11 SEPTEMBER 1992

JUDGMENT

LAND, ISLAND AND MARITIME FRONTIER DISPUTE
(EL SALVADOR/HONDURAS: NICARAGUA intervening)

DIFFÉREND FRONTALIER TERRESTRE, INSULAIRE ET MARITIME
(EL SALVADOR/HONDURAS; NICARAGUA (intervenant))

11 SEPTEMBRE 1992

ARRÊT

INTERNATIONAL COURT OF JUSTICE

1992
11 September
General List
No. 75

YEAR 1992

11 September 1992

CASE CONCERNING THE LAND, ISLAND AND MARITIME FRONTIER DISPUTE

(EL SALVADOR/HONDURAS: NICARAGUA intervening)

Case brought by Special Agreement — Dispute involving six sectors of international land frontier, legal situation of islands and of maritime spaces inside and outside the Gulf of Fonseca.

Land boundaries — Applicability and meaning of principle of uti possidetis juris *— Relevance of certain "titles" — Link between disputed sectors and adjoining agreed sectors of boundary — Use of topographical features in boundary-making — Special Agreement and 1980 General Treaty of Peace between the Parties — Provision in Treaty for account to be taken by Chamber of "evidence and arguments of a legal, historical, human or any other kind, brought before it by the Parties and admitted under international law" — Significance to be attributed to Spanish colonial* títulos ejidales *— Relevance of post-independence land titles — Role of* effectivités *— Demographic considerations and inequalities of natural resources — Considerations of "effective control" of territory — Relationship between titles and* effectivités *— Critical date.*

First sector of land boundary — Interpretation of Spanish colonial land titles — Effect of grant by Spanish colonial authorities to community in one province of rights over land situate in another — Whether account may be taken of proposals or concessions made in negotiations — Whether acquiescence capable of modifying uti possidetis juris *situation — Interpretation of colonial documents — Claims based solely on* effectivités *— Relevance of post-independence land titles — Significance of topographically suitable boundary line agreed* ad referendum.

Second sector of land boundary — Interpretation of Spanish colonial land titles — Circumstances justifying reliance on post-independence land titles — Interpretation of title — Claims to particular area based on effectivités.

Third sector of land boundary — Interpretation of Spanish colonial land titles — Interpretation of interlocking titles — Impossibility of reconciling all recorded references to landmarks, distances and directions — Line which harmonizes identifiable features and corresponds to recorded distances — Relevance of post-independence land titles — Claims based solely on effectivités.

Fourth sector of land boundary — Interpretation of Spanish colonial land titles and related judicial decision — Reference to negotiations between the Parties — Statement by Party of its view on a question of fact — Significance of recognition by Party that certain communal lands straddled international frontier — Claim to area which was crown lands (tierras realengas) *in colonial times — Absence of agreement between Parties as to location of endpoint of agreed sector of boundary — Limits of jurisdiction of the Chamber — Absence of evidence for determining* uti possidetis juris *on part of line — Application of equity* infra legem *— Claims based on* effectivités.

Fifth disputed sector of the land boundary — Interpretation of Spanish colonial land titles — Claims based on effectivités.

Sixth disputed sector of the land boundary — Colonial boundary formed by river — Change of river's course — New argument not consistent with previous history of dispute — Significance of 18th century map and survey — Relevance of past negotiations — Boundary line in river with several mouths.

Legal situation of islands of the Gulf of Fonseca — Jurisdiction of the Chamber — Question which islands were in dispute at date of Special Agreement — Law applicable to island dispute — Uti possidetis juris *of 1821 — Colonial* effectivités *and the islands — Evidence for application of* uti possidetis juris *fragmentary and ambiguous — Recourse to other evidence and arguments contemplated by Special Agreement — Relevance of conduct of newly-independent States as a guide to* uti possidetis juris *boundary — Acquiescence and lack of protest.*

El Tigre island — Presence of Honduras in the island and administration by it — Attitude of El Salvador.

Meanguera and Meanguerita islands — History of dispute — Administration of Meanguera by El Salvador — Conduct revealing acquiescence.

Legal situation of maritime spaces — Whether jurisdiction of Chamber includes delimitation of maritime spaces — Interpretation of Special Agreement — Ordinary meaning of text in its context — Ascertainment of common intention expressed in Special Agreement — Jurisdiction and principle of consent.

Gulf of Fonseca as an historic bay with three coastal States — Particular historical régime established by practice — 1917 Judgement of Central American Court of Justice — Exclusive littoral maritime belt of 1 marine league, further belt for rights of maritime inspection, 1900 maritime delimitation between Honduras and Nicaragua — Uso inocente *of waters of Gulf — Sovereignty of three States in historic waters — Finding in 1917 Judgement that waters of the Gulf are subject to a* condominio *(co-ownership) — Legal status of 1917 Judgement — Judgement as a relevant precedent decision of a competent court and subsidiary means for determination of rules of law (Statute, Art. 38) — Conclusion of Chamber that Gulf waters, other than 3-mile maritime belts, and waters delimited in 1900, are historic waters*

and subject to a joint sovereignty of the three coastal States — Honduran contention of community of interests — Possibility or necessity of delimitation of waters.

Closing line of Gulf — Whether or not also a baseline — Gulf waters are internal waters subject to a special and particular régime — Joint sovereignty and rights of passage — 1900 delimitation between Honduras and Nicaragua accepted by El Salvador — Significance of condominio *(co-ownership) for delimitation — Existence of legal rights of Honduras in waters at the closing line.*

Waters outside the Gulf — Application of modern concepts of the law of the sea — Territorial sea — Closing line of historic bay constitutes baseline of territorial sea — Entitlement of Honduras in respect of ocean waters outside the Gulf — All three joint sovereigns of waters inside closing line of Gulf have entitlement outside that line to territorial sea, continental shelf and exclusive economic zone — Choice between continuation of situation and delimitation for the three States concerned.

Intervention under Article 62 of the Statute of the Court — Effect of Judgment on State permitted to intervene as non-party — Possible effect of unilateral statement of intention to be bound.

