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“Judge-made” Regime of the Gulf of Fonseca and the Question of Binding Effect of Judgments of International Courts

Studia Europaea Gnesnensia 3, 95-105

2011

Artykuł został opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej bazhum.muzhp.pl, gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

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**“JUDGE-MADE” REGIME OF THE GULF OF FONSECA AND
THE QUESTION OF BINDING EFFECT OF JUDGMENTS OF
INTERNATIONAL COURTS**

Abstract

The status of the Gulf of Fonseca, bordered by El Salvador, Honduras and Nicaragua, was determined in certain important aspects by two judgments, delivered by the Central American Court of Justice in 1917 and the International Court of Justice in 1992. The judgments, although differing in many important details due to the evolution of international law of the sea after 1917, provided for, *inter alia*, existence within the Gulf of the special regime of joint sovereignty, excluding the coastal belts of three miles of exclusive sovereignty of each of the states concerned, and subject to existing Honduran-Nicaraguan delimitation of 1900. None of the judgments, however, may be treated, *prima facie*, as establishing legally binding source of obligations for El Salvador, Honduras and Nicaragua together, as none of them is of binding character for all three states, what in fact became the new source of disputes. The question is even more complex due to the fact that international law, in general, at its present state of evolution is still devoid of effective means of forcing states to observe the international courts' judgments, and still much depends on states' consent. Thus, in present case, cooperation of the states concerned seems to be the only way to surmount existing difficulties.

Keywords

the Gulf of Fonseca, historic bays, *uti possidetis iuris*, the binding force of judgments of international courts

The purpose of the present article is, in the first place, to set forth the status of the Central American Gulf of Fonseca as established by two judgments of competent international courts, i.e. Central American Court of Justice and International Court of Justice, respectively. As will be clearly seen, a unique state of affairs is presumed to exist as far as sovereignty over its territory is concerned; moreover, the latter judgment contains some important exceptions from the provisions of general international law of the sea. It must however be stressed that this aspect shall only serve as a background, as another, equally important, aim of the paper is to pay attention to essential role played by combined effect of those tribunals' judgments, notwithstanding difficulties with implementation of decisions of international courts in the present state of international law, generally devoid of effective means of making the states observe the judgments.

The Gulf of Fonseca, forming part of the Pacific Ocean, was discovered in 1522 by Spanish navigator Andres Niño and named after Juan Rodriguez de Fonseca, bishop of Burgos. Since then, Spanish monarchs exercised sovereignty over the area until the collapse of Spanish colonial empire in the New World in first decades of 19th century. In the period 1821–1839 the Gulf formed part of the Federal Republic of Central America comprised of areas previously forming parts of Capitanía General de Guatemala. After dissolution of the federation, three new states emerged along the shores of the Gulf; El Salvador, Honduras and Nicaragua. The succession of the area is thus clearly traceable in the form of chain of titles from Spanish period through Federal Republic of Central America to new states created after dissolution of the federation. The colonial past of the Gulf is of considerable importance since its legal status must be analyzed in the light of *uti possidetis iuris* concept, in essence amounting to inviolability of frontiers inherited from the colonial period in the absence of agreement to the contrary.

The legal status of the Gulf of Fonseca was thoroughly analyzed by international court in 1917, after El Salvador had brought the case against Nicaragua to the Central American Court of Justice¹; the principal subject matter of the case was the treaty of 1914 between Nicaragua and the USA², granting to the latter, *inter alia*, the right to establish, operate and maintain for the period of 99 years

¹ Text reproduced in American Journal of International Law [hereinafter AJIL] 11, 1917, p. 674 et seq.

² The so-called Bryan-Chamorro Treaty, reproduced in: Before the Central American Court of Justice. The Republic of El Salvador against the Republic of Nicaragua. Complaint of the Republic of El Salvador with Appendices, Washington 1917, p. 55 et seq.

(with option of renewing) the naval base in Nicaraguan territory bordering the Gulf of Fonseca, in particular area chosen by the Americans and subject exclusively to the laws and sovereign authority of the USA³. El Salvador recognized that step, *inter alia*, to be prejudicial to its "supreme interests", including security, and as constituting the violation of its rights to the waters of the Gulf⁴.

