

HOW TO GET LESS THAN YOU BARGAIN FOR: ADJUDICATING THE GUATEMALA-BELIZE TERRITORIAL DISPUTE AT THE I.C.J.

INTRODUCTION

On a Thursday afternoon in June of 2006, Emilio Hernandez and his brother wandered deep into the jungle of Guatemala to cut xate leaves.¹ Mostly indigenous Mayans, *xateros* sell the xate leaves they collect, which eventually end up on the international market and are quite popular with florists in the United States.² While cutting leaves in the thick forest, Emilio and his companion wandered across the “imaginary line” that separates Guatemala from Belize.³ Belizean soldiers opened fire on the *xateros*.⁴ The soldiers shot Emilio and took his brother to jail in Belize for crossing the border illegally, a crime in that country.⁵ Emilio was returned to the Guatemalan side of the border where he was rushed to a hospital and treated for gunshot wounds.⁶ This was not the first time that a seemingly innocent venture somewhere in the liminal space between Guatemala and Belize turned violent.⁷ In 2000, members of the Guatemalan military took four Belizean patrolmen from the Belizean side of the border into custody, forcing the longstanding conflict between these two countries into the international spotlight for a brief moment.⁸ According to Guatemalan reports, *xateros* have

¹ Rigoberto Escobar López, *Soldados beliceños atacan a campesinos*, PRENSA LIBRE (Guatemala City), June 26, 2006, available at <http://www.prensalibre.com/pl/2006/junio/26/145264.html>. Xate trees are related to the palm tree and the leaves resemble the branches of a palmetto. Belize Botanic Gardens, Xate, <http://www.belizebotanic.org/xate.html> (last visited Feb. 4, 2010) [hereinafter Xate]. People who cut xate leaves for a living are called *xateros*. *Id.*

² *Id.*; see also Alianza para un Mundo Justo, *Growing Together: Xate Plantation in Suculté, Guatemala*, Oct.–Dec. 2004, at 4, http://www.patriciadaniel.org.uk/CBM_archive/Xate%20report%20October%20December04.pdf.

³ *Id.*; see also Marcela Fernández O., *Beliceños rechazan reclamo guatemalteco; se resisten a acudir a la CIJ*, PRENSA LIBRE (Guatemala City), Feb. 1, 2009, available at <http://www.prensalibre.com/pl/2009/febrero/01/290856.html>.

⁴ Escobar López, *supra* note 1.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ U.S. Dep’t of State, Belize—Profile, Feb. 2002, <http://www.state.gov/outofdate/bgn/b/22891.htm> [hereinafter Belize Profile].

been shot at and even killed various times when they have crossed over into Belize.⁹ Indigenous Mayans living in the area feel that the xate, growing wild in the jungle, should belong to anyone who expends the labor collecting it.¹⁰ More than 250 Guatemalans wander daily onto the Belizean side of the border to collect xate leaves, aggravating a conflict that has its roots deep in the history of these two Central American nations.¹¹

Since its independence from Spain, Guatemala has asserted a territorial claim to what is now the country of Belize.¹² Guatemala's claim has varied from a claim to all of Belizean territory to a claim over what is now approximately the southern half of Belize.¹³ Guatemala bases its claim on various legal arguments, including a breached treaty with Great Britain prior to Belize's independence and the notion of inheritance from Spain following Guatemala's independence (*uti possidetis juris*).¹⁴ During approximately the first half of the twentieth century, this territorial dispute was characterized by occasional skirmishes on the border of Belize/Guatemala.¹⁵ As noted above, when, in 2000, Guatemalan security forces took a four-man Belizean border patrol into custody, it returned the conflict to international attention.¹⁶ After the return of the four Belizean officers, the Organization of American States ("OAS") started a facilitation process between the two countries¹⁷ and made a detailed proposal to end the dispute.¹⁸ While international attention and OAS involvement have quieted the conflict for the moment, Guatemala maintains its claim to Belizean territory. Belize states that due to Guatemala's claim, it is forced to divert important resources from development to focus on this

⁹ Escobar López, *supra* note 1.

¹⁰ Alianza para un Mundo Justo, *supra* note 2, at 3–4.

¹¹ *Id.*

¹² ELIHU LAUTERPACHT ET AL., LEGAL OPINION ON GUATEMALA'S TERRITORIAL CLAIM TO BELIZE 5 (2002); *see also infra* app. 1.

¹³ *Id.* Until 1981, Belize was a British colony known as British Honduras. P.A.B. THOMSON, BELIZE: A CONCISE HISTORY 170–71 (2004). For purposes of efficiency, this Comment refers to the country now known as Belize, and formerly known as British Honduras, as "Belize."

¹⁴ LAUTERPACHT ET AL., *supra* note 12, at 9; *see infra* note 133 and accompanying text.

¹⁵ THOMSON, *supra* note 13, at 169–75.

¹⁶ Belize Profile, *supra* note 8.

¹⁷ *Id.*; Alexis Rosado, *A Commentary on the Belize-Guatemala Facilitation Process*, 23 BELIZEAN STUDIES 81, 82 (2001). Alexis Rosado is the Chief Executive Officer of the Belize government's Ministry of Foreign Affairs and Foreign Trade. Press Release, Gov't of Belize, Reconstitution of the Belize Negotiation Team (June 27, 2008), available at http://www.governmentofbelize.gov.bz/press_release_details.php?pr_id=5039.

¹⁸ Press Release, Org. of American States, Belize-Guatemala Territorial Secretary Differendum: Secretary General Presents Completed Proposals (Sept. 17, 2002), available at http://www.oas.org/OASpage/press_releases/press_release.asp?sCodigo=E-182/02.

dispute.¹⁹ Belize is wary of ignoring Guatemala's claim because it is a small nation of 250,000 with security forces of only 800, while Guatemala's military forces alone are about 40,000 strong.²⁰ Belize has also accused Guatemala of allowing Guatemalan citizens to settle on the Belizean side of the border.²¹ The Guatemalan government has renewed its push for an International Court of Justice ("ICJ") resolution to the conflict since it formally rejected the OAS proposals in 2002.²² In January of 2008, a new Belizean Prime Minister was elected on the platform of sending the border dispute to the ICJ.²³ The two governments signed a pact in December of 2008 to send the dispute to the ICJ.²⁴ However, both countries' laws require this step to be approved by a popular vote.²⁵ While Guatemalan popular opinion remains strongly in favor of the ICJ resolution, many Belizeans are harshly opposed to leaving their fate in the hands of strangers.²⁶

In Part I, this Comment explores the historical causes of the conflict and analyzes the current social situations in both countries that have led to an intensification of hostility in the border area. Part II discusses the legal bases of each party's claim to the territory. Part III examines the history of negotiations between the parties and analyzes the many failures to reach a resolution. Part IV explores possible resolutions to the conflict. Part V examines problems with the possible resolutions and discusses the ramifications of an ICJ adjudication for both parties. Part V further analyzes the reasons why Guatemala—a sure loser at the ICJ—is pushing for such a resolution, while Belize—a sure winner at the ICJ—is opposed to this resolution to the conflict. Part VI concludes by demonstrating how an ICJ adjudication will fail to serve the interests of either party. This Comment advocates a negotiated solution and illustrates what both countries stand to lose by insisting on an ICJ resolution to the conflict.

¹⁹ Said Musa, *Belize-Guatemala Relations, Welcome Message from the Prime Minister of Belize*, http://belize-guatemala.gov.bz/pm_welcome.html (last visited Mar. 15, 2009).

²⁰ *Id.*

²¹ See Rosado, *supra* note 17, at 81.

²² See Fernández O., *supra* note 3.

²³ C. León & A. Blas, *Confían en continuidad de negociación con Belice*, PRENSA LIBRE (Guatemala City), Feb. 11, 2008, available at <http://www.prensalibre.com/pl/2008/febrero/11/219626.html>.

²⁴ *Guatemala y Belice acuerdan resolver diferendo en La Haya*, PRENSA LIBRE (Guatemala City), Dec. 8, 2008, available at <http://www.prensalibre.com/pl/2008/diciembre/08/281943.html>.

²⁵ *Id.*

²⁶ Fernández O., *supra* note 3.

I. HISTORY OF THE CONFLICT

A. *Before Belize's Independence*

Prior to Spanish conquest, the areas that now make up modern-day Belize and Guatemala were populated by the Maya.²⁷ In the early Spanish colonial period, this area, as well as regions further south in Central America and north into Chiapas, made up the Kingdom of Guatemala,²⁸ also known as the Captaincy-General of Guatemala.²⁹ This “Kingdom” included at least the southern half of Belize.³⁰ During the late seventeenth and early eighteenth centuries, British buccaneers and woodcutters began to settle on the Caribbean coast.³¹ The Spanish built large forts along the coast in an attempt to keep the British out, but for the most part these efforts failed.³² The competition for Belize’s coast, and the mahogany and dyewoods there, continued into the eighteenth-century, with British woodcutters occasionally being ousted and repeatedly returning.³³

Great Britain and Spain signed a series of treaties during this period to limit British activity in the area and maintain Spain’s sovereign rights.³⁴ When Mexico and the Central American states gained independence from Spain, the Captaincy-General of Yucatan, north of the area of British activity, became part of what is modern-day Mexico.³⁵ In 1826, Mexico recognized Great Britain’s rights to the land now known as Belize.³⁶ The Captaincy-General of Guatemala, to the south, became the Central American Federation from which Guatemala eventually seceded.³⁷ Neither the Federation—nor Guatemala—recognized Great Britain’s rights to Belize.³⁸ In 1859, Great Britain and Guatemala signed a treaty in an attempt to resolve this conflict.³⁹ However,

²⁷ RALPH LEE WOODWARD, JR., *CENTRAL AMERICA: A NATION DIVIDED* 12–20 (1985).

²⁸ *Id.* at 36–37.

²⁹ See LAUTERPACHT ET AL., *supra* note 12, at 9.

³⁰ WOODWARD, *supra* note 27, at 12–20.

³¹ *Id.* at 52.

³² *Id.*

³³ *Id.* at 64.

³⁴ John G. Merrills, *The Belize-Guatemala Territorial Dispute and the Legal Opinion of January 2002*, 1 *THE GLOBAL COMMUNITY: Y.B. INT’L L. & JURISPRUDENCE* 77, 79 (2002).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Convention Between Great Britain and Guatemala, Relative to the Boundary of British Honduras, Gr. Brit.-Guat., Apr. 30, 1859, 11 U.S.T. 1840 [hereinafter Convention]; see also *infra* Part II.B.

disagreement over terms of the treaty continued, and the dispute over Belize was left unresolved.⁴⁰ In 1931, Great Britain and Guatemala again addressed the problem in an Exchange of Notes, but disagreement over the meaning of terms in this treaty and absence of pressure to resolve the conflict again left the fate of Belize up in the air.⁴¹

In 1945, Guatemala adopted a new Constitution that asserted its claim to the full territory of Belize.⁴² Great Britain proposed that the dispute be submitted to the ICJ, but the parties could not agree on how the dispute should be decided.⁴³ In 1947, Great Britain deployed infantry from Jamaica to Belize and sent a warship to the Bay of Honduras.⁴⁴ While the Guatemalans did not respond with force, the Guatemalan claim was regularly reasserted, and the British continued to keep a military presence in Belize.⁴⁵

The conflict continued to be an issue between Great Britain and Guatemala and again came to a head when Great Britain began to consider a plan for Belize's self-governance.⁴⁶ Armed Guatemalan civilians entered into Belize, and when the plan for self-governance was adopted, Guatemala reduced relations with Great Britain to the consular level.⁴⁷ A United States-led mediation, resulting in a 1968 Model Treaty, also failed to reconcile the parties.⁴⁸ The U.S. plan was viewed as encouraging Guatemala's assertion of a claim to the Belizean territory.⁴⁹ In the early 1970s, Guatemala planned to attack Belize.⁵⁰ Guatemala joined forces with El Salvador at this time, promising El Salvador to settle Salvadoran peasants in what would become

⁴⁰ Merrills, *supra* note 34, at 79.

⁴¹ Exchange of Notes Respecting the Boundary between British Honduras and Guatemala, with Annexes, Gr. Brit.-Guat., Aug. 25–26, 1931, 428 L.N.T.S. 1932, *available at* http://untreaty.un.org/unts/60001_120000/17/22/00033070.pdf [hereinafter Exchange of Notes]; THOMSON, *supra* note 13, at 165; *see also infra* Part II.C.

⁴² THOMSON, *supra* note 13, at 166.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 166–67.

⁴⁷ *Id.* at 167.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 168.

Guatemalan territory (once annexed from Belize).⁵¹ The British responded by reinforcing the military presence in Belize.⁵²

During this decade, it became more obvious that Great Britain would have to grant Belize its independence.⁵³ As part of an international push for decolonization, the U.N. pressured Great Britain to give Belize independence.⁵⁴ However, Great Britain was loath to decolonize Belize with the Guatemalan claim still open.⁵⁵ As Great Britain saw it, granting Belize its independence could have two effects.⁵⁶ If Great Britain pulled out of Belize, this action would open up the country to the possibility of a Guatemalan occupation.⁵⁷ Otherwise, post-independence, Great Britain would be forced to continue its military protection of Belize.⁵⁸ Despite a push for negotiation in the 1970s, when Belize gained its independence in 1981, Guatemala still asserted a claim to the entire country.⁵⁹ Belize was admitted to the U.N. four days after its independence with a near-unanimous General Assembly vote.⁶⁰ Only Guatemala voted not to admit Belize.⁶¹ At this time, Guatemala also broke off consular relations with Great Britain and closed the border with Belize.⁶²

B. After Belize's Independence

As a result of the continued Guatemalan claim to the Belizean territory, Great Britain left its military garrison intact in Belize for more than a decade after Belize gained independence.⁶³ Guatemala continued to deny Belize's existence and independence until 1986, when Guatemala indicated that it was ready to negotiate directly with Belize—at least a *de facto* recognition of Belize as a separate and independent nation.⁶⁴ In 1988, a Permanent Joint

⁵¹ Janine Sylvestre, *The Cost of Conflict: The Anglo-Belize/Guatemala Territorial Issue*, ch. 8 (May 10, 1995) (unpublished M.A. thesis, University of Chile), available at <http://www.belizenet.com/bzeguat/chap8.html>.