Invitation to Chamber under Rules of Court, Articles 66 and 67, to obtain evidence in situ *— Request for admission of documents after close of oral proceedings.*

JUDGMENT

Present: *Judge* SETTE-CAMARA, *President of the Chamber*; *President* Sir Robert JENNINGS; *Vice-President* ODA; *Judges* ad hoc VALTICOS, TORRES BERNÁRDEZ; *Registrar* VALENCIA-OSPINA.

In the case concerning the land, island and maritime frontier dispute,

between

the Republic of El Salvador,

represented by

Mr. Alfredo Martinez Moreno,

as Agent and Counsel,

H.E. Mr. Roberto Arturo Castrillo, Ambassador,

as Co-Agent,

and

H.E. Mr. José Manuel Pacas Castro, Minister for Foreign Relations,

as Counsel and Advocate,

Lic. Berta Celina Quinteros, Director General of the Boundaries Office,

as Counsel,

assisted by

Mr. Eduardo Jiménez de Aréchaga, Professor of Public International Law at the University of Uruguay, former Judge and President of the International Court of Justice; former President and Member of the International Law Commission,

Mr. Keith Highet, Adjunct Professor of International Law at the Fletcher School of Law and Diplomacy and Member of the Bars of New York and the District of Columbia,

Mr. Elihu Lauterpacht, C.B.E., Q.C., Director of the Research Centre for International Law, University of Cambridge, Fellow of Trinity College, Cambridge,

Mr. Prosper Weil, Professor Emeritus at the Université de droit, d'économie et de sciences sociales de Paris,

Mr. Francisco Roberto Lima, Professor of Constitutional and Administrative Law; former Vice-President of the Republic and former Ambassador to the United States of America,

Mr. David Escobar Galindo, Professor of Law, Vice-Rector of the University "Dr. José Matías Delgado" (El Salvador),

as Counsel and Advocates,

and

Mr. Francisco José Chavarría,
Mr. Santiago Elías Castro,
Ms Solange Langer,
Ms Ana María de Martínez,
Mr. Anthony J. Oakley,
Ms Ana Elizabeth Villalta,

as Counsellors,

and

the Republic of Honduras,

represented by

H.E. Dr. Ramón Valladares Soto, Ambassador of Honduras to the Netherlands,

as Agent,

H.E. Mr. Pedro Pineda Madrid, Chairman of the Sovereignty and Frontier Commission,

as Co-Agent,

Mr. Daniel Bardonnet, Professor at the Université de droit, d'économie et de sciences sociales de Paris,

Mr. Derek W. Bowett, C.B.E., Q.C., LI.D., F.B.A., Whewell Professor of International Law, University of Cambridge,

Mr. René-Jean Dupuy, Professor at the Collège de France,

Mr. Pierre-Marie Dupuy, Professor at the Université de droit, d'économie et de sciences sociales de Paris,

Mr. Julio González Campos, Professor of International Law, Universidad Autónoma de Madrid,

Mr. Luis Ignacio Sánchez Rodríguez, Professor of International Law, Universidad Complutense de Madrid,
Mr. Alejandro Nieto, Professor of Public Law, Universidad Complutense de Madrid,
Mr. Paul De Visscher, Professor Emeritus at the Université de Louvain,

as Advocates and Counsel,

H.E. Mr. Max Velásquez, Ambassador of Honduras to the United Kingdom,
Mr. Arnulfo Pineda López, Secretary-General of the Sovereignty and Frontier Commission,
Mr. Arias de Saavedra y Muguelar, Minister, Embassy of Honduras to the Netherlands,
Mr. Gerardo Martínez Blanco, Director of Documentation, Sovereignty and Frontier Commission,
Mrs. Salomé Castellanos, Minister Counsellor, Embassy of Honduras to the Netherlands,
Mr. Richard Meese, Legal Advisor, Partner in Frere Cholmeley, Paris,

as Counsel,

Mr. Guillermo Bustillo Lacayo,
Mrs. Olmeda Rivera,
Mr. José Antonio Gutiérrez Navas,
Mr. Raul Andino,
Mr. Miguel Tosta Appel,
Mr. Mario Felipe Martínez,
Mrs. Lourdes Corrales,

as Members of the Sovereignty and Frontier Commission,

the Republic of Nicaragua having been permitted to intervene in the case,

represented by

H.E. Mr. Carlos Argüello Gómez,

as Agent and Counsel,

H.E. Mr. Enrique Dreyfus Morales, Minister for Foreign Affairs,

assisted by

Mr. Ian Brownlie, Q.C., F.B.A., Chichele Professor of Public International Law, University of Oxford; Fellow of All Souls College, Oxford,

as Counsel and Advocate,

and

Mr. Alejandro Montiel Argüello, Former Minister for Foreign Affairs,

as Counsel,

The CHAMBER OF THE INTERNATIONAL COURT OF JUSTICE formed to deal with the above-mentioned case,

composed as above,

after deliberation,

delivers the following Judgment:

1. By a joint notification dated 11 December 1986, filed in the Registry of the Court the same day, the Ministers for Foreign Affairs of the Republic of Honduras and the Republic of El Salvador transmitted to the Registrar a certified copy of a Special Agreement in the Spanish language entitled *"COMPROMISO ENTRE HONDURAS Y EL SALVADOR PARA SOMETER A LA DECISION DE LA CORTE INTERNACIONAL DE JUSTICIA LA CONTROVERSIA FRONTERIZA TERRESTRE, INSULAR Y MARITIMA EXISTENTE ENTRE LOS DOS ESTADOS, SUSCRITO EN LA CIUDAD DE ESQUIPULAS, REPUBLICA DE GUATEMALA, EL DIA 24 DE MAYO DE 1986"*, and entering into force on 1 October 1986.

2. The Parties provided the Chamber with a joint translation into English of this Special Agreement under cover of a letter dated 2 May 1991, received in the Registry on 8 May 1991. A French translation of the agreed English translation of the Special Agreement was prepared by the Registry.

