

Mexico knocks out treaty claim over land seizures

Toby Fisher
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Tulum, Mexico (Shutterstock, Rainer Lesniewski)

An UNCITRAL tribunal has declined jurisdiction over a US\$80 million claim brought against Mexico by a group of hotel investors over the seizure of properties in a tourist hotspot.

A Washington, DC-seated tribunal chaired by Colombia's **Eduardo Zuleta** and including Switzerland's **Charles Poncet** and Sweden's **Christer Söderlund** issued an award on 21 November.

According to the website of ICSID, which administered the case, the award comes eight months after a hearing on jurisdiction. It has not yet been published.

The claimants used Shook Hardy & Bacon in Miami, while Mexico relied on government lawyers and Canadian firm Tereposky & DeRose.

Argentine national Carlos Sastre originally brought the claim in 2017. He submitted an amended notice of arbitration in 2019, with two Portuguese nationals, two Canadians and one French national joining him as co-claimants. They invoked the North American free trade agreement and Mexico's bilateral investment treaties with Argentina, Portugal and France.

The claimants said they had interests in hotels in Tulum, a tourist hotspot in the state of Quintana Roo on Mexico's Caribbean coastline. They alleged they were improperly expelled from their properties by police, judicial agents, and armed and masked men following local court proceedings.

In a [filing last year](#), Mexico contested jurisdiction on the basis that it had not consented to the consolidation of the claims, arguing there were four distinct groups of unrelated claimants. It also objected that the claimants' dominant and effective nationality was Mexican, meaning they had waived the right to treaty protection.

The state further argued the investors had failed to demonstrate they had property rights recognised under Mexican law.

[The US](#) and [Canada](#) both made submissions on NAFTA ahead of a week-long hearing on jurisdiction via videoconference at the end of March this year.

Ownership of the land had been disputed since the Mexican government designated it part of a collective farm or “ejido” for impoverished farmers, according to reports at the time. A 2016 [investigation](#) into the Tulum land seizures alleged they were part of a larger pattern of land grabs and corruption by former Quintana Roo governor Roberto Borge, who was voted out of office months after the evictions. Borge is now facing trial for embezzlement and abuse of public office. He denies wrongdoing.

Mexico was [threatened last month](#) with a US\$3 billion NAFTA legacy claim by a Michigan company that said its agricultural land was expropriated. Two weeks ago, a Chicago-based precious metals producer [filed](#) a claim under the trade agreement over Mexican tax authorities’ refusal to grant VAT refunds.

Carlos Sastre and others v Mexico (ICSID Case No. UNCT/20/2)

Tribunal

- **Eduardo Zuleta** (Colombian) (chair)
- **Charles Poncet** (Switzerland) (appointed by the claimants)
- **Christer Söderlund** (Sweden) (appointed by Mexico)

Counsel to the claimants

- Shook Hardy & Bacon

Senior counsels **Ricardo Ampudia**, **Giovanni Angles** and **Alicia Menéndez**, and partners **Humberto Ocariz*** and **Carlos Concepción**** in Miami

**now at Greenberg Traurig*

***went [solo](#) in August 2022*

Counsel to Mexico

- Subsecretaría de Comercio Exterior, Dirección General de Consultoría Jurídica de Comercio Internacional, Secretaría de Economía in Mexico City

Director general **Orlando Pérez Gárate**, **Cindy Rayo Zapata**, **Antonio Nava Gómez**, **Ellionehit Sabrina Alvarado Sánchez**, **Pamela Hernández Mendoza**, **Imelda Silva Pacheco**, and **Erin Mirelle Castro Cruz**

- Tereposky & DeRose

Partner **Greg Tereposky** and associate **Graciela Jasa*** in Ottawa

**now at Global Affairs Canada*

Documents

Mexico's rejoinder on jurisdiction



Canada's submission



The US' submission



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