⁵² THOMSON, *supra* note 13, at 168.

⁵³ *See id.* at 168–69.

⁵⁴ Merrills, *supra* note 34, at 81; *see also* G.A. Res. 33/36, U.N. Doc. A/RES/33/36 (Dec. 13, 1978).

⁵⁵ Merrills, *supra* note 34, at 81; THOMSON, *supra* note 13, at 169.

⁵⁶ THOMSON, *supra* note 13, at 168–70.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ G.A. Res. 36/3, U.N. Doc. A/RES/36/3 (Sept. 25, 1981); THOMSON, *supra* note 13, at 170.

⁶¹ G.A. Res. 36/3, U.N. Doc. A/RES/36/3 (Sept. 25, 1981); LAUTERPACHT ET AL., *supra* note 12, at 69.

⁶² THOMSON, *supra* note 13, at 171.

⁶³ *Id.* at 170.

⁶⁴ *Id.* at 172.

Commission was formed between the two nations with an eye toward resolving the dispute.⁶⁵ In 1991, the Guatemalan President announced that he was prepared to come to an agreement with Belize based on informal agreements developed by the Permanent Joint Commission.⁶⁶ Belize's People's United Party facilitated the talks in Belize.⁶⁷ Guatemala planned to relinquish its claim to Belizean land in exchange for an increase in Guatemala's Caribbean access and the ability to exploit some part of Belize's exclusive economic zone ("EEZ").⁶⁸ Additionally, Great Britain pledged a large sum to improve road conditions between the two countries.⁶⁹ In an attempt to demonstrate its goodwill, Belize passed the Maritime Areas Act of 1992, which envisioned a limitation of Belize's territorial sea in the context of negotiation of a definitive agreement with Guatemala.⁷⁰ According to the act, the limitation of Belize's territorial sea must be approved by a popular vote in Belize and be intended to bring an end to the territorial dispute.⁷¹ The Belizean United Democratic Party inserted the popular vote reservation after negotiations with Guatemala were completed.⁷²

However, when the very Guatemalan President (Jorge Serrano Elias) who had pushed for a definitive agreement with Belize attempted to create an authoritarian regime in Guatemala by dissolving the Guatemalan Congress, Supreme Court, and Constitution, talks with Belize fell through.⁷³ While Serrano was replaced with a noted human rights advocate, disappearances and military repression continued in Guatemala, and the political climate there did not lend itself to further negotiations with Belize.⁷⁴ At the same time, the change in wording of the Belize Maritime Areas Act, effective once the United Democratic Party had regained control in Belize, was sufficient to cause distrust on the Guatemalan side.⁷⁵

⁶⁵ *Id.*

⁶⁶ *Id.* at 172–73.

⁶⁷ *Id.* at 173–74.

⁶⁸ *See id.*; *see also* Government of Belize, Belize-Guatemala Relations, The Belize Position, http://www.belize-guatemala.gov.bz/belize_position.html (last visited Mar. 15, 2009) [hereinafter Belize Position]; *infra* Part IV.C. (discussing one possible solution to the maritime problem).

⁶⁹ THOMSON, *supra* note 13, at 173.

⁷⁰ Belize Position, *supra* note 68; *see also* Maritime Areas Act, No. 1 (1992) (Belize).

⁷¹ Maritime Areas Act, *supra* note 70, pt. II, §3(2)–(3).

⁷² *See* THOMSON, *supra* note 13, at 174.

⁷³ *Id.* at 172–73; KAY B. WARREN, *INDIGENOUS MOVEMENTS AND THEIR CRITICS: PAN-MAYA ACTIVISM IN GUATEMALA* 132–33 (1998).

⁷⁴ THOMSON, *supra* note 13, at 173–74; WARREN, *supra* note 73, at 132–33.

⁷⁵ THOMSON, *supra* note 13, at 174.

In a 1994 letter to the U.N. Secretary-General, Guatemala reasserted its claim to Belize and rejected the agreements that had been reached in 1991.⁷⁶ In 1996, the Guatemalan government signed peace accords with the guerrillas it had been fighting for nearly forty years, ending civil unrest and armed conflict within the country.⁷⁷ Despite an end to the Guatemalan internal conflict, the Guatemalan government maintained its claim to Belize.⁷⁸ In 1999, the Guatemalan government again addressed a letter to the U.N. Secretary-General regarding its claim to Belize.⁷⁹ In this letter, the Guatemalan government claimed all of Belize's territory south of the River Sibun as Guatemalan territory.⁸⁰ The Guatemalan government also expressed its desire that the dispute be resolved in the ICJ or through an international arbitration.⁸¹

On February 24, 2000, a "four-man Belize[an] border patrol was taken into custody by a larger Guatemalan patrol."⁸² Belize characterized this incident as kidnapping and gained widespread international support as a result.⁸³ The OAS facilitation process was also a result of this incident.⁸⁴ Guatemala released the men after ten days.⁸⁵

Belize has also accused Guatemala of turning a blind eye to the settlement of its citizens on the Belize side of the border.⁸⁶ Considering the lack of control the Guatemalan government has throughout Petén, the Guatemalan state that borders Belize, this accusation may be unfounded.⁸⁷ However, these fears are related to historical relations between the two countries.

⁷⁶ Letter dated 10 March 1994 from the Permanent Representative of Guatemala to the United Nations addressed to the Secretary-General, U.N. Doc. A/49/94 (Mar. 14, 1994).

⁷⁷ See WARREN, *supra* note 73, at 52.

⁷⁸ See Belize Position, *supra* note 68.

⁷⁹ THOMSON, *supra* note 13, at 175; Belize Position, *supra* note 68.

⁸⁰ THOMSON, *supra* note 13, at 175; *see also infra* app. 1.

⁸¹ THOMSON, *supra* note 13, at 175; Belize Position, *supra* note 68.

⁸² Belize Profile, *supra* note 8.

⁸³ Musa, *supra* note 19.

⁸⁴ Belize Profile, *supra* note 8.

⁸⁵ *Id.*

⁸⁶ See Rosado, *supra* note 17, at 81.

⁸⁷ The Guatemalan state that has the longest border with Belize is Petén. Petén is characterized by forest terrain and is populated mostly by indigenous groups and peasants. Melissa Vega, *Petén con problemas de narcotráfico, medio ambiente y ocupaciones*, CENTRO DE REPORTES INFORMATIVOS SOBRE GUATEMALA, Mar. 27, 2008, <http://cerigua.blogspot.com/2008/03/petn-con-problemas-de-narcotrfico-medio.html>. The area is also home to a large number of former civilian patrolmen. Miguel González and Rigoberto Escobar López, *Negocian con ex-PAC fin a bloqueo en Petén*, PRENSA LIBRE (Guatemala City), June 19, 2002, *available at* <http://www.prensalibre.com/pl/2002/junio/19/30318.html>. During the Guatemalan Civil War, the civilian patrol was used by the government to keep tabs on local activities throughout Guatemala. *Id.* With the end of

In 1977, Roberto Carpio Nicolle, a Guatemalan congressman and journalist, published a book about Guatemala's claim in Belize.⁸⁸ Carpio Nicolle points out that Guatemala's focus on territorial control since the 1960s has ignored another important instrument of control: the Belizean population.⁸⁹ Carpio Nicolle recognizes the familial and economic ties between many Belizeans and Guatemalans, rooted in Guatemalan immigration to Belize.⁹⁰ In a propaganda campaign directed at Belizean citizens (1959–1963), the Guatemalan government took advantage of (1) the Guatemalan presence in Belize and (2) the population's dissatisfaction with British colonial rule.⁹¹ Internal problems in Guatemala put the propaganda campaign to an end, and by the following decade, the Belizean population was in favor of independence, not annexation to Guatemala.⁹² Still, Carpio Nicolle blames Guatemala's own inaction for this stance—had Guatemala helped the Belizeans when they were treated only as an instrument by Great Britain, Guatemala could have garnered favor with the population.⁹³ Carpio Nicolle uses this failure as a lesson for Guatemala's future strategy—Guatemala should use the population as an instrument of control.⁹⁴ While Carpio Nicolle leaves the matter in the hands of Guatemala and Belize,⁹⁵ his suggestions are insidious. Any attempt of the Guatemalan government to take action directly with Belizean citizens, without regard to their government, would undermine the years of confidence-building between the two governments. Taking advantage of the large number of Belizeans of Guatemalan descent would also lend credence to the Belizean government's stance that the Guatemalan

the civil war in 1996, the civilian patrol was disbanded, but many patrolmen retained their weapons, and feel that the government owes them some kind of payment for their services. *Id.* Guatemala's lack of control over this area was evidenced in 2002, when thousands of armed ex-civilian patrolmen succeeded in shutting down roads and airports in Petén for days, forcing the Guatemalan government to promise them payment for the services rendered during the civil war. *Id.* Not only do armed ex-civilian patrolmen continue to threaten the government's dominion over the area, but Petén is also plagued by looting of archeological sites and is the center of drug-trafficking in Guatemala. Vega, *supra*. While the government has discovered a number of aircraft landing strips throughout the area, it has been unsuccessful in combating this activity. Guatemalan congressmen are currently requesting increased military presence in the area. Jéssica Osorio, *Diputados exigen presencia militar en Petén, por narcotráfico*, PRENSA LIBRE (Guatemala City), Mar. 28, 2008, available at <http://www.prensalibre.com/pl/2008/marzo/28/228574.html>.

⁸⁸ ROBERTO CARPIO NICOLLE, *HACIA DONDE VA BELICE* 7–8 (1977).

⁸⁹ *Id.* at 200.

⁹⁰ *See id.* at 12, 197–200.

⁹¹ *Id.* at 197–98.

⁹² *Id.*

⁹³ *Id.* at 200.

⁹⁴ *Id.* at 200–02.

⁹⁵ *See id.*

government has done little to stop its citizens from settling on the Belizean side of the border.⁹⁶

In an effort to build confidence between the two countries, the OAS formed an adjacency zone on their border.⁹⁷ The OAS currently maintains the Belize-Guatemala Adjacency Zone and has begun the process of resettling the Guatemalan communities of Nueva Juda and Santa Rosa (settlements in Belize) on the Guatemalan side of the border.⁹⁸ However, despite the efforts of the OAS in the adjacency zone and proposals for confidence building measures, earlier this year Belize security forces detected three new Guatemalan settlements in Belize.⁹⁹

C. *Underlying Causes of the Conflict*

Unrest in Guatemala has been an important factor in its international relations generally, and more specifically in its relations with Belize. Guatemala was engaged in national crises for forty years.¹⁰⁰ Escalations of violence in Guatemala against its own citizens often coincided with renewed claims to the Belizean territory.¹⁰¹ Guatemala's severe reaction to Belize's independence in 1981 came at the same time as what some scholars have termed the "time of mass terror" in Guatemala.¹⁰² The number of Guatemalan civilian deaths at the hands of the military during the period from 1978 to 1984 has been estimated at 50,000 to 75,000.¹⁰³ While mass violence in Guatemala came to an end in the later 1980s, it was replaced by more selective repression.¹⁰⁴ The end of mass violence coincided with the ray of hope in 1991 that the two nations would be able to come to some sort of lasting solution to

⁹⁶ See Rosado, *supra* note 17, at 81.

⁹⁷ *Id.* at 82.

⁹⁸ Brochure, Bulletin of Activities 2007 of the Office of the Secretary General of the Organization of American States in the Belize-Guatemala Adjacency Zone, available at http://www.belizeguatemala.com/files/Boletin_Adyacencia_Ingles.pdf [hereinafter Bulletin of Activities 2007].

⁹⁹ *Denuncian cuatro asentamientos de guatemaltecos en Belice*, PRENSA LIBRE (Guatemala City), Feb. 2, 2008, available at <http://www.prensalibre.com/pl/2008/febrero/02/218143.html>.

¹⁰⁰ WARREN, *supra* note 73, at 52.

¹⁰¹ See LAUTERPACHT ET AL., *supra* note 12, at 3; see, e.g., THOMSON, *supra* note 13, at 174; WARREN, *supra* note 73, at 132.

¹⁰² BEATRIZ MANZ, REFUGEES OF A HIDDEN WAR: THE AFTERMATH OF COUNTERINSURGENCY IN GUATEMALA 17 (1988).

¹⁰³ *Id.* at 30.