3. The Spanish text of the Special Agreement of 24 May 1986 was set out in the Judgment of the Chamber dated 13 September 1990 on the application of Nicaragua to intervene in the case (see paragraph 12 below). The agreed English translation of the Special Agreement is as follows:

"SPECIAL AGREEMENT BETWEEN EL SALVADOR AND HONDURAS TO SUBMIT TO THE DECISION OF THE INTERNATIONAL COURT OF JUSTICE THE LAND, ISLAND AND MARITIME BOUNDARY DISPUTE EXISTING BETWEEN THE TWO STATES, SIGNED IN THE CITY OF ESQUIPULAS, REPUBLIC OF GUATEMALA, ON 24 MAY 1986.

The Government of the Republic of El Salvador and the Government of the Republic of Honduras,

Considering that on 30 October 1980, in the City of Lima, Peru, they signed the General Treaty of Peace, by means of which, *inter alia*, they delimited the land boundary of both Republics in those sectors where there did not exist any dispute;

Considering that within the period of time envisaged by Articles 19 and 31 of the General Treaty of Peace, of 30 October 1980, no direct agreement was reached regarding the differences relating to the existing boundaries in respect of the remaining land areas in dispute and relating to the juridical status of the islands and of the maritime spaces;

Have designated as their respective Plenipotentiaries, El Salvador its Minister of Foreign Affairs, *Licenciado* Rodolfo Antonio Castillo Claramount, and Honduras its Minister of Foreign Affairs, the lawyer Carlos López Contreras, who having found their Full Powers to be in good and appropriate form:

AGREE THE FOLLOWING:

Article 1

Constitution of a Chamber

1. In application of Article 34 of the General Treaty of Peace, signed on 30 October 1980, the Parties submit the issues mentioned in Article 2 of the present Special Agreement to a chamber of the International Court of Justice, composed of three members, with the consent of the Parties, who will express this in a joint form to the President of the Court, this agreement

being essential for the formation of the chamber, which will be constituted in accordance with the procedures established in the Statute of the Court and in the present Special Agreement.

2. In addition the chamber will include two Judges *ad hoc* specially nominated one by El Salvador and the other by Honduras, who may have the nationality of the Parties.

Article 2

Subject of the Litigation

The Parties request the Chamber:

1. To delimit the boundary line in the zones or sections not described in Article 16 of the General Treaty of Peace of 30 October 1980.

2. To determine the legal situation of the islands and maritime spaces.

Article 3

Procedure

1. The Parties request the Chamber to authorize that the written proceedings shall consist of:

(a) a Memorial presented by each of the Parties not later than ten months after the notification of this Special Agreement to the Registry of the International Court of Justice;

(b) a Counter-Memorial presented by each of the Parties not later than ten months after the date on which each has received the certified copy of the Memorial of the other Party;

(c) a Reply presented by each of the Parties not later than ten months after the date on which each has received the certified copy of the Counter-Memorial of the other Party;

(d) the Court will be able to authorize or to prescribe the presentation of a Rejoinder, if the Parties so agree or if the Court decides ex officio or at the request of one of the Parties that this part of the proceedings is necessary.

2. The above-mentioned parts of the written proceedings and their annexes presented to the Registrar will not be transmitted to the other Party until the Registrar has received the part of the proceedings corresponding to the said Party.

3. The oral procedure, the notification of the appointment of the respective Agents of the Parties, and any other procedural questions will be regulated in accordance with the provisions of the Statute and the Rules of the Court.

Article 4

Languages

The case will be heard in the English and French languages without distinction.

Article 5

Applicable Law

In accordance with the provisions of the first paragraph of Article 38 of the Statute of the International Court of Justice, the Chamber, when delivering its Judgment, will take into account the rules of international law

applicable between the Parties, including, where pertinent, the provisions of the General Treaty of Peace.

Article 6

Execution of the Judgment

1. The Parties will execute the Judgment of the Chamber in its entirety and in complete good faith. To this end, the Special Demarcation Commission established by the Agreement of 11 February 1986 will begin the demarcation of the frontier line fixed by the Judgment not later than three months after the date of the said Judgment and will diligently continue its work until the demarcation is completed.

2. For this purpose, the procedures established in respect of this matter in the above-mentioned Agreement concerning the establishment of the Special Demarcation Commission will be applied.

Article 7

Entry into Force and Registration

1. This present Special Agreement will enter into force on 1 October 1986, once the constitutional requirements of each Party have been met.

2. It will be registered with the Secretary-General of the United Nations in accordance with Article 102 of the United Nations Charter, jointly or by either of the Parties. At the same time it will be brought to the attention of the Organization of American States.

Article 8

Notification

1. In application of Article 40 of the Statute of the International Court of Justice, this present Special Agreement will be notified to the Registrar of the same by a Joint Note of the Parties. This notification will be made before 31 December 1986.

2. If this notification is not made in accordance with the preceding paragraph, the present Special Agreement may be notified to the Registrar of the Court by either of the Parties within the period one month following the date established in the preceding paragraph.

In witness thereof, the undersigned sign the present Special Agreement in two copies in the City of Esquipulas, Republic of Guatemala, on the twenty-fourth day of May one thousand nine hundred and eighty-six."

4. Pursuant to Article 40, paragraph 3, of the Statute of the Court and Article 42 of the Rules of Court, copies of the joint notification and Special Agreement were transmitted by the Registrar to the Secretary-General of the United Nations, the Members of the United Nations and other States entitled to appear before the Court. On 30 July 1991, the Registrar also transmitted copies, through the same channel, of the English translation approved by the Parties and of the French translation, prepared by the Registry.

5. The Parties, when duly consulted on 17 February 1987, pursuant to Article 26, paragraph 2, of the Statute and Article 17, paragraph 2, of the Rules of Court, as to the composition of the chamber of the Court, confirmed what was

said in the Special Agreement, that as regards the number of judges to constitute such chamber, they agreed, pursuant to Article 26 of the Statute, that that number be fixed at three judges with the addition of two judges *ad hoc* chosen by the Parties pursuant to Article 31, paragraph 3, of the Statute.

6. In March 1987 the Court was notified of the choice by El Salvador of Mr. Nicolas Valticos to sit as judge *ad hoc* in the chamber; in April 1987, the Court was notified of the choice by Honduras of Mr. Michel Virally to sit as judge *ad hoc* in the chamber.

