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SG/ASG-915

The General Secretariat of the Organization of American States presents its compliments to the Permanent Mission of Belize, and has the honor to refer to the letter for Her Excellency Lisa Shoman , Minister of Foreign Affairs and Foreign Trade, Belize.

The General Secretariat has the honor to request the good offices of the Mission in forwarding this letter. The General Secretariat of the Organization of American States avails itself of this opportunity to renew to the Permanent Mission the assurances of its highest consideration.

November 19, 2007



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19 de noviembre de 2007
SG/SAP/DSDME – 922/07

Dear Ms. Minister,

It is my honor to address you in reference to the negotiations being carried out under my auspices between the representatives of your Government and those of the Government of Guatemala, pursuant to the Agreement on a Framework of Negotiation and Confidence Building Measures, signed by the two governments on September 5, 2005.

As you will recall, at the second Ministerial Negotiating Session, convened in fulfillment of the Agreement, held in Washington, D.C., on February 10, 2006, I proposed, among other things, that the negotiation process on the territorial differendum (land, island, and maritime) between the two countries should begin with its maritime aspect, and that, to that end, the Government of Honduras should be invited to participate in the negotiation process.

The Negotiating Group has met several times since March 2006, at the ministerial and the technical level, with representatives of the governments of the three countries, with the facilitation and coordination of my special representative. I know for a fact that the deliberations took place in an atmosphere of sustained cordiality and that the participants worked intensively and at all times took an unfailingly constructive approach. Unfortunately, after more than a year of negotiations, it has not been possible to achieve a rapprochement of positions making it possible to discern a successful conclusion to this process, which is understandable in view of the complexity of the matter and importance of the interests at stake. With the participation of the three countries various technical and high level meetings were carried out, with the objective of reaching agreements on that regarding the maritime territory which could serve as a provisional framework and be ratified or revised according to the outcome of the territorial issue, the latter undoubtedly the more complex and difficult to resolve of the issues.

Her Excellency
Lisa Shoman
Foreign Affairs Minister of Belize
Permanent Representative of Belize to the OAS
Permanent Mission of Belize to the OAS
2535 Massachusetts Ave, N.W.
Washington DC, 20008

Organización de los Estados Americanos
17th Street & Constitution Ave. N.W.
Washington, DC. 20006-4499

Unfortunately, after more than one year of negotiations, and even with the possibility of continuing on the maritime issue, should the parties deem relevant, the parties have been unable to reach the principles of an agreement nor rapprochement of positions sufficient enough to envision a successful outcome of the process, not even in a provisional manner.

This is understandable given the importance of the interests at play and if one considers that this is not the first time that hopes of reaching agreement have been frustrated. During the lengthy period since this differendum arose, the governments involved have spared no efforts to reach a fair resolution acceptable to both, to that end having recourse to their political and diplomatic instruments. Among them, may I recall the conciliation procedure agreed by the Governments of Belize and Guatemala on May 15, 2000, by the Governments of Belize and Guatemala, which took place under the auspices of the OAS.

I consider that you would agree with me regarding the need to resolve this differendum as soon as possible, since it constitutes a factor that has disturbed relations between Belize and Guatemala for many years and today continues to affect prospects for improving relations of good neighborliness and cooperation between the two Parties, particularly in the areas of security, trade, and social development.

Since none of the earlier attempts at direct settlement were successful, and in view of the differendum's long history and the commendable persistence of the governments involved to reach, through pacific settlement, a comprehensive, equitable, honorable, and permanent solution thereto, in my view, the time has come to make a recommendation regarding the judicial authority to which the Parties may have recourse in putting an end to the differendum.

Having examined the dispute resolution mechanisms available under contemporary international law, and in fulfillment of the provisions of paragraph 5 of the Agreement on a Framework of Negotiation and Confidence Building Measures, I have reached the conclusion that this differendum must be resolved through judicial procedure, either an arbitration tribunal designated by agreement of the Parties or the International Court of Justice.