El Salvador maintained that the Gulf of Fonseca, originally belonging to Spain, subsequently fell under the sovereignty of the Federal Republic of Central America and then under joint sovereignty of three coastal states; consequently, a special regime of common ownership (or co-ownership) emerged⁵. Although Nicaragua had objected⁶, the Court shared the Salvadorian point of view in this aspect indicating the peaceful, uncontested possession and ownership of the Gulf by representative authorities since Spanish period⁷. It *inter alia* found unanimously that the Gulf was "an historic bay possessed of the characteristics of a closed sea"⁸ and, by four votes to one, that:

"the legal status of the Gulf of Fonseca [...] is that of property belonging to the three countries that surround it"⁹, except:

"the league¹⁰ of maritime littoral that belongs to each of the states that surround the Gulf of Fonseca adjacent to the coasts of their mainlands and islands respectively, and in which they have exercised, and may exercise, their exclusive sovereignty..."¹¹.

³ Art. 2 of the Treaty.

⁴ AJIL 11, 1917, p. 675.

⁵ *Ibidem*, p. 677 et seq.

⁶ According to Nicaragua, "the ancient Spanish Provinces of Nicaragua, Honduras and El Salvador, by reason of the fact that they are adjacent, are owners of the Gulf in the sense that to each belongs a part thereof, but not in the sense that, thereby, a community in the legal acceptance of the word exists among those republics. Demarcation of frontiers therein is lacking; but this [...] does not result in common ownership" (*ibidem*, p. 688). On its part, Honduras in dispatched communication refused to accept "the status of co-ownership with El Salvador, nor with any other republic, in the waters belonging to it in the Gulf of Fonseca" (*ibidem*, p. 696, see also p. 716 et seq.).

⁷ *Ibidem*, p. 700 et seq.

⁸ *Ibidem*, p. 693; (answer to question 9).

⁹ According to Judge Gutierrez Navas, "the ownership of the Gulf of Fonseca belongs, respectively, to the three riparian countries in proportion" (*ibidem*; answer to question 11).

¹⁰ I.e. three nautical miles.

¹¹ *Ibidem*, p. 694 (answer to question 15). In answer to question 14, by four votes to one, the Court confirmed that, as between two states in dispute, the right of co-ownership existed

The Court, noting that in principle the waters of the Gulf had not been delimited, paid also attention to the fact that to a certain degree such a delimitation took place in 1900 between Honduras and Nicaragua¹² and stressed that:

“[c]onsequently, it must be concluded that, with the exception of that part, the rest of the waters of the Gulf have remained undivided and in a state of community between El Salvador and Nicaragua...”¹³.

In effect, it was *inter alia* decided by the Court, by four votes to one, that Nicaragua, authorizing the USA to establish a naval base without Salvadorian consent, violated the right of co-ownership possessed by El Salvador in the Gulf¹⁴. Nicaragua raised objections to the judgment, dispatching relevant notes both to the Court as well as to Central American governments¹⁵.

Seventy five years after the judgment analyzed above, International Court of Justice addressed an issue in its own judgment in the case between El Salvador and Honduras (Nicaragua intervening)¹⁶, taking into account the evolution of the law of the sea influenced by the adoption of conventions on the law of the sea and development of the customary law. Leaving aside the

“in the non-littoral waters of the Gulf, and in those waters also, that are intermingled because of the existence of the respective zones of inspection in which those Republics exercise police power and the rights of national security and defense”. Thus the Court confirmed existence of yet another zone where states concerned were authorized to exercise certain rights (*ibidem*, see also answers to questions 12 and 13 at p. 693 and Court’s analysis at p. 715).

¹²*Ibidem*, p. 710 et seq. For the description of the delimitation see Land, island and maritime frontier dispute (El Salvador/Honduras), Application to intervene, Judgment, ICJ Reports 1990, p. 102, para. 26, as well as the map presented by D. Freestone along with the summary of the main points of dispute between El Salvador and Honduras (International Journal of Estuarine and Coastal Law, 3, 1988, p. 343). The delimitation thus involved only part of the bay. As to Salvadoran — Honduran attempt of delimitation, it was undertaken in 1884 but failed due to rejection of the relevant convention by Honduran Congress, AJIL 11, 1917, p. 710.

¹³*Ibidem*, p. 711.

¹⁴*Ibidem*, p. 694 et seq (answers to questions 16 and 20 and Court’s declaration at p. 696).

¹⁵Case concerning the land, island and maritime frontier dispute (El Salvador/Honduras: Nicaragua intervening), Pleadings, oral arguments, documents, VI, Written statement of Nicaragua, p. 21, para. 53; the protest was on the ground that the Court had exceeded its legal powers.