7. By an Order of 8 May 1987 the Court decided to accede to the request of the Parties to form a special chamber to deal with the case, and declared that at an election held on 4 May 1987 Judges Oda, Sette-Camara and Sir Robert Jennings had been elected to form, with the judges *ad hoc* referred to above, a chamber to deal with the case, and declared further such a chamber to have been duly constituted, with the following composition: Judges Oda, Sette-Camara and Sir Robert Jennings and Judges *ad hoc* Valticos and Virally. On 29 May 1987 the Chamber elected Judge Sette-Camara as its President, pursuant to Article 18, paragraph 2, of the Rules of Court.

8. Judge *ad hoc* Virally died on 27 January 1989, and by a letter dated 8 February 1989 the Agent of Honduras informed the Court that his Government had chosen Mr. Santiago Torres Bernárdez to sit as judge *ad hoc* in his place. By an Order dated 13 December 1989 the Court declared the composition of the Chamber formed to deal with the case to be as follows: Judge Sette-Camara, President of the Chamber; Judges Oda and Sir Robert Jennings; Judges *ad hoc* Valticos and Torres Bernárdez.

9. By an Order dated 27 May 1987, the Court, taking into account Article 3, paragraph 1, of the Special Agreement, fixed the time-limit for Memorials, and by an Order dated 29 May 1987 the Chamber authorized the filing of Counter-Memorials and Replies pursuant to Article 92, paragraph 2, of the Rules of Court, and fixed time-limits therefor.

10. The Memorials were duly filed within the time-limit of 1 June 1988 fixed therefor. The time-limits for the remaining pleadings were, at the request of the Parties, extended by Orders made by the President of the Chamber on 12 January 1989 and 13 December 1989. The Counter-Memorials and the Replies were duly filed within the extended time-limits thus fixed, namely 10 February 1989 and 12 January 1990 respectively.

11. Pursuant to Article 53, paragraph 1, of the Rules of Court, requests by the Governments of Nicaragua and Colombia for the pleadings and annexed documents to be made available to them were granted, for Nicaragua on 15 June 1988, and for Colombia on 27 January 1989, and in each case after the views of the Parties had been ascertained.

12. On 17 November 1989 the Republic of Nicaragua filed in the Registry of the Court an Application for permission to intervene in the case, which Application was stated to be made by virtue of Article 36, paragraph 1, and Article 62 of the Statute of the Court. In that Application, the Government of Nicaragua contended that its request for permission to intervene, "not only because it is an incidental proceeding but also for . . . reasons of elemental equity (that of consent and that of the equality of States)", was "a matter exclusively within the procedural mandate of the full Court".

13. By an Order dated 28 February 1990, the Court, after considering the written observations of the Parties on the question thus raised, whether the Application for permission to intervene was to be decided upon by the full

Court or by the Chamber, and the observations of Nicaragua in response to those observations found that it was for the Chamber formed to deal with the present case to decide whether the Application by Nicaragua for permission to intervene under Article 62 of the Statute should be granted.

14. Pursuant to Article 83, paragraph 1, of the Rules of Court, the two Parties on 5 March 1990 submitted written observations on the Application for permission to intervene filed by Nicaragua on 17 November 1989; since in the observations of El Salvador objection was made to the Application for permission to intervene, public sittings were held, pursuant to Article 84, paragraph 2, of the Rules of Court, in order to hear the State seeking to intervene and the Parties, on 5, 6, 7 and 8 June 1990.

15. By a Judgment delivered on 13 September 1990 the Chamber found that Nicaragua had shown that it had an interest of a legal nature which may be affected by part of the Judgment of the Chamber on the merits in the present case, namely its decision on the legal régime of the waters of the Gulf of Fonseca, but not by its decision on other issues in dispute, and decided that Nicaragua was permitted to intervene in the case, but not as a party, pursuant to Article 62 of the Statute, to the extent, in the manner and for the purposes therein indicated, but not further or otherwise.

16. Since the Application for permission to intervene submitted by Nicaragua had to that extent been granted by the Chamber, in accordance with Article 85 of the Rules of Court, that State submitted a written statement and the Parties filed written observations thereon. The written statement of Nicaragua and the written observations of the Parties thereon were filed within the time-limits fixed by the President of the Chamber.

17. The President of the Chamber fixed 15 April 1991 as the time-limit for the opening of the oral proceedings in the case. Following consultations with the representatives of the Parties on 21 February 1991, it was decided that the Parties would present their arguments successively on each of the following aspects of the dispute: *(a)* the whole of the general question; *(b)* each of the six sectors of the land frontier; *(c)* the islands and maritime spaces. Following a meeting held, after the opening of the oral proceedings, between the President of the Chamber and the Agents of the Parties and of the intervening State, it was agreed that, after the Parties had presented their arguments on the legal régime of the maritime spaces within the Gulf of Fonseca, Nicaragua would address this question and could, after the Parties had presented their views on the whole of the maritime aspects of the dispute, make a final statement on the legal régime of the waters of the Gulf of Fonseca.

18. In the course of 50 public sittings, held from 15 April to 14 June 1991, the Chamber was addressed by the following representatives of the Parties and Nicaragua:

For the Republic of Honduras:
H.E. Mr. Ramón Valladares Soto,
Mr. Paul De Visscher,
Mr. Alejandro Nieto,
Mr. Daniel Bardonnet,
Mr. Luis Ignacio Sánchez Rodríguez,
Mr. Julio González Campos,
Mr. René-Jean Dupuy,
Mr. Pierre-Marie Dupuy,
Mr. Derek Bowett, Q.C.

For the Republic of El Salvador:	H.E. Mr. José Manuel Pacas Castro, H.E. Mr. Alfredo Martínez Moreno, Mr. Prosper Weil, Mr. Eduardo Jiménez de Aréchaga, Mr. Anthony J. Oakley, Mr. Francisco Roberto Lima, Mr. Keith Highet, Mr. Elihu Lauterpacht, Q.C.
For the Republic of Nicaragua:	H.E. Mr. Carlos Argüello Gómez, Mr. Ian Brownlie, Q.C., H.E. Mr. Enrique Dreyfus Morales.