¹⁰⁴ *Id.*

the dispute. However, Guatemalan civil unrest, in the form of the constitutional crisis of 1993, again got in the way of a lasting solution.¹⁰⁵

The events of 1999 and 2000 and Guatemala's current intransigence are more puzzling. While the dispute with Belize may have been used in the past as a tool to rally nationalistic sentiment in times of severe civil war, the 1996 end of the Guatemalan Civil War and the establishment of a semblance of civil order beg the question of what motivates Guatemala to keep its claim open in the face of considerable international disapproval. Guatemala is an extremely poor nation with insufficient land for its citizens and returning refugees.¹⁰⁶ Guatemala has a strong interest in increasing its land base and surely hopes to do so by annexing territory from Belize. Talks have regularly fallen through because Belize refuses to give in to any of Guatemala's territorial claims to Belizean land.¹⁰⁷

Under the United Nations Convention on the Law of the Sea, Guatemala considers itself to be a "geographically disadvantaged" state.¹⁰⁸ Because of the geography of the Caribbean coast, Guatemala's access to the Caribbean seas and its ability to maintain a viable port on that coast, are severely limited by the territorial seas of Belize and Honduras.¹⁰⁹ Guatemala has a large interest in annexing Belizean territory south of the River Sibun because not only would that add to Guatemala's land mass, but it would increase Guatemala's territorial sea and access for import and export on the Caribbean.¹¹⁰

¹⁰⁵ THOMSON, *supra* note 13, at 173–74. The constitutional crisis occurred when the then-democratically elected President Serrano attempted an authoritarian takeover of his own government, including a dissolution of the Guatemalan Congress and the Constitution. WARREN, *supra* note 73, at 132–33.

¹⁰⁶ See MANZ, *supra* note 102, at 208–11; WOODWARD, *supra* note 27, at 247.

¹⁰⁷ Belize Position, *supra* note 68.

¹⁰⁸ *Consultation held to discuss Belize/Guatemala Facilitators Proposal*, THE SAN PEDRO SUN (Ambergris Caye, Belize), Oct. 3, 2002, available at <http://ambergriscaye.com/sanpedrosun/old/02-381.html>. Under the United Nations Convention on the Law of the Sea, a geographically disadvantaged state is defined as a coastal state bordering an enclosed or semi-enclosed sea, "whose geographical situation makes them dependent upon the exploitation of the living resources of the exclusive economic zones of other States in the subregion or region . . ." United Nations Convention on the Law of the Sea art. 70, ¶ 2, Dec. 10, 1982, 1833 U.N.T.S. 397. The convention gives geographically disadvantaged states the right to exploit the living resources of the exclusive economic zones of coastal states in the same region or subregion "on an equitable basis." *Id.* ¶ 1.

¹⁰⁹ IVELAW L. GRIFFITH, *CARIBBEAN SECURITY IN THE AGE OF TERROR* 22 (2004).

¹¹⁰ See Sylvestre, *supra* note 51, ch. 8. Guatemala has suggested common infrastructure projects such as ports in Belize to further economic development. *Id.*

Further complicating the negotiation problem for Guatemala is something like a national inferiority complex.¹¹¹ Immediately to the south of the Latin American giant, Mexico, and left behind by modernizations and successes of other Central American nations, Guatemala regularly seems to be at the lowest rung on the ladder in international relations.¹¹² With an exponentially larger population and military than Belize, Guatemala for once has the ability to have the upper hand in an international negotiation.¹¹³ However, many of the positions that Guatemala has taken during negotiations have weakened its overall approach. Its repeated insistence that it receive a piece of Belizean land territory has cost it rights to Belize's territorial sea and shared exploitation of Belize's EEZ.¹¹⁴ Additionally, its insistence that the dispute be resolved in the ICJ may result in a greater net loss for the country than an acceptance of the OAS proposals. What may be viewed as a lack of goodwill on the part of the Guatemalan government has certainly damaged confidence-building measures.¹¹⁵ While the 2000 kidnapping of the Belizean border patrol must nominally be attributed to the Guatemalan government, other incidents may be more indicative of Guatemala's poverty and weak democracy than anything else. The Guatemalan state that shares the longest border with Belize is one of the most lawless states of Guatemala.¹¹⁶ The jungle terrain would be difficult to regulate even if Guatemala had the resources to do so.¹¹⁷ This area is also home to some of the most serious drug trafficking in the country.¹¹⁸

Belize's interests in this dispute are easier to flesh out. Its most obvious interest is a peaceable end to the dispute that allows it to maintain sovereignty and territorial integrity.¹¹⁹ A definitive end to the conflict with its closest neighbor would not only allow it to use important resources that it currently devotes to self-defense and negotiations, but would also allow for friendlier

¹¹¹ Cf. Kate Doyle & Peter Kornbluh, *CIA and Assassinations: The Guatemala 1954 Documents*, National Security Archive Electronic Briefing Book No. 4, <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB4/> (last visited Oct. 23, 2009).

¹¹² See Belize Position, *supra* note 68; see also SUSANNE JONAS, OF CENTAURS AND DOVES: GUATEMALA'S PEACE PROCESS 224 (2000).

¹¹³ U.S. Dep't of State, Belize—Background Note, Sept. 2009, <http://www.state.gov/r/pa/ei/bgn/1955.htm>; U.S. Dept. of State, Guatemala—Background Note, Feb. 2009, <http://www.state.gov/r/pa/ei/bgn/2045.htm>.

¹¹⁴ Belize Position, *supra* note 68.

¹¹⁵ *Id.*

¹¹⁶ See *supra* note 87 and accompanying text.

¹¹⁷ Vega, *supra* note 87.

¹¹⁸ *Id.*

¹¹⁹ See Belize Position, *supra* note 68.

relations with Guatemala.¹²⁰ Belize is also interested in maintaining its borders and stopping the flow of Guatemalans into Belize.¹²¹ Belize blames Guatemalans for the destruction of 10,000 acres of Belize's forest, illegal mahogany logging, xate harvesting, wildlife hunting, cattle ranching, illegal settlements, and excavating and exporting artifacts.¹²² Belizeans also hope that a definitive resolution of the conflict will put an end to the constant insults to their sovereignty and self-determination that the Guatemalan claim encourages.¹²³

II. LEGAL BASES OF CLAIMS

Both parties assert claims to the area now known as Belize under various legal theories. Guatemalan legal claims have changed as it has reduced its territorial claims. The basis of any Guatemalan claim is grounded in the theory of *uti possidetis juris*, that it inherited the territory of present day Belize from Spain when it gained its independence from Spain.¹²⁴ Guatemala based its claim to the entire territory of Belize in the theory of *uti possidetis juris*.¹²⁵ The claim to the southern half of Belize that it maintains today is also rooted in this theory.¹²⁶ Guatemala also traces its claim to what it has characterized as Great Britain's breach of an 1859 treaty between Guatemala and Great Britain pertaining to the area of Belize.¹²⁷ Belize, on the other hand, also bases its claim under *uti possidetis juris* originating from when it gained independence

¹²⁰ See *id.*

¹²¹ See Glenn Tillett, *A Harsh Storm Seen Only Once in 100 Years*, BELIZE TIMES (Belize City), Nov. 12, 2008, available at http://belizetimes.biz/index2.php?option=com_content&task=view&id=2002&pop=1&page=0&Itemid=9 (opining that one of the greatest threats to the Belizean nation is "the continued civilian invasion by Guatemalans and other 'illegales'").

¹²² Adele Ramos, *The Slow Rape of Belize*, AMANDALA (Belize City), Dec. 23, 2008, available at <http://www.amandala.com.bz/index.php?id=7924>.

¹²³ See, e.g., Compton Fairweather, *The Price of an Insult*, AMANDALA (Belize City), Feb. 12, 2009, available at <http://www.amandala.com.bz/index.php?id=8146>. Fairweather's article reacts to an incident in which a Guatemalan businessman, Leonel Arellanos, built a storage container on Belizean territory. *Id.* The container was built in December, soon after the two governments signed the pact to go to the ICJ. *Id.* Armed, and aided by fellow villagers, Arellanos continued to hold both his own government and the Belizean government at bay for many weeks. *Id.* Fairweather calls the construction of this storage container "an insult to our national dignity" and likens the situation to an 1874 incident in which the Guatemalan governor of a nearby seaport "flogged the local British Consul." *Id.* In response to the 1874 incident, 200 British troops were sent to the drunken governor's town, the Guatemalan government issued a formal apology and paid 50,000 pounds in damages. *Id.*

¹²⁴ LAUTERPACHT ET AL., *supra* note 12, at 60–61.

¹²⁵ *Id.*

¹²⁶ *Id.* at 60.

¹²⁷ *Id.* at 64–66.

from Great Britain, the 1859 treaty between Great Britain and Guatemala, and another 1931 treaty pertaining to the territory between Guatemala and Great Britain.¹²⁸ Furthermore, Belize derives its claim from customary international law and self-determination.¹²⁹

A. *Uti Possidetis Juris*

Guatemala first bases its claim to the Belizean territory on the idea that Spain retained sovereignty over all of Belize during the colonial period.¹³⁰ During the colonial period, Guatemala claims that Belize formed part of the Province of Verapaz, which was in turn part of the Captaincy-General of Guatemala.¹³¹ When the United Provinces of Central America (and later Guatemala) gained independence from Spain, they inherited Spain's title to the land from Chiapas south to Costa Rica.¹³² This inheritance was based on *uti possidetis juris*, the theory that borders of newly sovereign states are drawn "on the basis of their previous administrative frontiers."¹³³ At the time of independence and thereafter, there was some confusion as to which country had administered the territory that is now modern-day Belize.¹³⁴ While Great Britain and Spain had signed treaties regarding the territory prior to independence, the treaties had never fully decided the fate of the Belizean territory.¹³⁵ At least the southern half of Belize was included in the Captaincy-General of Guatemala during Spanish colonial times.¹³⁶ Though English buccaneers/woodcutters were present from the late seventeenth-century forward, Spain continued to claim sovereignty over the area.¹³⁷ In the Spanish-English treaties, Spain agreed to allow some British activity in the area, but

¹²⁸ *Id.* at 10–26.

¹²⁹ *Id.* at 27–36; *see also infra* Part II.D (discussing the customary international law basis of Belize's claim). Self-determination is defined as "a principle related to the rights of peoples and distinct nationalities to have a State that is representative of their national aspirations." DAVID J. BEDERMAN, *INTERNATIONAL LAW FRAMEWORKS* 56 (2d ed. 2006). In the Belizean case, the fact that Belizeans gained independence from Great Britain in 1981 and have maintained a democratic government since then suggests that Belizeans' national aspirations are fulfilled with a sovereign Belize.

¹³⁰ LAUTERPACHT ET AL., *supra* note 12, at 9.

¹³¹ *Id.*

¹³² *See id.* at 9, 60.

¹³³ Enver Hasani, *Uti Possidetis Juris: From Rome to Kosovo*, 27 *FLETCHER F. WORLD AFF.* 85, 85 (2003).

¹³⁴ *See* THOMSON, *supra* note 13, at 12–13.

¹³⁵ *See* LAUTERPACHT ET AL., *supra* note 12, at 2.

¹³⁶ WOODWARD, *supra* note 27, at 12–20.

¹³⁷ LAUTERPACHT ET AL., *supra* note 12, at 87–88.

still maintained her sovereign claim to the coast.¹³⁸ Belize (and Great Britain before her) claims, however, that while the southern half of Belize fell under the Captaincy-General of Guatemala, and the northern half under the Captaincy-General of Yucatan, Spain never actually administered the area.¹³⁹ The area's terrain as well as the presence of British pirates and buccaneers in the area made it difficult for Spain to administer the area.¹⁴⁰

At the same time, Great Britain did maintain some kind of administrative presence in the area throughout the colonial period.¹⁴¹ The basis of a claim in *uti possidetis juris* here boils down to the construction of "administration" in the colonial context. Spain certainly included the area within her New World colonies, and the area was "administered" in much the same way many Spanish colonial areas were administered—through erratic contact with the respective capitals of the captaincy-generals.¹⁴² While the British maintained some administrative presence on the coast, that presence covered only a very small percentage of the area now covered by modern-day Belize.¹⁴³ Thus, Belize's claim based in *uti possidetis juris* is somewhat weaker than Guatemala's claim. However, in light of subsequent history and customary international law, the basis of any territorial claim to the area solely in *uti possidetis juris* is not strong enough to survive.¹⁴⁴

B. *The 1859 Treaty*

Guatemala and Great Britain executed a treaty in Guatemala in 1859.¹⁴⁵ The treaty was signed on April 30 and ratified on September 12, 1859.¹⁴⁶ The stated purpose of this treaty was to define a boundary between Belize and Guatemala:¹⁴⁷ The two nations "being desirous, with a view to improve and perpetuate the friendly relations which happily subsist between the two countries, to define the boundary aforesaid, have resolved to conclude a Convention for that purpose"¹⁴⁸ The treaty also provided that each

¹³⁸ *Id.* at 73–74.

¹³⁹ *Id.* at 88.

¹⁴⁰ *Id.* at 73–74.

¹⁴¹ THOMSON, *supra* note 13, at 27–33.

¹⁴² *See generally* WOODWARD, *supra* note 27, at 12–20.

¹⁴³ THOMSON, *supra* note 13, at 27–33.

¹⁴⁴ LAUTERPACHT ET AL., *supra* note 12, at 67–68.