¹⁶Land, island and maritime frontier dispute (El Salvador/Honduras: Nicaragua intervening), ICJ Reports 1992, p. 351 et seq. The judgment was delivered by the Chamber of the Court composed of five Judges, including two Judges *ad hoc*.

problem of the land frontier that most of the judgment dealt with¹⁷, other subject matters of the dispute were the status of the waters of the Gulf and of some islands situated therein. According to El Salvador, the regime of the Gulf corresponded to that determined by the judgment of 1917¹⁸. Honduras took the view that there existed "a perfect equality of rights" in their mutual relations but by no means a condominium¹⁹, while Nicaragua rejected both Salvadorian and Honduran approaches, strongly supporting the view that legal regime of the Gulf was determined by Nicaraguan-Honduran delimitation and principles of general international law²⁰.

The Court underlined that the *uti possidetis iuris* principle was applicable to the waters of the Gulf as well as to the land²¹, but as the Central American Court before it could not find any evidence of a full delimitation of its waters. In the sentence it was therefore confirmed that the Gulf is a historical bay

"...the waters whereof, having previously to 1821 been under the single control of Spain, and from 1821 to 1839 of the Federal Republic of Central America, were thereafter succeeded to and held in sovereignty by the Republic of El Salvador, the Republic of Honduras, and the Republic of Nicaragua,

¹⁷It deserves however to be noted that the judgment determined, *inter alia*, the land boundary in the so-called sixth sector, reaching the Gulf (ibidem, p. 615, para. 430). This part of the judgment was the subject of Salvadorian application for revision according to art. 61 of the Statute of the Court, filed on 10 September 2002; the Chamber of the Court, by four votes to one, found the application inadmissible and, as far as the Gulf of Fonseca was concerned, only mentioned that the Court in its judgment of 1992 had settled the dispute over the legal status of various islands in the Gulf and the legal status of waters in and outside the Gulf (Application for revision of the judgment of 11 September 1992 in the case concerning the Land, island and maritime frontier dispute (El Salvador/Honduras: Nicaragua intervening) (El Salvador v. Honduras), Judgement, ICJ Reports 2003, p. 396 et seq., para. 12–15 and p. 411, para. 60).

¹⁸The legal status of the Gulf is also so described in the provisions of Salvadorian constitution (art. 84, text available on www.asamblea.gob.sv/asamblea-legislativa/constitucion/Constitucion_Actualizada_Republica_El_Salvador.pdf).

¹⁹Honduran constitution admits that "El Golfo de Fonseca podra sujetarse a un regimen especial", art. 10 (text available on www.honduras.com/honduras-constitution.html). According to the Court, there were similarities between both states' approaches: "It seems odd, however, to postulate a community of interest regime as an argument against a condominium regime; for a condominium is almost an ideal juridical embodiment of the community of interest's requirements of perfect equality of user of the waters and of common legal rights and the 'exclusion of any preferential privilege'" (ICJ Reports 1992, p. 602, para. 407).

²⁰For the detailed presentation of points of view of participants see ibidem, p. 362 et seq., para. 23–26.

²¹Ibidem, p. 589, para. 386.

jointly²², and continue to be so held, as defined in the present Judgment, but excluding a belt, as at present established, extending 3 miles (1 marine league) from the littoral of each of the three States, such belt being under the exclusive sovereignty of the coastal State, and subject to the delimitation between Honduras and Nicaragua effected in June 1900, and to the existing rights of innocent passage through the 3 — mile belt and the waters held in sovereignty jointly...²³.

The Court determined also the nature of sovereign rights belonging to the coastal states in the light of contemporary law of the sea; as a rule, such a bay, if bordered by one state only, would constitute that state's internal waters. In the present case the principle in pure form was however inapplicable and the Court recognized that although the waters indeed had a character of internal waters²⁴, emphasized simultaneously their *sui generis* nature due to existence in the waters in question of regime of co-ownership²⁵. Moreover, the Court strongly underscored that littoral belts of three miles were not territorial seas:

“The inner littoral maritime belts are therefore certainly not territorial seas in the sense of the modern law. Those maritime belts within the Gulf may properly be regarded as the internal waters of the coastal State, not being subject to

²²The courts employ variety of terms to describe such a joint sovereignty, e.g. joint ownership, co-imperium, condominium. See e.g. Lac Lanoux Arbitration (France/Spain) (16.11.1957, Arbitral Tribunal, International Law Reports [hereinafter ILR], 24, p. 127), Indo-Pakistan Western Boundary (Rann of Kutch) Case (19.02.1968, Ad Hoc Tribunal, ILR 50, p. 388 and Bachmann v. Canton of St-Gall (17.06.1975, Switzerland, Federal Tribunal, ILR 75, p. 82).