19. In accordance with Article 53, paragraph 2, of the Rules of Court, the Court decided that copies of the pleadings and documents annexed would be made accessible to the public on the opening of the oral proceedings.

20. On 12 April 1991 the Republic of El Salvador indicated, in accordance with Article 57 of the Rules of Court, that it intended to call Mr. Heriberto Avilés Domínguez, of Salvadorian nationality, as a witness and provided particulars identifying him. Additional information concerning Mr. Avilés Domínguez was communicated subsequently by El Salvador, at the request of the Agent of Honduras. At a public sitting held on 29 May 1991 Mr. Avilés Domínguez gave evidence, in Spanish, and in accordance with Article 39, paragraph 3, of the Statute and Article 70, paragraph 2, of the Rules of Court, El Salvador made the necessary arrangements for the statement of its witness to be interpreted. The examination-in-chief of the Salvadorian witness was conducted by Mr. Highet and the cross-examination by Mr. Sánchez Rodríguez.

21. In the course of the oral proceedings, a number of new documents were submitted by each of the Parties in accordance with Article 56, paragraph 1, of the Rules of Court. Prior to the close of the oral proceedings El Salvador announced its intention of submitting to the Chamber certain additional documents which had been referred to, but not included, in a dossier of documents concerning the island dispute (referred to as the "Meanguera dossier") submitted by El Salvador during the oral proceedings. These additional documents were transmitted to the Chamber under cover of a letter from the Agent of El Salvador dated 5 September 1991. The President of the Chamber, while noting that the submission of further documents to the Court after the closure of the written proceedings was not a normal part of the procedure, took the view that it was appropriate to apply to them, by extension and *mutatis mutandis*, the provision of Article 56 of the Rules. A set of copies of the documents was therefore transmitted to Honduras, which objected to the admission of the additional documents submitted by El Salvador. After examining the question the Chamber decided not to authorize the submission of those documents and informed the Parties of its decision to that effect.

22. At the hearings of 27 May 1991 and 14 June 1991, El Salvador requested that the Chamber consider exercising its functions pursuant to Article 66 of the Rules of Court with regard to the obtaining of evidence *in situ* in the disputed areas of the land frontier, and indicated also that El Salvador would welcome any order by the Chamber pursuant to Article 67 of the Rules, arranging for an enquiry or an expert opinion on these matters. At the closure of the oral proceedings, the President of the Chamber stated that the Chamber considered that it was not yet in a position to reach a decision on whether it would be appropri-

ate in the case to exercise its powers under Articles 66 and 67 of the Rules of Court, and would announce its decision in due course. After deliberation, the Chamber decided that it did not consider it necessary to exercise its functions with regard to the obtaining of evidence, as contemplated by Article 66 of the Rules of Court, in the disputed areas of the land frontier, as suggested by El Salvador, nor did it consider it necessary to exercise its powers to arrange for an enquiry or expert opinion in the case.

23. In the course of the written proceedings the following submissions were presented by the Parties:

On behalf of the Republic of El Salvador,

in the Memorial:

"*I. Delimitation of the Land Frontier*

The Government of El Salvador requests the Chamber of the International Court of Justice to delimit the land frontier in the disputed areas between El Salvador and Honduras on the basis of:

1. The rights resulting from the titles to commons owned in favour of El Salvador and the effective sovereignty that El Salvador has exercised and exercises in those disputed areas in accordance with the evidence which has been submitted in the annexes of the present Memorial. The precise delimitation of the areas which, in accordance with the above are subject to its sovereignty are set out as follows:"

In the Memorial, here follow references to the specific paragraphs of the Memorial setting out the argument of El Salvador on each of the six sectors of the land boundary. The Memorial also contains a "Conclusion" specifying the detailed course of the line, the terms of which were repeated in the Annexes to the final submissions of El Salvador at the close of the oral proceedings (see below).

"2. The addition to the areas thus attributed to El Salvador of those areas of Crown Lands *(tierras realengas)* lying between the Common Lands of El Salvador and Honduras respectively that are properly attributed to El Salvador after a comparison of the grants of Common Lands made by the Spanish Crown and authorities in favour of the Provinces of San Salvador and of Comayagua and Tegucigalpa, Honduras.

II. The Juridical Position of the Islands

The Government of El Salvador requests the Chamber of the International Court of Justice: To determine, on the basis of long-established possession and/or of the titles granted by the Spanish Crown, that El Salvador has and had sovereignty over all the islands in the Gulf of Fonseca, with the exception of the Island of Zacate Grande which can be considered as forming part of the coast of Honduras.

III. The Juridical Position of the Maritime Spaces

The Government of El Salvador requests the Chamber of the International Court of Justice to determine the juridical position of the maritime spaces as follows:

A. Within the Gulf of Fonseca

The juridical position of the maritime spaces within the Gulf of Fonseca corresponds to the juridical position established by the Judgement of the Central American Court of Justice rendered 9 March 1917, as accepted and applied thereafter.

B. Outside of the Gulf of Fonseca

As regards the juridical position beyond the closing line of the Gulf of Fonseca, the Government of El Salvador is unaware of the precise nature and extent of the claim, if any, of the Government of Honduras and must, therefore reserve its position. However El Salvador maintains that in principle, as Honduras has no coast on the Pacific Ocean, it has no rights in that ocean other than those possessed therein by any other non-littoral State."

in the Counter-Memorial:

"*I. Delimitation of the Land Frontier*

1. The Government of El Salvador ratifies the petition to the Chamber of the International Court of Justice contained in its Memorial that the Chamber delimit the land frontier between El Salvador and Honduras in the disputed sectors in accordance with the line indicated in the submissions contained in the Memorial of El Salvador.