¹⁴⁵ Convention, *supra* note 39.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

country would appoint a commissioner to designate and mark out the boundary.¹⁴⁹ In Article VII of the treaty, the two countries agreed

conjointly to use their best efforts, by taking adequate means for establishing the easiest communication (either by means of a cart-road, or employing the rivers, or both united, according to the opinion of the surveying engineers), between the fittest place on the Atlantic Coast, near the settlement of Belize, and the capital of Guatemala¹⁵⁰

While Article VII outlined the basic goal of improved communication, the parties did not agree on basic terms, such as how to build the cart road or the percentage of cost for which each nation would be responsible.¹⁵¹ Negotiations between Great Britain and Guatemala subsequently broke down over the best way to establish easy communication and the percentage each nation would pay to build a road, railroad, or other form of communication.¹⁵²

Guatemala has since cited the inability of the parties to agree on the construction of a cart road as a material breach, on Great Britain's part, of the treaty.¹⁵³ Guatemala further claims that, rather than being a treaty to decide the boundary between two separate sovereignties, this treaty was a treaty of cession on Guatemala's part.¹⁵⁴ According to this theory, Guatemala ceded what was previously Guatemalan territory (Belize) to Great Britain.¹⁵⁵ This cession was in exchange for Great Britain's promise that it would construct a cart road from Guatemala City to a point on the Belizean coast.¹⁵⁶ The Guatemalan government argues that when Great Britain breached Article VII of the Convention, Guatemala was justified in reclaiming the territory it had ceded to Great Britain.¹⁵⁷ Guatemala's stance is that ever since Great Britain breached its part of the 1859 Convention, Belizean territory reverted back to Guatemala.¹⁵⁸

¹⁴⁹ *Id.* art. II.

¹⁵⁰ *Id.* art. VII.

¹⁵¹ *Id.* Because Article VII was not essential to the "object or purpose of [the] treaty," it is unlikely that this will be construed as a material breach. BEDERMAN, *supra* note 129, at 39. Under international law, Guatemala cannot terminate the treaty without a material breach. *Id.*

¹⁵² See THOMSON, *supra* note 13, at 100–02.

¹⁵³ LAUTERPACHT ET AL., *supra* note 12, at 64–66.

¹⁵⁴ See *id.* at 65; see also *Guatemala y Belice acuerdan resolver diferendo en La Haya*, *supra* note 24.

¹⁵⁵ LAUTERPACHT ET AL., *supra* note 12, at 11.

¹⁵⁶ *Id.* at 7.

¹⁵⁷ *Id.* at 64–66.

¹⁵⁸ *Id.*

Belize takes the opposite position—that in this treaty Guatemala recognized Britain’s sovereignty over the area and that the treaty was nothing more than an agreement as to the boundaries of the Belizean area.¹⁵⁹ Additionally, the Belize position is that breach of Article VII was not a material breach, and if there were a breach, it was mutual.¹⁶⁰ Both parties were required to take part in the construction of a cart-road, and when neither party could agree on the terms, there was mutual breach.¹⁶¹ Belize maintains that Article I (deciding the boundary between the two territories) and Article VII were not dependent on each other and furthermore that the treaty was not one of cession, but simply to decide the boundary between the two territories.¹⁶²

Further support for Belize’s stance comes from Article II of the Convention and the subsequent actions of the two countries. Article II of the Convention provided that the two countries would each appoint commissioners within twelve months of the ratification of the convention to mark the boundary between the two nations.¹⁶³ This project was begun, and markers were placed at “the terminal points of the southern section of the boundary . . .”¹⁶⁴ When relations between the two countries suffered because of their inability to resolve the cart-road issue, the commissioners ceased the mapping of the Belize-Guatemala boundary.¹⁶⁵

Guatemala also argues that despite the wording of the 1859 Convention, which suggests that the purpose of the treaty was to demarcate the boundary between the two countries, the actual purpose of the treaty as a treaty of cession was agreed to by the two parties.¹⁶⁶ Guatemala maintains that Great Britain was concerned that, were it to sign a treaty of cession with Guatemala, this treaty would violate the Clayton-Bulwer Treaty between Great Britain and the United States.¹⁶⁷

The Clayton-Bulwer Treaty, signed in 1850, provided that neither country would “occupy, or fortify, or colonize, or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central

¹⁵⁹ *Id.* at 65–66.

¹⁶⁰ *See id.*

¹⁶¹ *Id.*

¹⁶² Convention, *supra* note 39, art. I; LAUTERPACHT ET AL., *supra* note 12, at 65–66.

¹⁶³ Convention, *supra* note 39, art. II; LAUTERPACHT ET AL., *supra* note 12, at 65–66.

¹⁶⁴ Exchange of Notes, *supra* note 41, at 428.

¹⁶⁵ *See* THOMSON, *supra* note 13, at 100–02.

¹⁶⁶ *See* LAUTERPACHT ET AL., *supra* note 12, at 61–63.

¹⁶⁷ *Id.*

America”¹⁶⁸ This treaty was signed at a time when both Great Britain and the United States were suspicious of each other’s activities in Central America.¹⁶⁹ The thrust of Guatemala’s claim is that Great Britain acquiesced in Guatemala’s superior claim to the Belizean territory in 1859 and wanted to attain legal title to the territory through a treaty of cession.¹⁷⁰ However, Great Britain was concerned that if the 1859 Convention with Guatemala was worded to actually betray its true identity as a treaty of cession, it would aggravate relations with the United States.¹⁷¹ Whether or not Guatemala’s statements about the true purpose of the 1859 Convention actually characterize an unwritten agreement between Guatemala and Great Britain at the time of the 1859 Convention is a moot point. Guatemala’s acceptance of the 1931 Exchange of Notes (which included the 1859 treaty as an annex) is tantamount to an acceptance of the 1859 Convention’s plain language—revealing nothing more than a treaty to resolve and demarcate a pre-existing boundary.¹⁷²

C. *Exchange of Notes, 1931*

The issues of the boundary and the meaning of the 1859 Convention were again addressed by Great Britain and Guatemala in an Exchange of Notes between the two countries in 1931.¹⁷³ The British government addressed a note to the Guatemalan government pertaining to the boundary between the two countries.¹⁷⁴ The British note first refers to the boundary between Belize and Guatemala by stating that the boundary “was laid down in the convention” of 1859.¹⁷⁵ The note continues by quoting the definition of the boundary as stated in Article 1 of the 1859 Convention.¹⁷⁶ It also refers to Article 2 of the

¹⁶⁸ Convention as to Ship-Canal Connecting Atlantic and Pacific Oceans art. I, U.S.-Gr. Brit., Apr. 19, 1850, 1 Malloy 659 [hereinafter Clayton-Bulwer Treaty].

¹⁶⁹ LAUTERPACHT ET AL., *supra* note 12, at 62.

¹⁷⁰ *Id.* at 61.

¹⁷¹ *Id.* at 62.

¹⁷² *Id.* at 16–17.

¹⁷³ See generally Exchange of Notes, *supra* note 41. Treaties are commonly concluded by an exchange of instruments, as in this case. ANTHONY AUST, MODERN TREATY LAW AND PRACTICE 80 (2000). Article 13 of the Vienna Convention on the Law of Treaties provides that consent to be bound by a treaty can be expressed by an exchange of instruments, as long as the instruments provide that the exchange should have that effect. Vienna Convention on the Law of Treaties art. 13, May 23, 1969, 1155 U.N.T.S. 331. While the Convention does not have retroactive effect and the Exchange of Notes was executed before the Convention, the articles of the Convention, which codified pre-existing customary law regarding treaties, are helpful in analyzing the effect of past treaties. AUST, *supra*, at 8.

¹⁷⁴ Exchange of Notes, *supra* note 41, at 428–29.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

Convention and the appointment of joint commissioners by the two governments to mark out the boundary between the two territories.¹⁷⁷ The note then refers to the reappointment of joint commissioners in 1929 to complete the demarcation.¹⁷⁸ These commissioners examined the old monuments placed in 1860 and replaced these with new concrete monuments.¹⁷⁹ The British government further states that it accepts the boundaries as stated and “would be glad to receive a similar assurance on the part of the Government of Guatemala.”¹⁸⁰ The British government concludes: “The present note and your Excellency’s reply will constitute the agreement between the Governments of the United Kingdom and Guatemala in the matter.”¹⁸¹

The Guatemalan reply, executed a day later, is quite short.¹⁸² The Foreign Affairs Minister acknowledges the British note.¹⁸³ He then states that “[t]he Government of Guatemala agree[s] to accept the concrete monuments erected . . . on the frontier between Guatemala and British Honduras”¹⁸⁴ The Minister concludes by agreeing that “[t]hese monuments, thus determined, form part of the boundary line between British Honduras and the Republic of Guatemala.”¹⁸⁵

The statements made in the Exchange of Notes, and its registration with the League of Nations as a bilateral treaty, are especially damaging to the Guatemalan position. Despite these two treaties, Guatemala continues to cite a legal basis for its claim to the southern half of Belize.¹⁸⁶ Taking into account the two treaties executed between Great Britain and Guatemala prior to Belize’s independence, Guatemala’s strongest claim still lies in the theory of *uti possidetis juris*.¹⁸⁷ Belize’s claim is bolstered not only by these two binding treaties, but also by customary international law.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 429.

¹⁸⁰ *Id.* at 428–29.

¹⁸¹ *Id.*

¹⁸² *Id.* at 430.

¹⁸³ *Id.* As a high government official, the Guatemalan Foreign Minister is “always assumed to have the power to enter into treaties.” BEDERMAN, *supra* note 129, at 31.

¹⁸⁴ Exchange of Notes, *supra* note 41, at 428–29.

¹⁸⁵ *Id.*

¹⁸⁶ See *supra* Part II.A–B.

¹⁸⁷ See *supra* Part II.A.

D. Customary International Law

Effective occupation is the current rule by which a state can gain and maintain title to territory.¹⁸⁸ Effective occupation is characterized by, among other factors, “the actual continuous and peaceful display of state functions” in a territory.¹⁸⁹ Guatemala has never occupied or administered the Belizean territory it claims and has in fact “actively and passively acquiesced in . . . Britain’s title to Belize during the period prior to the independence of Belize.”¹⁹⁰ Conversely, from the mid-eighteenth century until 1981, the British government had maintained an administrative presence in Belize.¹⁹¹ Belize became self-governing in 1963 and has administered the entire territory since.¹⁹² Thus, at least since 1981, Belize has had all of the hallmarks of a state and has continuously displayed “state functions.”¹⁹³ The hallmarks of a state recognized in international law are a defined territory, government, and a permanent population.¹⁹⁴ Belize has all of these.¹⁹⁵ If international recognition is also included as a hallmark of a state,¹⁹⁶ Belize also has this, evidenced by the fact that it was accepted by a near unanimous vote to the United Nations, with only Guatemala voting against its acceptance.¹⁹⁷

III. HISTORY OF NEGOTIATIONS

A. The United States

While negotiations have been ongoing since Guatemala’s independence, this Comment focuses on some of the more recent negotiations. As Belize was gaining the status of self-governance, the relations between the parties worsened.¹⁹⁸ The parties submitted to a U.S.-led negotiation mediated by

¹⁸⁸ BEDERMAN, *supra* note 129, at 116.

¹⁸⁹ The Island of Palmas Case (U.S. v. Neth.), 11 R. Int’l Arb. Awards 829 (Perm. Ct. Arb. 1928).

¹⁹⁰ LAUTERPACHT ET AL., *supra* note 12, at 67–68.

¹⁹¹ See THOMSON, *supra* note 13, at 13–19, 169–71.

¹⁹² *Id.* at 163–64.

¹⁹³ See Convention on Rights and Duties of States art. 1, Dec. 26, 1933, 3 Bevans 145 [hereinafter Rights and Duties]; The Island of Palmas Case (U.S. v. Neth.), 11 R. Int’l Arb. Awards 829 (Perm. Ct. Arb. 1928).

¹⁹⁴ Rights and Duties, *supra* note 193.

¹⁹⁵ THOMSON, *supra* note 13, at 70–73, 163–64, 184; see also *supra* notes 91–93 and accompanying text.

¹⁹⁶ See BEDERMAN, *supra* note 129, at 56–60.

¹⁹⁷ G.A. Res. 36/3, *supra* note 60; LAUTERPACHT ET AL., *supra* note 12, at 10.

¹⁹⁸ See THOMSON, *supra* note 13, at 167; Ismail Omar Shabazz, *U.S. Intimidates Belize Government over Oil*, AMANDALA (Belize City), July 25, 2008, available at <http://www.amandala.com.bz/index.php?id=7242>.

B.M. Webster, a U.S. attorney.¹⁹⁹ After years of communication with the parties and an in-depth examination of the two parties' claims, the United States published a model treaty in 1968 as a result of negotiations mediated by Webster.²⁰⁰ Both parties rejected the model treaty.²⁰¹ Belize rejected the model treaty because it granted Guatemala some form of control over Belize's trade, military, and foreign affairs; Guatemala rejected it because the treaty required Guatemala to give up its territorial claim to Belize in exchange for some economic benefits.²⁰² Belize especially viewed the model treaty as overly advantageous to Guatemala and has since had little confidence in the United States's impartiality in the matter.²⁰³ This Belizean stance was rearticulated recently in *Amandala*, a Belizean newspaper:

We know from the available historical records that the U.S.A. has shown great interest in the Belize/Guatemala dispute. We know that the USA [sic] supports Guatemala's claim to Belize as evidenced in the Bay of Pigs 1961 under President Kennedy. (Cuban exiles trained in Guatemala for the invasion of Cuba.) We have seen the U.S. support for Guatemala in the 1966 Thirteen Proposals and the 1968 17 Proposals, the 1981 Heads of Agreements and the Belize Maritime Areas Act in 1991.²⁰⁴

This unconcealed statement of distrust for the United States's motives in the area paints a dim picture of any success the United States government might have in again attempting to resolve this dispute. If future negotiations are attempted by a third party, that third party must not be viewed by either of the parties as a strong ally to Belize or Guatemala. Additionally, a solution should not seem to favor either party unfairly, as the American proposals seemed to do.