²³ICJ Reports 1992, p. 616, para. 432. Judge Oda dissented supporting the view that the waters of the Gulf were territorial seas of the coastal states (*ibidem*, Diss. Op. Oda, p. 758, para. 48). For the view of Honduras recognizing definitive character of the delimitation, see e.g. reservation to Inter-American Treaty of Reciprocal Assistance of 1947 (United Nations Treaty Series, 21, No. 324, p. 105). For the similar approach of Nicaragua, see UN doc. A/52/677, 12.11.1997. The Court expressed the view that El Salvador accepted the delimitation “in the terms indicated in the 1917 Judgment” (ICJ Reports 1992, p. 606, para. 413).

²⁴It is however to be noted that this finding was careful and the Court was conscious of difficulties with the application of this concept in present case; it noted that: “[t]he Gulf waters are therefore, if indeed internal waters, internal waters subject to a special and particular regime...” (*ibidem*, p. 605, para. 412), and next proceeded to state that: “the essential juridical status of these waters is the same as that of internal waters...” (*ibidem*). Supporting the thesis that in the light of contemporary law of the sea they should be treated as internal waters, the Court underlined *inter alia* that the term “territorial” describing the waters used in 1917 judgment meant “not territorial sea but waters that were not international and were on historical grounds claimed a *titre de souverain* by the three coastal States” (*ibidem*, p. 604, para. 412).

²⁵*Ibidem*, p. 605, para. 412.

the joint sovereignty, and even though subject, as indeed are all the waters of the Gulf, to rights of innocent passage that owe their origin to the exigencies and resulting history of a three-State but relatively small bay, with its problems of navigational access"²⁶.

Although the matter is not strictly within the scope of present article, it must be noted that new problems faced by the Court were the questions of the legal status of a portion of the Pacific Ocean outside the Gulf, but adjacent to it, as well as of sovereignty over certain islands situated within the Gulf. Recognizing that the line closing the bay constituted the baseline of the territorial sea from which maritime zones should be measured, the Court found all three states entitled to claim territorial sea, exclusive economic zone and continental shelf in the Ocean outside the Gulf²⁷, without prejudice to rights of El Salvador and Nicaragua, in accordance with international law, to these parts of the Ocean and its seabed as situated seaward from the baseline formed by the sections of the closing line of three miles (one marine league) measured from Punta de Amapala and from Punta Cosiguina, respectively, corresponding to the states' littoral belts²⁸.

At last, as far as status of the three islands in dispute is concerned, it was decided that the island of El Tigre formed part of territory of Honduras, while Meanguera and Meanguerita of El Salvador²⁹.

The analysis set forth above presents the status of the Gulf as determined by the judgments as a complex question. The judgment of the International Court of Justice, according to Chamber's own determination, has binding effect

²⁶Ibidem, p. 607, para. 416.

²⁷Art. 11 of the Honduran constitution concerning maritime zones envisage that in the Pacific Ocean they are measured from the closing line of the Gulf of Fonseca. See also Act on Honduran maritime areas (1999), art. 3 (reproduced in Bulletin of the law of the sea, 49, 2002, p. 15 et seq.).

²⁸ICJ Reports 1992, p. 616–617, para. 432. Judge Oda did not share the view; according to him, Honduras could not claim any maritime zones outside the Gulf, although he did not exclude the possibility of application of these provisions of the United Nations Convention on the Law of the Sea of 1982 that deal with rights of geographically disadvantaged states (ibidem, Diss. Op. Oda, p. 760 et seq., para. 53– 55).

²⁹Ibidem, p. 616, para. 431. In the case of El Tigre and Meanguera the Judges decided unanimously, while in the case of Meanguerita by four votes to one. It is also worth mentioning that the Court expressed the view that all three states recognized the Farallones as belonging to Nicaragua (ibidem, p. 554, para. 326). During the hearings the counsel for this state admitted that: "Nicaragua's sovereignty over the Farallones being expressly recognized by the Parties, Nicaragua has in principle no direct interest in the determination of the legal situation of the other islands in the Gulf" (quoted ibidem, p. 555, para. 326).