2. In addition to the arguments set out in the Memorial of El Salvador, the Government of El Salvador has proven:

(i) that the land boundaries defined by the Formal Title-Deeds to the Commons of the indigenous communities (which include the Royal Landholdings within the same jurisdictions) presented by El Salvador are absolutely identical with the international frontiers of the territory of each State;

(ii) that El Salvador has completely established in its Memorial and in this Counter-Memorial that the Formal Title-Deeds to Commons which support the claims of El Salvador were executed by the Spanish Crown in accordance with all the necessary judicial procedures and requirements and, consequently, these Formal Title-Deeds to Commons form the fundamental basis of the *uti possidetis juris* in that they indicate jurisdictional boundaries, that is to say the boundaries of territories and settlements;

(iii) that Honduras has presented Title-Deeds to private proprietary interests which in no case either permitted the exercise of administrative control or implied the exercise of acts of sovereignty;

(iv) that the majority of the Title-Deeds presented by Honduras relate to lands which are situated either outside the disputed sectors or in sectors which have already been delimited by the General Peace Treaty of 1980.

II. The Juridical Status of the Islands

3. The Government of El Salvador ratifies the petition to the Chamber of the International Court of Justice contained in its Memorial in view of the fact that in Chapters V and VI of this Counter-Memorial it has rebutted the arguments contained in the Memorial of Honduras.

4. In addition to the arguments set out in the Memorial of El Salvador, the Government of El Salvador has proven:

(i) that in 1804 none of the islands of the Gulf of Fonseca was assigned to the Bishopric of Comayagua and that, even when the 'Alcaldía Mayor' of Tegucigalpa was incorporated to the intendency and Government of Comayagua subsequently to 1821, neither this 'Alcaldía' nor the Bishopric of Comayagua ever exercised either civil or ecclesiastical jurisdiction over the islands of the Gulf of Fonseca during the colonial period and thus it was the colonial Province of San Salvador, through San Miguel, that exercised both civil and ecclesiastical jurisdiction over the islands of the Gulf of Fonseca;

(ii) that the colonial Province of Honduras, when it was constituted, did not have any coast on the Pacific Ocean;

(iii) that the *Reales Cédulas* (Royal Decrees) of 1563 and 1564 left the Gulf of Fonseca within the jurisdiction of the Captain-General of Guatemala and, more specifically, in the jurisdiction of San Miguel in the colonial Province of San Salvador;

(iv) that when the Spanish Crown established jurisdiction over islands, it did so by means of a *Real Cédula* (as in the case of islands of Guanajas on the Atlantic coast of Honduras) and no such *Real Cédula* was ever executed in favour of Honduras in respect of the Islands of the Gulf of Fonseca.

III. The Juridical Status of the Maritime Spaces

5. The Government of El Salvador petitions the Chamber of the International Court of Justice that it determine the juridical status of the maritime spaces in the following manner:

(i) that, in view of the Principles of the Law of the Sea, it apply within the Gulf of Fonseca the juridical status established by the decision of the Central American Court of Justice handed down on 9 March 1917;

(ii) that, in accordance with the Special Agreement between El Salvador and Honduras, it decide that it has no jurisdiction to delimit the waters of the Gulf of Fonseca;

(iii) that it decline to delimit the maritime spaces outside the Gulf of Fonseca in the Pacific Ocean beyond the closing line of the Gulf on the grounds that its jurisdiction is limited to determining the juridical status of these maritime spaces;

(iv) that it determine that the rights and the jurisdiction over the waters and maritime spaces (including the natural resources therein) of the Pacific Ocean beyond the closing line of the Gulf of Fonseca are exerciseable exclusively by El Salvador and Nicaragua on the grounds that such rights arise from the relevant coasts which these two States have on the Pacific Ocean";

in the Reply:

"*I. Delimitation of the Land Frontier*

1. The Government of El Salvador ratifies the petition to the Chamber of the International Court of Justice contained in its Memorial that the Chamber delimit the land frontier between El Salvador and Honduras in the disputed sectors in accordance with the line indicated in the submissions contained in the Memorial. This petition was ratified in the

Counter-Memorial of El Salvador, which rebutted the arguments contained in the Memorial of Honduras, and is now ratified again in view of the fact that in Chapters II, III and IV of this Reply El Salvador has rebutted the arguments contained in the Counter-Memorial of Honduras.

II. The Juridical Status of the Islands

2. The Government of El Salvador ratifies the petition to the Chamber of the International Court of Justice contained in its Memorial as to the juridical status of the islands. This petition was ratified in the Counter-Memorial of El Salvador, which rebutted the arguments contained in the Memorial of Honduras, and is now ratified again in view of the fact that in Chapter V of this Reply El Salvador has rebutted the arguments contained in the Counter-Memorial of Honduras.

III. The Juridical Status of the Maritime Spaces

3. The Government of El Salvador ratifies the position to the Chamber of the International Court of Justice contained in its Counter-Memorial as to the juridical status of the maritime spaces in view of the fact that in Chapter VI of this Reply El Salvador has rebutted the arguments contained in the Counter-Memorial of Honduras."

On behalf of the Republic of Honduras,

in the Memorial and in the Counter-Memorial (identical texts):

"In view of the *facts and arguments* set out above, the Government of the Republic of Honduras confirms and reiterates the submissions of its Memorial and asks that it may please the Court:

A. With respect to the land frontier dispute:

— to adjudge and declare that the course of the frontier between El Salvador and Honduras is constituted by the following line in the areas or sections not described in Article 16 of the General Peace Treaty of 30 October 1980:

1. Section of the land frontier lying between the point known as El Trifinio, at the summit of the Cerro Montecristo, and the summit of the Cerro del Zapotal. From the summit of the Cerro Montecristo (latitude 14° 25′ 20″ N and longitude 89° 21′ 28″ W), the tripoint between Honduras, El Salvador and Guatemala, running south-east to the northernmost source of the San Miguel Ingenio or Taguilapa river (14° 24′ 00″ N and 89° 20′ 10″ W), known as the Chicotera, thereafter running downstream along the middle of the bed of the said river to the ford on the road from Citalá to Metapan (14° 20′ 55″ N and 89° 19′ 33″ W) at Las Cruces. From the preceding point eastwards, in a straight line, as far as the confluence of the river Jupula with the river Lempa (14° 21′ 06″ N and 89° 13′ 10″ W), the said line passing through the place known as El Cobre, and from that confluence in a straight line to the summit of the Cerro del Zapotal (14° 23′ 26″ N and 89° 14′ 43″ W).