Firstly, I feel it necessary to remind you that the Governments of Belize and Guatemala are at complete liberty to select the procedure to which they wish to submit the territorial differendum affecting them. Neither state has signed the "optional clause" contained in Article 36.2 of the Statute of the International Court of Justice, in which a state declares that it recognizes as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court.

On the other hand, the two countries may agree that resolution of the dispute should be entrusted to an international arbitration tribunal, which is the other alternative suggested in paragraph 5 of the Agreement on a Framework of Negotiation and Confidence Building Measures. In this alternative, the parties may come to exercise greater control regarding the composition of the body and in its proceedings (which, in arbitration bodies, typically are shorter than those before the International Court of Justice). To that end, the parties should reach agreement regarding not only the formulation of the question to be submitted to the tribunal for resolution, but also on the composition of the tribunal and how its procedure should be conducted.

The opinion of the Secretary General, therefore, is no more than a recommendation to two sovereign states that, as such, may adhere to the procedure they feel best adjusted to the defense of those interests and of the material costs they are willing to settle.

Based on this understanding, given that the matter deals with a controversy that consists of national interests of the highest level of the countries involved, where what is at stake is a claim to territory of significant and transcendental importance that affects the territorial integrity of both countries, allow me to recommend that the States submit this issue to the International Court of Justice.

The International Court of Justice is one of the primary organs of the United Nations and has the competency to resolve international controversies submitted to it by the States that form part of its Statute (Belize and Guatemala are parties to the Statute through the mere fact they are Member States of the United Nations). The Court's function is to decide upon the controversies on the basis of international law, except when the Parties to the controversy request that the litigation be resolved *ex aequo et bono*, in other words, applying the criteria of equity and justice instead of basing the sentence exclusively on the rules of the law.

The jurisprudence of the Court in the area of territorial and maritime delimitation is very broad, having dictated in the last decades numerous sentences regarding boundary controversies. The Court's decisions were always adhered to by the States under litigation and have generally been the object of praise by the academic and diplomatic worlds.

I am aware of the high costs that these procedures before the Court could generate for the States, such as the hiring of attorneys, translation of documents and other expenses that could occur with this procedure. But I feel that given the magnitude of the issue at hand, for both parties, this option is the most recommendable.

Notwithstanding my reiteration that that the decision pertains to the two states, I respectfully urge the Governments of the two parties to proceed to review carefully the jurisdictional alternatives I have mentioned so that they may choose, freely and by common accord, that which affords them most assurance of being able to bring an end to the dispute in a fair, honorable, and permanent manner. The decisions that you adopt will have my full support and, I am sure, that of the entire hemispheric community.

Similarly, I understand that the agreement reached by the Parties on the legal matter must be subjected to the legislative procedures that each country establishes for its consideration and definitive decision.

I wish to indicate to you that, should the Governments of Belize and Guatemala decide to accept my recommendation, I consider it advisable to maintain the full effectiveness of the confidence-building measures. To be noted among such measures are the important functions that the Office of the General Secretariat in the Adjacent Zone is fulfilling among them, efforts to investigate, verify, and report incidents or violations of confidence-building measures, and recommendations in their regard, coordination meetings between the armed forces and the police of the two countries, and how to organize and promote relations between communities on both sides of the adjacency line.

Lastly, I wish to indicate that, whatever decision is taken by the Governments of Belize and Guatemala, the OAS General Secretariat remains at their disposal for collaboration, should this be considered pertinent or necessary, in preparing the instruments for submission of the dispute to the jurisdictional authority agreed. The OAS will collaborate with the Parties' decision, should they opt for an arbitration tribunal including its constitution and procedures; or should they opt for the International Court of Justice, as per my suggestion, including all that concerning written application addressed to the register by which jurisdiction is accepted and the purpose of the differendum is stated.

I avail myself of this opportunity to reiterate to Your Excellency the assurances of my highest and most distinguished consideration.

A handwritten signature in black ink, appearing to read 'J. Insulza', enclosed within a large, sweeping, handwritten flourish that forms a wide, shallow arch over the signature.

José Miguel Insulza
General Secretary
Organization of American States