B. *The United Nations*

The United Nations also got involved in the Belize question.²⁰⁵ During its push for Belize's independence, the U.N. advocated a definitive resolution to

¹⁹⁹ Merrills, *supra* note 34, at 81.

²⁰⁰ *Id.*

²⁰¹ *Id.* at 81, 92.

²⁰² *Id.*

²⁰³ See THOMSON, *supra* note 13, at 167–68.

²⁰⁴ Shabazz, *supra* note 198. The “1968 17 Proposals” refers to the Model Treaty drafted by Webster.

See *id.*

²⁰⁵ See, e.g., G.A. Res. 34/38, U.N. Doc. A/RES/34/38 (Nov. 21, 1979).

the dispute with Guatemala.²⁰⁶ In a 1979 General Assembly resolution, the United Nations urged the governments of Great Britain, Belize, and Guatemala to “continue their efforts to conclude their negotiations without prejudice to the right of the people of Belize to self-determination, independence and territorial integrity,” and further requested the governments to report “arrangements” to the General Assembly during its thirty-fifth session.²⁰⁷ The United Nations again addressed the dispute in its thirty-fifth session.²⁰⁸ The General Assembly recognized that while the parties had attempted to negotiate in good faith, they had still failed to reach a definitive accord.²⁰⁹ The General Assembly again affirmed the rights of the people of Belize to self-determination and territorial integrity, and it urged Great Britain and Guatemala to reach an accord prior to Belize’s independence.²¹⁰ The United Nations also insisted upon Belize’s independence and “call[ed] upon Guatemala and independent Belize to work out arrangements for post-independence cooperation on matters of mutual concern”²¹¹

Despite these attempts to bring the dispute to a close before Belize’s independence, Guatemala’s claim remained open. The failure of the United Nations is most easily attributed to the fact that its overarching purpose was the decolonization of Belize.²¹² The U.N. had to apply all of the political will it could muster to urge Great Britain to grant Belize independence, which seemed more pressing at the time.

C. Guatemala

Guatemala recognized Belize as a nation in 1991, and the two countries established diplomatic relations that year.²¹³ After recognition, the parties agreed that Guatemala would give up its territorial claims to Belize in exchange for Belize’s concession of rights to its territorial sea.²¹⁴ In an attempt to demonstrate its goodwill, Belize passed the Maritime Areas Act of 1992, which envisioned a limitation of Belize’s territorial sea in the context of

²⁰⁶ *Id.* ¶¶ 2–3.

²⁰⁷ *Id.*

²⁰⁸ G.A. Res. 35/20, U.N. Doc. A/RES/35/20 (Nov. 11, 1980).

²⁰⁹ *Id.*

²¹⁰ *See id.*

²¹¹ *Id.* ¶¶ 2, 9.

²¹² *See generally* G.A. Res. 34/38, *supra* note 205; G.A. Res. 35/20, *supra* note 208.

²¹³ Sylvestre, *supra* note 51, ch. 12.

²¹⁴ *Id.*

negotiating a definitive agreement with Guatemala.²¹⁵ The text of the Act that was ultimately passed contained a provision that required the limitation of the territorial sea to be approved by a popular vote in Belize.²¹⁶ The original agreement between the parties did not envision the popular vote clause of the Act.²¹⁷ This provision was added when there was a political party power change in Belize, between the time that Guatemala and Belize negotiated the agreement and the passage of the Act in the Belizean parliament.²¹⁸ This change affected Guatemalan confidence in the Belizean position to a certain extent.²¹⁹ At the same time that Guatemalan confidence in Belize's good faith was diminished, Guatemala itself underwent a dramatic change. Jorge Serrano, the Guatemalan President who had pushed for a definitive agreement with Belize, attempted to create an authoritarian regime by dissolving the Guatemalan Congress, Supreme Court, and Constitution—and talks with Belize fell through.²²⁰

Belize and the international community tend to portray Guatemala as bearing the brunt of the failure in confidence building between the two nations.²²¹ The 1991 agreement between Belize and Guatemala concerning a trade of maritime rights for a definitive settlement to the boundary dispute is an example.²²² The referendum proposed in the Maritime Areas Act is not a constitutional requirement in Belize and was only added after a new political party came to power.²²³ Thus, the good faith Belize promised in negotiations looked quite different than the good faith Belize delivered. The national referenda requirement in the OAS proposals is an unsettling reminder of a time in the process when Guatemala ended up with something quite different than it bargained for. While Guatemala seemed to be ready to resolve the dispute without third-party intervention in 1991, its weak democracy coupled with the countries' mutual distrust made a resolution impossible. Considering the continuing hostility between the countries, it is unlikely that they will be able to resolve the conflict without some kind of independent intervention.

²¹⁵ Belize Position, *supra* note 68; Maritime Areas Act, *supra* note 70.

²¹⁶ Maritime Areas Act, *supra* note 70, pt. II, § 3(2)–(3).

²¹⁷ THOMSON, *supra* note 13, at 173–74.

²¹⁸ *See generally id.* at 173–74.

²¹⁹ *Id.* at 172–73.

²²⁰ *See* WARREN, *supra* note 73, at 132–33; *see also* THOMSON, *supra* note 13, at 172–73.

²²¹ *See* Belize Position, *supra* note 68.

²²² *See supra* notes 214–20 and accompanying text.

²²³ *See* CONSTITUTION OF BELIZE; *see also* THOMSON, *supra* note 13, at 173.

D. *The Organization of American States*

After the kidnapping of a four-man Belizean border patrol in 2000, the Organization of American States began a facilitation process.²²⁴ Each government appointed a facilitator, and the Secretary-General acted as an impartial assistant to the facilitators.²²⁵ Honduras also nominated a facilitator in the hopes that the discussions could lead to an agreement between all three governments as to the Gulf of Honduras.²²⁶ The OAS facilitators made proposals that would basically leave the border between the two countries in the same place as “agreed” on in the 1859 treaty.²²⁷ The proposals also address the Guatemalan communities living on the Belize side of the border and the territorial seas and EEZs of the two countries.²²⁸ The proposals seek to form a joint ecological park between the parties and Honduras as well as a development fund that will address poverty and landlessness in Guatemala.²²⁹ During the facilitation process, the OAS facilitators successfully established an “adjacency line” between the two countries, and on that line, a one-kilometer adjacency zone administered by OAS representatives.²³⁰ The facilitators also succeeded in creating a Belize-Guatemala mixed commission that deals with development issues for the people of the two nations and promotes cooperation.²³¹

While the proposals were economically advantageous to all parties, they required Guatemala to relinquish its territorial claim to Belize without a clear picture of what it would gain in exchange.²³² For this reason, Guatemala rejected the proposals and instead has pushed for a submission of the dispute to the ICJ.²³³ The failure of the proposals is analyzed in more detail below.²³⁴

²²⁴ Belize Profile, *supra* note 8.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ See Press Release, Government of Belize, Belize-Guatemala Territorial Differendum: Proposals from the Facilitators, presented to the Secretary General of the Organization of American States (Aug. 30, 2002), http://www.governmentofbelize.gov.bz/press_release_details.php?pr_id=1927 [hereinafter Proposals].

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ Rosado, *supra* note 17, at 82; Bulletin of Activities 2007, *supra* note 98.

²³¹ Rosado, *supra* note 17, at 82.

²³² See Proposals, *supra* note 227.

²³³ Fernández O., *supra* note 3.

²³⁴ See *infra* Part V.A–B.

IV. TOWARD AN END TO THE CONFLICT

A. *The Positions of the Parties*

Two possible solutions to the territorial *differendum* have been suggested. First, the parties could renegotiate a settlement modeled on something like the OAS Proposals.²³⁵ The other possible solution is to submit the case to the ICJ, and presumably, to treat the Court's decision as a binding resolution to the conflict.²³⁶

The Belizean newspaper *Amandala* reported on a recent presentation by the government about the possibility of sending the case to the ICJ.²³⁷ The government officials explained the current makeup of the ICJ judiciary and the cost and ramifications of settling the dispute in the ICJ.²³⁸ The author expressed concerns about the cost of an ICJ suit, the binding and final quality of an ICJ decision, and the amount of time a decision would take.²³⁹ In the past, Belize has been opposed to submitting the dispute to the ICJ, preferring instead to encourage negotiations that "could promote cooperation in matters that would be mutually beneficial to both our peoples."²⁴⁰ However, in the face of Guatemala's continued resistance to a negotiated settlement, the Belizean government agreed to submit the case to the ICJ, pending approval in a popular vote.²⁴¹ Since December of 2008, *Amandala* has begun a series of articles analyzing past ICJ decisions in territorial disputes.²⁴²

Near the end of his term in 2007, the former president of Guatemala, Oscar Berger, expressed his willingness to send the case to the ICJ for resolution.²⁴³

²³⁵ See *supra* note 18 and accompanying text.

²³⁶ See Acuerdo sobre un marco de negociación y medidas de fomento de confianza entre Belice y Guatemala, Belize-Guat., Sept. 7, 2005, O.A.S. Bilateral Agreement 79-2005, available at http://www.oas.org/DIL/AgreementsPDF/79-2005_Acuerdo.pdf.

²³⁷ Rowland A. Parks, *COLA Hosts Negotiators of the Belize-Guatemala Differendum*, AMANDALA (Belize City), Sept. 30, 2008, available at <http://www.amandala.com.bz/index.php?id=7501>.

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ Rosado, *supra* note 17, at 81.

²⁴¹ *Guatemala y Belice acuerdan resolver diferendo en La Haya*, *supra* note 24.

²⁴² See, e.g., *ICJ STATS—A Case Study: The Libya/Chad Territorial Dispute*, AMANDALA (Belize City), Dec. 18, 2008, available at <http://www.amandala.com.bz/index.php?id=7891>.

²⁴³ Wendy Ruano & Carlos Fuentes, *Diferendo con Belice, a consulta popular*, PRENSA LIBRE (Guatemala City), Nov. 22, 2007, available at <http://www.prensalibre.com/pl/2007/noviembre/22/188500.html>. The Guatemalan Constitution states that while the President will be charged with negotiations that tend to a resolution of the problem with Belize, any definitive agreement must be submitted to a popular vote. Constitución Política de la República de Guatemala, tit. VIII, art. 19.

Berger stated that the Guatemalan Constitution required a popular vote to approve the President's decision to send the case to the ICJ.²⁴⁴ Because so little time remained in his term, Berger said that he would leave the issue in the hands of his successor.²⁴⁵ Álvaro Colom, the current President of Guatemala, also indicated his desire to send the case to the ICJ.²⁴⁶ On a recent visit to the U.N., Colom again expressed his happiness that the case would be heard by the ICJ.²⁴⁷ Colom's administration signed a pact with the new Belizean Prime Minister in December of 2008.²⁴⁸ The British government pledged to donate \$296,000 U.S. to facilitate the referenda and other necessary actions to end the dispute in the two countries.²⁴⁹ Both countries require popular vote approval before the case can be submitted to the ICJ.²⁵⁰ While the Guatemalan and Belizean governments seem ready to move forward, hostilities at the border continue.²⁵¹ In addition, an ICJ adjudication will not resolve the social issues that cause the border hostilities and, in fact, could exacerbate incidents in the jungle.²⁵² Additionally, the Belizean Prime Minister has stated that the recent border incident involving the construction of a storage locker on the Belizean side of the border by a Guatemalan businessman "diminishes any chance of the dispute going to the ICJ."²⁵³

B. *An ICJ Resolution*

The ICJ has developed a de facto three-part hierarchy for its territorial dispute jurisprudence.²⁵⁴ The hierarchy gives the most importance to any treaty that may make reference to the area in dispute.²⁵⁵ If no treaty is in effect

²⁴⁴ Ruano & Fuentes, *supra* note 243.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Álvaro Colom se entrevistó con el Secretario General de la ONU*, DEGUATE.COM, Sept. 23, 2008, <http://www.deguate.com/artman/publish/noticias-guatemala/alvaro-colom-se-entrevista-con-el-secretario-general-de-la-onu.shtml>.

²⁴⁸ *Guatemala y Belice acuerdan resolver diferendo en La Haya*, *supra* note 24.

²⁴⁹ *Inglaterra dona US\$296 mil para solucionar diferendo con Belice*, PRENSA LIBRE (Guatemala City), Dec. 8, 2008, available at <http://www.prensalibre.com/pl/2008/diciembre/08/281885.html>.

²⁵⁰ *Guatemala y Belice acuerdan resolver diferendo en La Haya*, *supra* note 24.

²⁵¹ *See, e.g., supra* note 123 and accompanying text.

²⁵² Adele Ramos, *ICJ—The Politics of the ICJ Proposal*, AMANDALA (Belize City), Feb. 19, 2009, available at <http://www.amandala.com.bz/index.php?id=8179>. Ramos points out that an ICJ resolution will not resolve the Guatemalan sentiment "inculcated in the minds of Guatemalans over centuries" that Belize belongs to Guatemala. *Id.*

²⁵³ *Id.*; *see also supra* note 123 and accompanying text.

²⁵⁴ Brian Taylor Sumner, *Territorial Disputes at the International Court of Justice*, 53 DUKE L.J. 1779, 1803–04 (2004).

²⁵⁵ *Id.* at 1804.

between the parties to a dispute, the Court next considers *uti possidetis juris*.²⁵⁶ If *uti possidetis juris* does not apply to the situation, or if it is unclear, then the Court considers effective control.²⁵⁷ Considering this hierarchy, we can make predictions as to how the Court would adjudicate the case at hand.