2. Section of the land frontier lying between the Cayaguanca rock and the confluence of the Chiquita or Oscura stream with the Sumpul

river. From the Cayaguanca rock (14° 21′ 55″ N and 89° 10′ 05″ W), in a straight line, as far as the confluence of the Chiquita or Oscura mountain stream with the river Sumpul (14° 20′ 25″ N and 89° 04′ 57″ W).

3. Section of the land frontier lying between the Pacacio boundary marker and the boundary marker known as Poza del Cajón. From the Pacacio boundary marker (14° 06′ 28″ N and 88° 49′ 20″ W), on the river of the same name, in a straight line as far as the confluence of the La Puerta stream with the Gualcinga river (14° 06′ 24″ N and 88° 47′ 04″ W) and from there downstream along the middle of the bed of the said river to arrive at the Poza del Toro boundary marker (14° 04′ 14″ N and 88° 47′ 00″ W), at the confluence of the river Gualcinga with the river Sazalapa, on La Lagartera, thence following the said river upstream along the middle of the bed to the Poza de la Golondrina boundary marker (14° 06′ 55″ N and 88° 44′ 32″ W); from this point in a straight line as far as the La Cañada, Guanacaste or Platanar boundary marker (14° 06′ 04″ N and 88° 43′ 52″ W) and from that boundary marker in a straight line to the El Portillo boundary marker on the Cerro del Tambor (14° 04′ 47″ N and 88° 44′ 06″ W), also known as Portillo de El Sapo; from that boundary marker in a straight line as far as the Guaupa boundary marker (14° 04′ 33″ N and 88° 44′ 40″ W), passing over the El Sapo hill; thence in a straight line to the summit of the Loma Redonda (14° 03′ 46″ N and 88° 44′ 35″ W); from the Loma Redonda in a straight line to the summit of the Cerro del Ocotillo or Gualcimaca (14° 03′ 25″ N and 88° 44′ 22″ W), passing over the Cerro del Caracol. From the El Ocotillo boundary marker, in a straight line, as far as the La Barranca or Barranco Blanco boundary marker (14° 02′ 55″ N and 88° 43′ 27″ W); from there to the Cerro de la Bolsa (14° 02′ 05″ N and 88° 42′ 40″ W); and from that place, in a straight line, to the Poza del Cajón boundary marker (14° 01′ 28″ N and 88° 41′ 10″ W) on the river Amatillo or Gualcuquín.

4. Section of the land frontier lying between the source of the La Orilla stream and the boundary marker known as the Malpaso de Similatón. From the source of the mountain stream called La Orilla (13° 53′ 50″ N and 88° 20′ 30″ W) to the pass of El Jobo (13° 53′ 40″ N and 88° 20′ 25″ W), at the foot of the mountain known as El Volcancillo; from there to the southernmost source of the Cueva Hedionda (13° 53′ 46″ N and 88° 20′ 00″ W), following its course downstream along the middle of the bed to the Champate boundary marker (13° 53′ 20″ N and 88° 19′ 02″ W) as far as its confluence with the river Cañas or Santa Ana, thence following the *camino real*, by way of the boundary markers of Portillo Blanco (13° 53′ 40″ N and 88° 18′ 24″ W), Obrajito (13° 53′ 50″ N and 88° 17′ 28″ W), Laguna Seca (13° 54′ 03″ N and 88° 16′ 46″ W), Amatillo (13° 54′ 28″ N and 88° 15′ 42″ W), Picacho or Quecruz (13° 55′ 59″ N and 88° 14′ 42″ W), Esquinero or Sirin (13° 56′ 55″ N and 88° 13′ 10″ W), El Carrizal (13° 57′ 20″ N and 88° 11′ 35″ W); thence, still following the *camino real*, as far as the point where this road crosses the river Negro (13° 59′ 36″ N and 88° 12′ 35″ W); thence, following the river Negro upstream, as far as the Las Pilas boundary marker at the source of that same river

(14° 00′ 00″ N and 88° 06′ 30″ W), and from that place to the Malpaso de Similatón (13° 59′ 28″ N and 88° 04′ 21″ W).

5. Section of the land frontier lying between the point where the river Torola is joined by the Manzupucagua stream and the ford known as Paso de Unire. From the confluence of the Manzupucagua mountain stream with the Torola river (13° 54′ 00″ N and 87° 54′ 30″ W), following the river Torola upstream along the middle of the bed to its source, the mountain stream known as La Guacamaya (13° 53′ 30″ N and 87° 48′ 22″ W); from this point, in a straight line, to the pass of La Guacamaya (13° 53′ 20″ N and 87° 48′ 19″ W); thence in a straight line to a point on the river Unire (13° 52′ 37″ N and 87° 47′ 04″ W), close to the place known as El Coyolar, and from there, following the Unire river downstream, as far as the Paso de Unire or Limón ford (13° 52′ 07″ N and 87° 46′ 00″ W), on the said river.

6. Section of the land frontier lying between Los Amates and the Gulf of Fonseca. From the point known as Los Amates on the river Goascorán (13° 26′ 28″ N and 87° 43′ 20″ W), following the said river downstream along the middle of the bed by way of the Rincón de Muruhuaca and Barrancones, as far as its mouth to the north-west of the Ramaditas islands (13° 24′ 26″ N and 87° 49′ 05″ W) in the Bay of La Unión.

B. With respect to the island dispute:

— to declare that the Republic of Honduras has sovereignty over the islands of Meanguera and Meanguerita.