only in respect of El Salvador and Honduras. Nicaragua, as an intervener but not a party in dispute, is not legally bound by the text³⁰. The situation emerging (taking into account Chamber's view and following strictly principle that only parties are bound by judgments) is thus as follows: neither of the judgments binds all three states, but every state is bound by at least one of them, as Nicaragua undertook to observe the judgment of the Central American Court of Justice³¹. To claim otherwise would be contrary to existing law and would undermine the important role played by international tribunals in the process of pacific settlement of disputes. Consequently, speaking about at least some of elements of the status of the Gulf of Fonseca it seems better to do so, as the title of the present article suggests (only loosely referring to common-law concept of judge-made law), from the perspective of some obligations arising from existing judicial decisions. Thus the following interpretation may be proposed: the most important finding shared by binding parts of both judgments is the recognition of waters of the Gulf as subject to the regime of co-sovereignty. Also, the partial delimitation between Nicaragua and Honduras must be taken into account. In addition to uncontested historical nature of the Gulf, exclusive sovereignty of each state over respective littoral belts and established rights of innocent passage³², those elements seem to form the components of its status that should be respected by all three states, according to and to the extent established in relevant judgments. This construction, although constituting core of Gulf's status, has however important deficiency, dealt with later on in present article. As to other states' attitude, historic character of the Gulf was not contested by international community.

Nevertheless, it cannot be said that the whole matter is free from doubts. Above all, it seems that the very concept of co-sovereignty is not entirely free

³⁰Ibidem, p. 609 et seq., para. 421–424 and art. 59 of the Statute of the International Court of Justice. See also UN doc. A/57/337, 10.10.2002 for Nicaraguan approach. In a letter to the Secretary-General from Minister for Foreign Affairs of Nicaragua it was stressed that: "Nicaragua's rights in the Gulf of Fonseca outside the zone delimited with Honduras have not yet been determined" (UN doc. A/52/677, 12.11.1997).

³¹Art. 25 of the Convention for the establishment of a Central American Court of Justice (AJIL 2, 1908, Supplement, p. 231 et seq.) International Court of Justice analyzing the 1917 judgment confirmed that it was "a valid decision of a competent Court" (ICJ Reports 1992, p. 600, para. 402). It was also impossible to regard the judgment as abandoned by agreement of the parties due to the attitude of El Salvador.

³²See AJIL 11 [1917], p. 715 and ICJ Reports 1992, p. 593 para. 393, p. 605 para. 412 and p. 616, para. 432.

from ambiguities; the passage from Central American Court's judgment quoted above³³ in author's opinion considerably weakened the concept of co-sovereignty as applied by this Court, apparently much influenced by idea of community with respect to area that remained undivided by the end of colonial period. Also attempts of bilateral delimitations of the waters of the Gulf seem to indicate that not all three states necessarily wished to see it as under joint sovereignty. As to judgment of 1992, it was to a considerable degree the effect of application of the *uti possidetis iuris* concept as well and of reliance on the very 1917 judgment. As to *uti possidetis iuris* concept, it may undeniably be applied to maritime areas³⁴, but in the present case it was adopted when in fact there were no existing boundaries of colonial origins. The Court stressed that:

"[a] joint succession of the three states to the maritime area seems in these circumstances to be the logical outcome of the principle of *uti possidetis [i]uris* itself"³⁵.

But as there are in international law no precise rules concerning status of historical pluristatal bays, it seems that application of land dominates the sea principle as understood in its classic form was not necessarily excluded (the point of view shared also by Nicaragua and Judges Oda and, in 1917, Gutierrez Navas). It is important to be noted in this context that the International Court of Justice referred to Central American Court's decision as to "important part of the Gulf's history" and felt obliged to take it into consideration³⁶. It is highly probable that Judges felt it desirable to follow, as far as possible and in conformity with international law, judgment already given in order to assure uniformity of judicial decisions. Another problem concerns the nature of obligations in question; the deficiency noted above is connected with the fact that they cannot be claimed to be of tripartite treaty-like character unless assumed that principle of extended effect of objective regimes established by judgments in certain types of cases is applicable in present case or that Nicaragua is bound by judgment of 1992 as an intervener to the extent the right of intervention was granted³⁷. The

³³ At. supra, note 13.

³⁴ ICJ Reports 1992, p. 589, para. 386; Territorial and maritime dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), Judgment, ICJ Reports 2007, p. 728, para. 232.

³⁵ ICJ Reports 1992, p. 602, para. 405.

³⁶ Ibidem, p. 590, para. 387.