The fact that there are applicable treaties present here will probably be dispositive for the Court. However, were the Court to look beyond the treaties to other legal bases for the claims, the Court would consider each country's claim of *uti possidetis juris* and Belize's claim of effective occupation under customary law.²⁵⁸ While the Court is likely in many cases to give more credence to claims based in *uti possidetis juris*, the fact that Belize has maintained effective and peaceful control over its territory since self-governance began in 1963 will probably outweigh Guatemala's *uti possidetis juris* claims in this case.²⁵⁹ Also, Belize's international recognition as a country within the same permanent territory, at least since it became a member state of the United Nations in 1981, will be helpful to Belize's case at the ICJ because international recognition is an important hallmark of state identity.²⁶⁰ Furthermore, Guatemala's *uti possidetis juris* claim, while substantiated for the southern half of Belize, does not have enough historical evidence from the colonial period to upset the current status quo.²⁶¹ The self-determination of Belize's people would also play a role.²⁶² Belizeans consider the Guatemalan claim to be "a direct challenge to the right of Belizeans to self-determination and the right to inviolability of their territory."²⁶³ A decision of the Court to grant half of Belize's territory to Guatemala would be tantamount to a threat to Belize's very statehood and would force many Belizeans to become Guatemalans, an unlikely move on the part of the ICJ.²⁶⁴

In this case, there is applicable treaty law. In other cases where applicable treaty law exists, the treaties have proven dispositive.²⁶⁵ In a dispute over territory on the border between Belgium and the Netherlands (*Sovereignty*

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *See supra* Parts II.A, II.D.

²⁵⁹ *Id.*

²⁶⁰ *See supra* notes 196–97 and accompanying text.

²⁶¹ *See supra* Part II.A.

²⁶² *See supra* note 119 and accompanying text.

²⁶³ Adele Ramos, *ICJ STATS—The Inalienable Right of Belizeans to Self-Determination*, AMANDALA (Guatemala City), Dec. 29, 2008, available at <http://www.amandala.com.bz/index.php?id=7937>.

²⁶⁴ *See id.*

²⁶⁵ *Sovereignty over Certain Frontier Land (Belg. v. Neth.)*, 1959 I.C.J. 209, 229 (June 20).

Case), the Netherlands attempted to prove that an 1843 treaty between the two parties was void under the doctrine of mistake.²⁶⁶ The treaty was based on a map drawn by a mixed commission formed by another treaty between the parties in 1842.²⁶⁷ After examining the *travaux préparatoires*, the Court rejected the Netherlands's claim that the map drawn by the commission and accepted by the two parties in the 1843 treaty was a mistake.²⁶⁸ For the Court, the dispositive factors were that the boundary commission formed was made up of representatives from both countries and was in contact with both countries during the mapping of the border area between the two nations.²⁶⁹ In addition, the fact that the Netherlands had failed to object to the boundary agreed upon in the treaty for over a century was helpful.²⁷⁰ The Court ultimately adopted the boundary agreed to by the parties in the 1843 treaty.²⁷¹

As in the *Sovereignty Case*, Guatemala argues that the 1859 treaty between Guatemala and Great Britain should be void because the treaty was a treaty of cession dependent on the construction of a cart-road between Guatemala and the coast.²⁷² Because Great Britain breached the cart-road provision of the treaty, Guatemala argues that the treaty is void.²⁷³ However, the plain language of the treaty, like the plain language of the treaty in the *Sovereignty Case*, indicates that this treaty was a border treaty and not a treaty of cession.²⁷⁴ Guatemala also claims that the plain language of the treaty does not reveal the parties' actual intent in forming the treaty.²⁷⁵ Much like the Netherlands claimed in the *Sovereignty Case*, Guatemala claims that the treaty was simply disguised as a border treaty to protect relations between Great Britain and the United States under the Clayton-Bulwer Treaty, but was actually a treaty of cession.²⁷⁶ Again, like the *Sovereignty Case*, in which one treaty established a mixed commission to map the boundary and another treaty accepted the boundary as mapped by the mixed commission, here the treaty was not executed to map a boundary, but rather to mark a boundary already

²⁶⁶ *Id.* at 224–26.

²⁶⁷ *Id.* at 214.

²⁶⁸ *Id.* at 209, 225–29; see also Sumner, *supra* note 254, at 1793–94.

²⁶⁹ *Sovereignty over Certain Frontier Land*, 1959 I.C.J. at 227.

²⁷⁰ *Id.*

²⁷¹ *Id.* at 229.

²⁷² See *supra* Part II.B.

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

specified in the treaty.²⁷⁷ In the case at hand, none of the *travaux préparatoires*, nor the subsequent historical events, indicate that the parties considered this treaty to be anything more than a treaty to agree upon a border—and to subsequently demarcate that border.²⁷⁸

The Court also relied upon a treaty in a territorial dispute between Cambodia and Thailand.²⁷⁹ In *Temple of Preah Vihear (Temple Case)*, the two parties (France, as predecessor in interest to Cambodia, and Thailand) signed a 1904 treaty that established a mixed commission to map the boundary between the two territories.²⁸⁰ The mixed commission mapped the area and created maps which were published in both Thailand and Cambodia.²⁸¹ While the parties never formally accepted the maps, the Court reasoned that they had implicitly accepted them through publication and other means.²⁸² The Court relied on the maps created by the mixed commission and imposed the boundary as such on the parties.²⁸³

Like the *Temple Case*, a mixed commission was formed by the 1859 treaty to demarcate the boundary between Guatemala and Belize.²⁸⁴ However, the parties had already specified the boundary lines in the 1859 treaty.²⁸⁵ Even had the parties not done so, this case is reminiscent of the *Temple Case*. Here, the parties sent the mixed commission to demarcate the boundary and then did not formally address the mixed commission's activities immediately afterward as envisioned in the treaty.²⁸⁶ Also similar to the *Temple Case*, the parties did subsequently accept the boundaries as indicated in the 1859 treaty and demarcated by the mixed commission in another document.²⁸⁷ However, unlike the *Temple Case*, in which the Thai government did not formally accept the document created by the mixed commission, here the Guatemalan government did formally accept the boundaries.²⁸⁸ The Guatemalan government did so with its acceptance of the Exchange of Notes in 1931,

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ Sumner, *supra* note 254, at 1795; *see also* *Temple of Preah Vihear (Cambodia v. Thailand)*, 1962 I.C.J. 6 (June 15).

²⁸⁰ *Temple of Preah Vihear*, 1962 I.C.J. at 16.

²⁸¹ *Id.* at 24–28.

²⁸² *Id.*

²⁸³ *Id.* at 24–25, 36–37.

²⁸⁴ *See supra* Part II.B.

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *See Temple of Preah Vihear*, 1962 I.C.J. at 16; *see also supra* notes 145–47 and accompanying text.

which incorporated in its annex the 1859 treaty and the activities of the mixed commission formed thereby.²⁸⁹ Thus, even if Guatemala were to win its arguments as to the 1859 treaty, it is unlikely that the Court would ignore the 1931 treaty.

The Court's view on subsequent reconstruction or repudiation of a boundary treaty is summarized in the *Temple Case*.

In general, when two countries establish a frontier between them, one of the primary objects is to achieve stability and finality. This is impossible if the line so established can, at any moment, and on the basis of a continuously available process, be called in question, and its rectification claimed, whenever any inaccuracy by reference to a clause in the parent treaty is discovered. Such a process could continue indefinitely, and finality would never be reached so long as possible errors still remained to be discovered. Such a frontier, so far from being stable, would be completely precarious.²⁹⁰

If the Court follows this pattern, the most likely outcome is Belize's success on the merits. Belize has the stronger case under treaty law and customary law. While Guatemala's case is stronger on the basis of *uti possidetis juris*, this argument is not strong enough to outweigh the interests of a long established nation and its people. If Belize prevails on the merits, it is much more likely that the Court will find that Belize is entitled to a monetary judgment or some other kind of restitution. Even were Guatemala to somehow convince the Court that it deserves some kind of restitution for the loss of its territorial claim, it is highly unlikely that the Court would render a judgment that looks beyond the narrow issue before it. Adjudication of territorial disputes in the ICJ has never reached beyond the matter at hand, and awards are usually limited to matters related to the merits.²⁹¹ In the *Temple Case*, for example, the only restitution the Court could envision for Cambodia—the party that prevailed on the merits—was the possible return of artifacts Thailand illegally appropriated during its occupation of the temple.²⁹² While the Court found on principle that Thailand should return any objects illegally obtained by it from the temple, it refused to grant any further restitution, as Cambodia had not presented sufficient evidence on the matter.²⁹³

²⁸⁹ See *supra* Part II.C.

²⁹⁰ *Temple of Preah Vihear*, 1962 I.C.J. at 34.

²⁹¹ See, e.g., *id.* at 36.

²⁹² *Id.*

²⁹³ *Id.*

Thus, any hopes Guatemala has of using the ICJ as a tool to gain more Caribbean access or alleviate the poverty of its citizens on the border area will not be fulfilled. Additionally, the long-standing rancor between citizens of the two countries will not be ameliorated by a declaratory judgment from a far away court that Belize belongs to Belize.

C. A Negotiated Settlement

While the ICJ will not provide relief beyond the narrow matter adjudicated, a negotiated settlement between the parties can address some of the larger issues driving the conflict. The OAS proposals are a good example of what negotiators envision as solutions that address the underlying causes of a dispute.²⁹⁴ Though the Guatemalan government has formally rejected the OAS proposals, the OAS proposals are a good starting point for a negotiated resolution.²⁹⁵ The goal of the OAS facilitations, and negotiations generally, is broader than issues submitted to the ICJ by *compromis*. The Court usually responds to the issues as stated in the parties' pleadings and is highly unlikely to step outside of those issues to reach a creative solution to the dispute at hand.²⁹⁶ The purpose of the OAS facilitation, on the other hand, was "to find formulae for a peaceful and definitive resolution of the territorial *differendum* between the two countries."²⁹⁷

The facilitators found such formula not only by defining the boundary at issue, but also by addressing other problems driving the dispute between Belize and Guatemala.²⁹⁸ The proposals addressed the Guatemalan settlement of Santa Rosa on the Belizean side of the border, ensuring the protection of the people in the settlement and making allowances for land for the settlers on either side of the border, depending on their preference.²⁹⁹ The proposals also addressed the maritime issues between the countries.³⁰⁰ The facilitators set the maritime boundary between Belize and Guatemala and also required that Belize accept the "Bay Closing Line" for the Bay of Amatique as proposed by

²⁹⁴ Proposals, *supra* note 227.

²⁹⁵ The Guatemalan government formally rejected the OAS proposals in September of 2002. Editorial, *Belize, resolver el diferendo*, EL PERIÓDICO (Guatemala City), Mar. 10, 2005, available at <http://www.elperiodico.com.gt/es/20050310/opinion/13852>.

²⁹⁶ J.G. MERRILLS, INTERNATIONAL DISPUTE SETTLEMENT 162–63 (4th ed. 2005) (1984).

²⁹⁷ Proposals, *supra* note 227, Introduction.

²⁹⁸ See generally *id.*

²⁹⁹ *Id.* pt. V.A.4–5.

³⁰⁰ *Id.* pt. V.B.

Guatemala.³⁰¹ While the proposals required the acceptance of both Honduras and Belize's straight baseline system, the proposals also granted a four-mile wide access corridor to Guatemala.³⁰² Additionally, the proposals gave Guatemala a 2,000-square nautical mile EEZ in the Caribbean, carved out of the EEZs of Honduras and Belize.³⁰³ Guatemala's EEZ would be subject to Honduras and Belize's preferential rights to "a reasonable proportion of the allowable catch" in the areas each country grants to Guatemala.³⁰⁴ The proposals also allow the exploration and exploitation of natural resources in the EEZ to be carried out jointly with the granting nation—Belize for the northern half and Honduras for the southern half.³⁰⁵

In an attempt to foster cooperation between the parties, the proposals also envisioned the establishment of a Belize-Honduras-Guatemala Ecological Park.³⁰⁶ The park would be administered jointly by all three states and would seek to develop and sustain conservation techniques and eco-tourism in the area.³⁰⁷ Furthermore, citizens of the three countries would have rights of access to all parts of the park.³⁰⁸

Recognizing the fact that poverty and landlessness in Guatemala is a contributing factor to the current dispute, the facilitators also proposed the creation of a Development Trust Fund.³⁰⁹ The Fund would be subscribed to by the international community and administered by the Inter-American Development Bank.³¹⁰ The proposals also called for a Free Trade Agreement and a Bilateral Investment Treaty between Belize and Guatemala.³¹¹

Additionally, the facilitators recognized that laws of both Belize and Guatemala provide for a national referendum in the event of a definitive treaty between the parties.³¹² The proposals formulated a process through which

³⁰¹ *Id.* pt. V.B.4–6.

³⁰² *Id.*

³⁰³ *Id.* pt. V.B.7.

³⁰⁴ *Id.* pt. V.B.9.a.

³⁰⁵ *Id.* pt. V.B.9.c.

³⁰⁶ *Id.* pt. V.B.

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.* pt. VI.C.

³¹⁰ *Id.*

³¹¹ *Id.* pt. VI.D.

³¹² *Id.* pt. VI.E.

referenda would be held on the same day in both nations with the same basic question to be asked in each referendum.³¹³

V. PROBLEMS AND SOLUTIONS

Despite the attempts of various international actors, the dispute between Guatemala and Belize remains unresolved. This section highlights various problems with the most recent attempts to resolve the dispute. Specifically, the failure of the OAS Facilitation Process is discussed in more detail and the current agreement to send the case to the ICJ (on the condition that it passes a popular vote in both countries) is analyzed.