³⁷ Although the Chamber expressly stated that Nicaragua is not bound by the judgment as an intervener, it is to be noted that Judge Oda and Judge ad hoc Torres Bernardez chosen by

latter seems to be and the former certainly is, in general, reasonable exception from the principle that only parties are bound by judgments. And although in this particular case adoption of those approaches would not directly affect the very nature of condominium, it would justify existence of a tripartite obligation and thus this possibility cannot be neglected when Nicaraguan – Honduran relations are considered. However, despite possible doubts concerning concept of joint sovereignty and nature of existing obligations, the decisions in question taking into account unique character of the bay must be regarded as precious contribution to creation of coherent (of course only to certain degree as described above) though complex (based on one hand on states' practice and general rules of international law and on the other on binding force of international courts' judgments) regime of the Gulf. It cannot be also denied that joint-sovereignty approach produced undoubtedly equitable result safeguarding Honduran rights, especially those connected with access to the high seas outside the Gulf of Fonseca.

As usual in the sphere of international law, in this particular case little may be achieved and clarified without strict cooperation between interested parties, as there are in international law no effective means to make them observe the judgments. And although this remains outside the scope of a paper dealing with combined effect of judicial decisions, it appears that the definite solution of the question and dispersing of existing doubts may be brought, if not by complete delimitation of the waters of the Gulf (in the effect of pure partition Honduras, situated at the far end of the Gulf, would be disadvantaged), at least by adoption of some clear and exhaustive rules regulating mutual rights and obligations of the states concerned. It is therefore very important that after the period of tensions that followed the 1992 judgment³⁸, the states concerned recognized the significance of cooperation in the field of common management and protection

Honduras took a different view (ICJ Reports 1992, p. 620 and 730-1, respectively), a view supported, as a rule, also by other jurists (see e.g. resolution adopted by Institute of International Law in 1999 on settlement of disputes involving more than two states, available at www.idi.iil.org). However, as Nicaragua's right to intervention was limited to question of legal regime of waters of the Gulf (ICJ Reports 1990, p. 137 para. 105 and p. 136 para. 104) adherence to this concept would bring the same results as concept of extended effect of judgment in the part concerning status of waters of the Gulf.

³⁸ See e.g.: C. Paulson, *Compliance with Final Judgments of the International Court of Justice since 1987*, AJIL 98, 2004, at p. 437 et seq. See also: Honduran objections against Nicaraguan activities, according to Honduras infringing its rights within and outside the Gulf (UN doc. A/57/299, 12.08.2002).

of the Gulf; the Managua Declaration of 2007, signed by Presidents of El Salvador, Honduras and Nicaragua, constituted a very promising step forward³⁹. In any case, whatever shall be the future status of the Gulf as agreed by the parties, it remains one of the most important existing pieces of evidence of common colonial past of the states concerned.

Rafał Soroczyński

**USTRÓJ ZATOKI FONSECA I KWESTIA WIĄŻĄCEGO SKUTKU
ORZECZEŃ SĄDÓW MIĘDZYNARODOWYCH**

Streszczenie

Status prawny Zatoki Fonseca określony został sądownie przez dwa orzeczenia wydane przez Środkowoamerykański Trybunał Sprawiedliwości w 1917 r. oraz przez Międzynarodowy Trybunał Sprawiedliwości w 1992 r. Orzeczenia te, choć różniące się w wielu punktach ze względu na ewolucję międzynarodowego prawa morza, uznały m.in.: istnienie na większości obszaru wód Zatoki szczególnego reżimu „współsuwerenności” lub „współwłasności”. Żadne z orzeczeń nie może być jednak *prima facie* traktowane jako wiążące źródło zobowiązań równocześnie dla Hondurasu, Nikaragui i Salwadoru, co stało się w praktyce zarzewiem nowych sporów. Kwestię tę dodatkowo komplikuje fakt, iż na obecnym szczeblu rozwoju prawo międzynarodowe nie dysponuje skutecznymi środkami egzekwowania obowiązku przestrzegania przez państwa międzynarodowych orzeczeń wydanych zgodnie z zakresem jurysdykcji trybunałów, i wciąż wiele zależy od woli tychże państw. Także w sprawie Zatoki Fonseca współpraca zainteresowanych rządów wydaje się być jedynym możliwym sposobem przezwyciężenia istniejących trudności.

³⁹Text reproduced in UN doc. A/62/486, 15.10.2007. The UN online treaty database shows that no international agreement concerning the status of the Gulf and registered in the database was concluded between the three states by the time of writing of the present article.