A. *Positions and Interests*

Negotiations have failed regularly because each party seems to disproportionately value its positions more than its interests. Splitting the parties' positions and interests can be helpful analytically. Guatemala's underlying interests in the dispute include (1) amelioration of poverty and landlessness among its citizens, (2) an increase in access to the Caribbean, and (3) an assertion of its strength in the region. However, the Guatemalan government has repeatedly expressed its position that the dispute should be sent to the ICJ.³¹⁴ Adjudication in the ICJ will not address any of the three interests that Guatemala has at stake.³¹⁵

Belize's interest is reaching a definitive end to the dispute that (1) affirms its sovereignty over its territory, (2) allows it to free up resources it currently devotes to the dispute and its resolution, (3) promotes cooperation with its closest neighbor, and (4) ends Guatemalan civilian incursions into the Belizean territory.³¹⁶ Belize has regularly taken the position that it will not send the dispute to the ICJ.³¹⁷ This past position may affect the ability now to convince the people of Belize to vote for an ICJ resolution to the dispute.

³¹³ *Id.* The facilitators suggested this wording for the question asked in the referenda:

Do you approve the Proposals made through the Facilitation Process of the Organization of American States for the peaceful, honorable and permanent resolution of the Territorial Differendum between Belize and Guatemala?

Id. pt. VI.E.2(3).

³¹⁴ See *supra* notes 23–26 and accompanying text.

³¹⁵ See *supra* Part III.B.

³¹⁶ See *supra* notes 119–23 and accompanying text.

³¹⁷ See, e.g., Rosado, *supra* note 17.

Considering ICJ jurisprudence in the area of territorial disputes, the question becomes why Guatemala—a sure loser at the ICJ—is pushing for an ICJ solution, while Belize—a sure winner—has tried to avoid the ICJ.³¹⁸ Not only will Guatemala lose its territorial claim to Belize, but it will also lose the economic benefits it could gain by acceptance of a negotiated settlement. Guatemala is placing itself in a lose-lose situation. Belize, viewed from the legal standpoint as a party to a case at the ICJ, is almost a sure winner. However, winning will come at a price for Belize. Submission to the ICJ requires Belize to put its destiny in the hands of a third party (which from a self-determination standpoint should only rest in the hands of Belize).³¹⁹ At the same time, submission would require Belize to assume an equal and adversarial position towards its closest neighbor. Thus, Belize's third interest, solving the dispute in a manner that promotes cooperation with Guatemala, will not be served by an adjudication at the ICJ. Litigation rarely breeds cooperation. Additionally, one of the greatest causes of Belizean hostility is Guatemalan civilian incursion into Belize.³²⁰ An ICJ holding will have no effect on these incursions.

The only thing Guatemala as a nation gains from submitting the case to the ICJ is time. With time, Guatemala could exert more pressure on Belize to negotiate a settlement with Guatemala that is more advantageous to Guatemala than the OAS proposals.³²¹ However, given Guatemala's regular rejection of negotiated settlements, it is hard to imagine that this is Guatemala's goal in pushing for an ICJ resolution.³²²

On the other hand, Guatemalan politicians gain a great deal from a submission of the case to the ICJ. Any politician that accepts a negotiated settlement with Belize could easily be portrayed as weak and lose important political capital. By sending the dispute to the ICJ, Guatemalan politicians gain deniability for whatever decision the Court makes. First, by forcing a popular vote on the ICJ issue, the Guatemalan politicians put the issue in the hands of the people, thereby shifting responsibility away from themselves. If the Guatemalan populace approves submission to the ICJ, then a final decision has been removed by another degree of separation from any current politician. Politicians can claim responsibility for a popular decision by citing their

³¹⁸ See *supra* Part III.B.

³¹⁹ Ramos, *supra* note 263.

³²⁰ See, e.g., Ramos, *supra* note 122.

³²¹ See *supra* Part III.

³²² *Id.*

insistence on sending it to the Court, and they can wash their hands of an unpopular decision. In the event of an unpopular decision, the people have submitted the issue to the Court, and the Court has made the final decision. While the position may seem irrational in the sense of what the country as a collective stands to lose, the decision to resolve the dispute in this way is quite rational when viewed from the position of individual political actors within the Guatemalan government.

This example is emblematic of the difficulty of splitting positions and interests.³²³ Considering the “best interests” of the Guatemalan nation, sending the dispute to the ICJ seems to be an untenable position. However, the submission of the dispute to the ICJ is in the “best interests” of politicians that fear appearing weak by relinquishing a territorial claim in the context of a negotiated settlement. Positions from one perspective look like interests from another.

To resolve the dispute, each party must decide which interests it is willing to trade for others. By hardening itself in the ICJ position, Guatemala is currently trading all of its interests for nothing. This attitude is a result of its reluctance to accept any negotiated settlement.³²⁴ Had the OAS proposals offered enough for Guatemala, it is unlikely that the proposals would have failed despite flagging political will for the facilitation process.³²⁵

While it is improbable that any resolution of the dispute will award Guatemala a piece of Belize’s territory, it is foreseeable that Guatemala could gain a more favorable settlement in terms of its maritime area.³²⁶ Currently, Guatemala is severely disadvantaged in the Caribbean.³²⁷ A settlement that offers the country an EEZ that must, perforce, be shared is not enough to convince that country to relinquish its territorial claim.³²⁸ This part of the OAS proposals may have been a sticking point for Guatemala. Belize must decide how much it is willing to give up in the sea in exchange for a favorable settlement of the dispute on land.

If promoting cooperation with Guatemala is all-important to Belize, then its opposition to an ICJ resolution makes sense. However, if ending the dispute is

³²³ ROGER FISHER ET AL., *COPING WITH INTERNATIONAL CONFLICT* 61–67 (1997).

³²⁴ *See supra* Part III.D.

³²⁵ *Id.*

³²⁶ *See* Proposals, *supra* note 227.

³²⁷ *See supra* notes 108–09 and accompanying text.

³²⁸ *See supra* notes 304–05 and accompanying text.

its most important interest, then sending the dispute to the ICJ will do just that, and in a manner most likely advantageous to Belize both on land and at sea. It is doubtful that the Court will decide that Belize prevails on the merits on land but will find a way to award Guatemala rights at sea.³²⁹

Whether or not Belize decides to send the dispute to the ICJ, the government should continue its campaign to educate the citizenry that the Court's judgment will most likely favor Belize (which the Belizean government already seems to be doing).³³⁰ If Belize presents a united front that shows (1) it is prepared to send the dispute to the ICJ, as evidenced by the pact signed in December of 2008, and (2) it is sure to prevail on the merits, this position gives Belize the strength to negotiate a settlement with Guatemala. Although the Belizean government is willing to send the dispute to the ICJ, Belizean popular sentiment is currently opposed to this solution.³³¹ The reluctance of Belize's people to submit the case to the ICJ³³² further fuels Guatemala's contention that it will prevail there.

Even if the people of both countries approve an ICJ resolution, Belize should again offer to negotiate a settlement with Guatemala. Belize should choose a procedural point in the litigation at which any concessions it offers in a negotiated settlement will be taken off the table. In the meantime, the parties together, or Belize alone, could enlist the help of an independent third party (a not-for-profit organization, for example) to educate the Guatemalan public about the ramifications of proceeding to the ICJ. A media campaign in Guatemala could be useful in educating the public about what Guatemala stands to lose by going to the ICJ and what it stands to gain with a negotiated settlement. This type of campaign could be helpful in putting pressure on Guatemalan politicians who are pushing for the ICJ.

B. Past Failures and Current Hostilities

An examination of past failures and current hostilities illustrates why an ICJ resolution is the least ideal for this territorial dispute. The ICJ's jurisdiction in contentious cases extends only to states.³³³ As such, the ICJ's

³²⁹ See *supra* Part IV.C.

³³⁰ See *supra* notes 237–38 and accompanying text.

³³¹ Fernández O., *supra* note 3.

³³² See *id.*

³³³ International Court of Justice, How the Court Works, Contentious Cases, <http://www.icj-cij.org/court/index.php?p1=1&p2=6> (last visited Sept. 29, 2009).

analysis and holdings only reach actions by and between states.³³⁴ While the ICJ has had a great deal of success in resolving territorial disputes, sometimes the human cost is too great, and the rancor too long-standing, for an ICJ resolution to solve the problems that generally aggravate a territorial dispute.³³⁵ Even where borders are well defined, large-scale migrations are often the source of severe acrimony between nations.³³⁶

The events that are currently fueling popular sentiment against the ICJ in Belize are an important window into why past solutions have failed. Almost immediately after the two countries signed a pact to send the case to the ICJ (pending popular vote approval), a Guatemalan businessman built a storage locker on the Belizean side of the border.³³⁷ With other armed villagers aiding him, he held off the Guatemalan and Belizean military for two months.³³⁸ Current reports suggest that the storage locker has been removed.³³⁹ However, the Belizean response to this incursion has been venomous. Almost-daily newspaper articles have reported on the situation of the encroaching storage locker.³⁴⁰ One reporter compared the situation to the flogging of a British consul by a drunken Guatemalan governor in 1874, a serious international incident at the time.³⁴¹ During a recent radio interview, the Belizean Prime Minister has suggested that the storage locker incident would reduce the chances of the case being sent to the ICJ.³⁴² Certainly it will be more difficult to muster popular support for a measured solution in light of this encroachment. That something as mundane as a storage locker, encroaching only a few feet onto Belizean territory, could derail two governments is emblematic of the delicacy of this situation.

Another innocuous object, the xate leaf, has also been a sticking point between the two nations.³⁴³ Many poor indigenous Mayans living on the

³³⁴ *Id.*

³³⁵ *See, e.g., infra* note 336 and accompanying text.

³³⁶ For example, border crossings at the Mexico-U.S. border have caused a great deal of trouble between the two countries. *See generally* TONY PAYAN, *THE THREE U.S.-MEXICO BORDER WARS: DRUGS, IMMIGRATION, AND HOMELAND SECURITY* (2006).

³³⁷ *See supra* note 123 and accompanying text.

³³⁸ *Id.*

³³⁹ *Illegal Bodega in Jalacte Finally Removed* (Great Belize Productions Ltd. broadcast Feb. 18, 2009) (transcript available at http://www.channel5belize.com/archive_detail_story.php?story_id=23300).

³⁴⁰ *See Adele Ramos, Arrellanos Threatens Bze, Guat Soldiers!*, AMANDALA (Belize City), Jan. 23, 2009, available at <http://www.amandala.com.bz/index.php?id=8048>.

³⁴¹ Fairweather, *supra* note 123.

³⁴² Ramos, *supra* note 340.

³⁴³ *See supra* notes 1–14 and accompanying text.

Guatemalan side of the border eke out a living by cutting xate leaves (like palm leaves) in the jungle areas around the border.³⁴⁴ For Belizeans, this is another example of Guatemalan encroachment.³⁴⁵ Belizeans have reported destruction of upwards of 10,000 acres of Belizean forest.³⁴⁶ For the indigenous Guatemalans who cut xate leaves, the only rightful owner of the leaf is the person who expends the energy in cutting it—national borders are irrelevant.³⁴⁷ In Belize, it is already a crime to cross the border without license.³⁴⁸ It is also a crime to cut xate leaves in the Belizean jungle.³⁴⁹ These provisions serve to criminalize the indigenous Guatemalans that cross the border. It is highly unlikely that an ICJ holding that the border exists will stop indigenous Guatemalans from crossing it. It is also unlikely that these indigenous groups will be less criminalized in Belize as a result of such a holding.

This situation has regularly exacerbated the dispute between the two countries. In 2006, Belizean border patrol opened fire on three Guatemalan peasants that had ventured onto the Belizean side of the border to cut leaves of xate trees.³⁵⁰ In the past, Guatemalan peasants have been killed by Belizean military during peaceful border incursions.³⁵¹ It is possible that this situation also contributed to the failure of the OAS proposals.

Though the OAS created an adjacency zone between Guatemala and Belize, resources are not sufficient to monitor the entire 266-kilometer border.³⁵² The OAS proposals focused on Guatemalan settlements on the Belizean side of the border.³⁵³ However, since the adjacency zone was created in 2002, more Guatemalans have settled on the Belizean side of the border, with three new settlements detected in 2008.³⁵⁴ The problem with the proposals is that they did not go far enough in addressing the hostilities at the border and the underlying causes of those hostilities. The settlements are only one side of the problem. The other side consists of the daily incursions of

³⁴⁴ Xate, *supra* note 1; Alianza para un Mundo Justo, *supra* note 2.

³⁴⁵ Ramos, *supra* note 122.

³⁴⁶ *Id.*

³⁴⁷ Alianza para un Mundo Justo, *supra* note 2.

³⁴⁸ Escobar López, *supra* note 1.

³⁴⁹ *Id.*

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² Central Intelligence Agency, The World Factbook—Belize, <https://www.cia.gov/library/publications/the-world-factbook/geos/bh.html> (last visited Sept. 29, 2009).

³⁵³ *See* Proposals, *supra* note 227, pt. A.5.i–vi.

³⁵⁴ *Denuncian cuatro asentamientos de guatemaltecos en Belice*, *supra* note 99.

indigenous people who live on the Guatemalan side of the border, but who cross onto the Belizean side of the border to cut xate leaves.³⁵⁵ One not-for-profit organization has addressed this issue with a two-pronged solution.³⁵⁶ On the one hand, the organization has started a xate plantation on the Guatemalan side of the border to provide people with a source of subsistence and deter them from crossing the border.³⁵⁷ On the other hand, the organization has proposed a licensing program that would allow these people to continue their customary practice of cutting xate leaves on both sides of the border.³⁵⁸

While the Belizean government blames the Guatemalan government for these incursions, it is important for the Belizeans to recognize the conditions in Guatemala that cause these incursions and also contribute to the general conflict.³⁵⁹ Guatemala is an extremely poor nation with very little arable land.³⁶⁰ It has a large indigenous population that engages in customary practices despite the existence of national frontiers.³⁶¹ Guatemala and Belize should attempt to resolve their differences in a manner that recognizes indigenous customary practices along the border, facilitates them, and ensures their sustainability.³⁶² The long-standing conflict between Guatemala and Belize has allowed both countries to define these problems under the rubric of a territorial dispute. However, a solution to the territorial dispute will not necessarily provide a solution to the problems at the border. In fact, a solution that ignores the underlying causes could exacerbate the border situation.

In addition to poverty in the area in question, lawlessness is a contributing factor.³⁶³ If Guatemala is incapable of controlling drug trafficking and the sacking of archaeological sites in the same area, it is unlikely that it will be able to control the stream of settlers trickling across into Belize.³⁶⁴ At the

³⁵⁵ Escobar López, *supra* note 1.

³⁵⁶ Alianza para un Mundo Justo, *supra* note 2.

³⁵⁷ *Id.*

³⁵⁸ *Id.*

³⁵⁹ *See supra* Part I.C.

³⁶⁰ *See supra* note 106 and accompanying text.

³⁶¹ Alianza para un Mundo Justo, *supra* note 2.

³⁶² For example, both Belize and Guatemala voted to protect international indigenous peoples by supporting the United Nations Declaration on the Rights of Indigenous Peoples. Press Release, General Assembly, General Assembly Adopts Declaration on Rights of Indigenous Peoples; 'Major Step Forward' Towards Human Rights for All, Says President, U.N. Doc. GA/10612 (Sept. 13, 2007), available at <http://www.un.org/News/Press/docs/2007/ga10612.doc.htm>; *see also* G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Oct. 2, 2007).

³⁶³ *See supra* note 87 and accompanying text.

³⁶⁴ *Id.*

same time, the lawlessness in the area could easily be an impetus for settlement on the Belizean side of the border.³⁶⁵ As peasants feel more threatened by smugglers, they may be more likely to leave their homes and search for a safe haven in Belize. Furthermore, whether or not the two countries have a set border, the proximity of the two means that Belize will not be able to avoid the problems of Guatemala, and vice versa. An ICJ resolution will not stop crime from spilling across the border.³⁶⁶

In order to solve the problem of confidence building in the border area, both countries must take clear steps. Guatemala must attempt to curtail settlement by its citizens in Belize.³⁶⁷ The Belizean government should recognize the obstacles that the Guatemalan government faces and cease to blame the government for every civilian incursion. The Belizean government must also direct its border patrol to deal with peaceful incursions in a lawful manner.³⁶⁸ The Belizean government must also recognize the right of indigenous peoples to engage in customary practices and must work in concert with the Guatemalan government to develop a plan for sustainability in the region.³⁶⁹ However, an ICJ holding in favor of Belize will take away motivation on Belize's part to respect these incursions and could serve to justify the further criminalization of indigenous Guatemalans engaging in customary practices.

³⁶⁵ *Id.*

³⁶⁶ For example, Belize depends on tourism for about 16% of its GDP. Belize Tourism, Tourism Revenues, <http://www.belizetourism.org/belize-tourism/tourism-revenues.html> (last visited Oct. 11, 2009). Recently, a Belizean newspaper reported that bandits believed to be Guatemalan had attacked a group of tourists at a popular set of caves. Aaron Humes, *Guat Bandits Strike Tourists at Rio Frio Caves!*, AMANDALA (Belize City), Feb. 13, 2009, available at <http://www.amandala.com.bz/index.php?id=8157>. This attack was one of a series of robberies of tourists in Belize by bandits believed to be Guatemalans. *Id.*

³⁶⁷ Guatemalan congressmen recently requested Guatemalan military presence in Petén, the border state with Belize, to fight drug trafficking in the area. BONN INT'L CTR. FOR CONVERSION, SECURITY SECTOR REFORM IN GUATEMALA, at 3–4, available at http://www.bicc.de/ssr_gtz/pdf/guatemala.pdf. Guatemala could lend some of whatever force it sends to the area to patrol the border. *Id.* Guatemala's history is a cautionary tale of allowing the military to take part in police-like activities, such as combating drug trafficking. *Id.* Until the 1996 Peace Accords created a civilian police force in Guatemala, the police force was an arm of the military and was responsible for a significant percentage of the genocide and other human rights violations. *Id.*

³⁶⁸ See Escobar López, *supra* note 1.

³⁶⁹ See Alianza para un Mundo Justo, *supra* note 2.

CONCLUSION

The dispute between Belize and Guatemala has resisted resolution for more than a century. Parties as diverse as the United States, the United Nations, and the Organization of American States have attempted to negotiate a settlement, but each has failed.³⁷⁰ These failures illustrate that any negotiated resolution must (1) be brokered by an impartial third party with enough political will to drive the countries to settle their differences, (2) envision as its sole purpose a settlement between these two countries, and (3) offer Guatemala greater and more focused compensation for relinquishing its territorial claim to Belize.³⁷¹

Guatemala's claim is internationally unpopular and founded on a weak legal basis.³⁷² However, it reflects the overwhelming attitude of the Guatemalan populace.³⁷³ In addition, the problems exacerbating the dispute are mirrored throughout the region. The parties must re-envision these issues not as Guatemala's problems, but as regional problems. While any accord between the parties is a step forward, the agreement to send the case to the ICJ is too tenuous and will not address the underlying interests of the parties.

Given the requirement for popular vote approval in both countries, it is likely that even with this accord, the case will never see its way to the ICJ. Guatemala has pushed for this solution for years but has never held a popular vote on the issue.³⁷⁴ In Belize, despite government attempts to convince the voting public that Belize is sure to prevail in an ICJ adjudication, popular opinion remains opposed to putting Belize's fate in the hands of strangers.³⁷⁵ The simple fact that the two governments have been able to come together and agree on something (the ICJ pact in December of 2008) is a sign of progress. But taking their interests into account, the governments should rethink this agreement.

An ICJ resolution will only address one of Belize's four interests. It will certainly affirm its sovereignty over its own territory, but it will not promote cooperation with Guatemala, free up resources devoted to the conflict, or stop civilian incursions into Belize.³⁷⁶ It will not promote cooperation because

³⁷⁰ See *supra* Part III.

³⁷¹ *Id.*

³⁷² See *supra* Part II.

³⁷³ See *supra* Part I.C.

³⁷⁴ See, e.g., Editorial, *supra* note 295.

³⁷⁵ See, e.g., Fernández O., *supra* note 3.

³⁷⁶ See *supra* notes 119–23 and accompanying text.

litigation rarely creates anything more than a contentious environment. The bulk of resources that Belize devotes to the conflict are spent on border protection, and civilian incursions across the border are less related to the dispute itself than they are to indigenous customary practices.³⁷⁷

Guatemala must rethink its position that an ICJ adjudication is the best possible resolution. None of its interests will be addressed at the ICJ.³⁷⁸ An ICJ holding that the 1859 border stands will only serve to further criminalize Guatemalans that cross that border daily to cut xate.³⁷⁹ The ICJ adjudication of the territorial dispute will not reach the maritime issues that motivate Guatemala to insist on more territory.³⁸⁰ In fact, an ICJ holding that the border stands will do nothing more than continue the status quo in the Caribbean. Additionally, a loss at the ICJ will make Guatemala appear weak, not strong.³⁸¹ While an ICJ adjudication could end the “dispute” in the long term, it will not address the issues driving the dispute today. It will deprive Guatemala of the one bargaining chip it has to solve the problems of its citizens at the border and its interests in the Caribbean.

If Guatemala allows the ICJ to adjudicate the dispute, the result will strengthen Belize’s position and weaken Guatemala’s. As it has in the past, Guatemala must use this territorial claim as a wedge to open communication and gain the best result for its people. The best result can only be reached through a negotiated solution. The solution should take the form of the OAS proposals, but it must go farther in two important areas.³⁸² First, the solution must grant Guatemala an EEZ, as the OAS proposals did.³⁸³ However, any solution must better define Guatemala’s rights within that EEZ. The OAS proposals awarded Guatemala an EEZ, but with the condition that Belize and Honduras would have a right to a “reasonable proportion of the allowable catch” in that EEZ.³⁸⁴ Additionally, exploitation of natural resources in the EEZ was to be carried out jointly with Belize and Honduras in the respective parts of the EEZ that those countries would grant to Guatemala.³⁸⁵ While neither Belize nor Honduras should be expected to give up pieces of their

³⁷⁷ See, e.g., Ramos, *supra* note 122; Alianza para un Mundo Justo, *supra* note 2.

³⁷⁸ See *supra* Part I.C.

³⁷⁹ See Escobar López, *supra* note 1.

³⁸⁰ See *supra* notes 108–09 and accompanying text.

³⁸¹ See *supra* Part I.C.

³⁸² Proposals, *supra* note 227.

³⁸³ *Id.* pt. VI.B.7–11.

³⁸⁴ *Id.* pt. VI.B.9.a–b.

³⁸⁵ *Id.* pt. VI.B.9.c.

EEZs without retaining some rights there, these rights must be better defined at the outset. Without a clear idea of what Guatemala is trading its territorial claim for, it is unlikely that any such trade will take place.

Second, a negotiated solution must provide a licensing system for indigenous peoples living in the border area.³⁸⁶ This system must respect the customary practices of these people while providing for sustainability of these practices. This solution must also devote funds to the cultivation of xate on the Guatemala side of the border to deter Guatemalans from crossing.³⁸⁷ In addition, education about these customary practices on the Belizean side of the border is imperative to reduce hostility and curb the criminalization of these people.³⁸⁸

While this solution may seem more favorable to Guatemala on its face, the result will be equally advantageous for both parties. For Belize, it will foster more cooperation with its closest neighbor. It will also ameliorate the border crossings causing such hostility in Belize. Finally, this resolution will keep Belize's fate in the hands of Belizeans. Both countries have devoted valuable resources to this dispute over many decades. Now is the time for each to reflect on why this dispute continues and how to solve it in the most beneficial way for both. An ICJ holding as to the boundary between Belize and Guatemala stops short of an actual solution. For the parties, an ICJ adjudication will provide them with far less than what they have bargained for.

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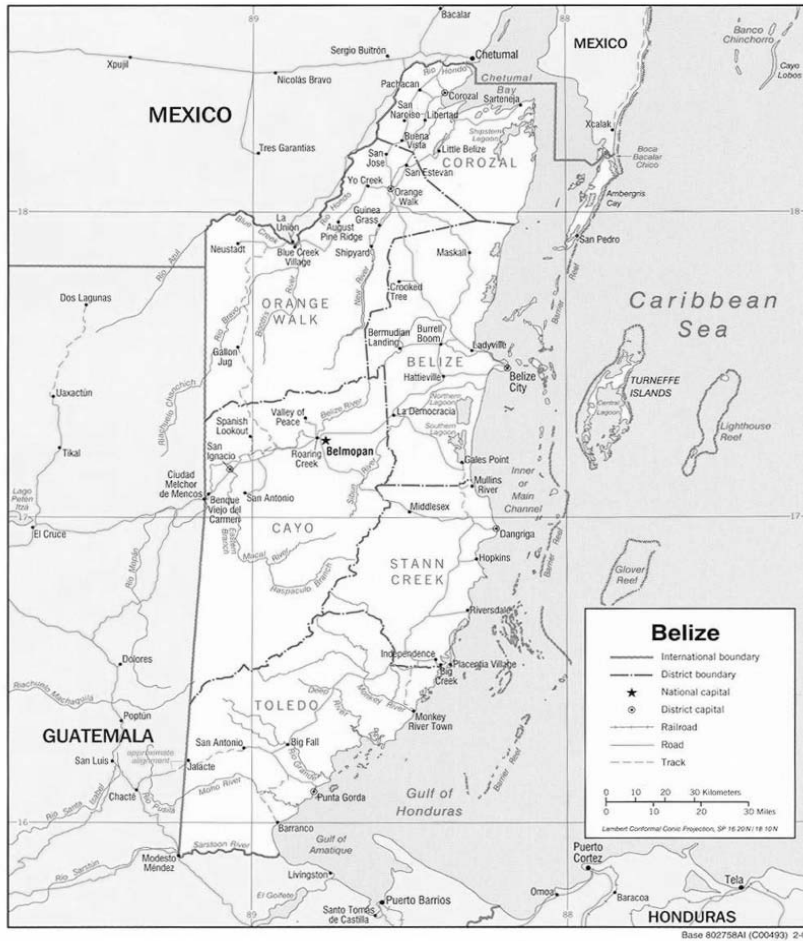
³⁸⁶ See *Alianza para un Mundo Justo*, *supra* note 2.

³⁸⁷ See *id.*

³⁸⁸ See Escobar López, *supra* note 1.

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Appendix 1: Map of Belize Showing Border with Guatemala³⁸⁹



389 Map reproduced from <http://Ambergriscaye.com/maps/art/belize.jpg>.