C. With respect to the maritime dispute:

(1) Concerning the zone subject to delimitation within the Gulf:

— to adjudge and declare that the community of interests existing between El Salvador and Honduras by reason of their both being coastal States bordering on an enclosed historic bay produces between them a perfect equality of rights, which has nevertheless never been transformed by the same States into a condominium;

— to adjudge and declare, therefore, that each of the two States is entitled to exercise its powers within zones to be precisely delimited between El Salvador and Honduras;

— to adjudge and declare that the course of the line delimiting the zones falling, within the Gulf, under the jurisdiction of Honduras and El Salvador respectively, taking into account all the relevant circumstances for the purpose of arriving at an equitable solution, shall be defined as follows:

(a) the line equidistant from the low-water line of the mainland and island coasts of the two States, starting within the Bay of La Unión, from the mouth of the Río Goascorán (latitude 13° 24′ 26″ N and longitude 87° 49′ 05″ W) and extending to the point situated at a distance of 1 nautical mile from the Salvadorian island of Con-

chaguita and from the Honduran island of Meanguera, to the south of the first and to the west of the second;

(b) from that point, the line joining points situated at a distance of 1 nautical mile from the island of Conchaguita, running to the south of that island up to a point situated at a distance of 3 nautical miles from the mainland coast of El Salvador;

(c) from that point onwards, the line joining points situated at a distance of 3 nautical miles from the Salvadorian coast as far as the point where it meets the closing line of the Gulf (see illustrative Chart C.5);

— to adjudge and declare that the community of interests existing between El Salvador and Honduras as coastal States bordering on the Gulf implies an equal right for both to exercise their jurisdictions over maritime areas situated beyond the closing line of the Gulf.

(2) Concerning the zone outside the Gulf:

— to adjudge and declare that the delimitation line productive of an equitable solution, when account is taken of all the relevant circumstances, is represented by a line drawn on a bearing of 215.5°, starting from the closing line of the Gulf at a point situated at a distance of 3 nautical miles from the coast of El Salvador, and running out 200 nautical miles from that point, thus delimiting the territorial sea, exclusive economic zone and continental shelf of El Salvador and Honduras (see illustrative Chart C.6)";

in the Reply:

"In view of the *facts and arguments* set out above, the Government of the Republic of Honduras asks that it may please the Court:

A. With respect to the land frontier dispute:

— to adjudge and declare that the course of the frontier between El Salvador and Honduras is constituted by the following line in the areas or sections not described in Article 16 of the General Peace Treaty of 30 October 1980:

1. Section of the land frontier lying between the point known as El Trifinio, at the summit of the Cerro Montecristo, and the summit of the Cerro del Zapotal. From the summit of the Cerro Montecristo (latitude 14° 25′ 20″ N and longitude 89° 21′ 28″ W), the tripoint between Honduras, El Salvador and Guatemala, running south-east to the northernmost source of the San Miguel Ingenio or Taguilapa river (14° 24′ 00″ N and 89° 20′ 10″ W), known as the Chicotera, thereafter running downstream along the middle of the bed of the said river to the ford on the road from Citalá to Metapan (14° 20′ 55″ N and 89° 19′ 33″ W) at Las Cruces. From the preceding point eastwards, in a straight line, as far as the confluence of the river Jupula with the river Lempa (14° 21′ 06″ N and 89° 13′ 10″ W), the said line passing through the place known as El Cobre, and from that confluence in a straight line to the summit of the Cerro Zapotal (14° 23′ 26″ N and 89° 14′ 43″ W).

2. Section of the land frontier lying between the Cayaguanca rock and the confluence of the Chiquita or Oscura stream with the Sumpul

river. From the Cayaguanca rock (14° 21′ 55″ N and 89° 10′ 05″ W), in a straight line, as far as the confluence of the Chiquita or Oscura mountain stream with the river Sumpul (14° 20′ 25″ N and 89° 04′ 57″ W).

3. Section of the land frontier lying between the Pacacio boundary marker and the boundary marker known as Poza del Cajón. From the Pacacio boundary marker (14° 06′ 28″ N and 88° 49′ 20″ W), on the river of the same name, in a straight line as far as the confluence of the La Puerta stream with the Gualcinga river (14° 06′ 24″ N and 88° 47′ 04″ W) and from there downstream along the middle of the bed of the said river to arrive at the Poza del Toro boundary marker (14° 04′ 14″ N and 88° 47′ 00″ W), at the confluence of the river Gualcinga with the river Sazalapa, on La Lagartera, thence following the said river upstream along the middle of the bed to the Poza de la Golondrina boundary marker (14° 06′ 55″ N and 88° 44′ 32″ W); from this point in a straight line as far as the La Cañada, Guanacaste or Platanar boundary marker (14° 06′ 04″ N and 88° 43′ 52″ W) and from that boundary marker in a straight line to the El Portillo boundary marker on the Cerro del Tambor (14° 04′ 47″ N and 88° 44′ 06″ W), also known as Portillo de El Sapo; from that boundary marker in a straight line as far as the Guaupa boundary marker (14° 04′ 33″ N and 88° 44′ 40″ W), passing over the El Sapo hill; thence in a straight line to the summit of the Loma Redonda (14° 03′ 46″ N and 88° 44′ 35″ W); from the Loma Redonda in a straight line to the summit of the Cerro del Ocotillo or Gualcimaca (14° 03′ 25″ N and 88° 44′ 22″ W), passing over the Cerro del Caracol. From the El Ocotillo boundary marker, in a straight line, as far as the La Barranca or Barranco Blanco boundary marker (14° 02′ 55″ N and 88° 43′ 27″ W); from there to the Cerro de la Bolsa (14° 02′ 05″ N and 88° 42′ 40″ W); and from that place, in a straight line, to the Poza del Cajón boundary marker (14° 01′ 28″ N and 88° 41′ 10″ W) on the river Amatillo or Gualcuquín.

4. Section of the land frontier lying between the source of the La Orilla stream and the boundary marker known as the Malpaso de Similatón. From the source of the mountain stream called La Orilla (13° 53′ 50″ N and 88° 20′ 30″ W) to the pass of El Jobo (13° 53′ 40″ N and 88° 20′ 25″ W), at the foot of the mountain known as El Volcancillo; from there to the southernmost source of the Cueva Hedionda (13° 53′ 46″ N and 88° 20′ 00″ W), following its course downstream along the middle of the bed to the Champate boundary marker (13° 53′ 20″ N and 88° 19′ 02″ W) as far as its confluence with the river Canas or Santa Ana, thence following the *camino real*, by way of the boundary markers of Portillo Blanco (13° 53′ 40″ N and 88° 18′ 24″ W), Obrajito (13° 53′ 50″ N and 88° 17′ 28″ W), Laguna Seca (13° 54′ 03″ N and 88° 16′ 46″ W), Amatillo or Las Tijeretas (13° 54′ 28″ N and 88° 15′ 42″ W), and from there, in a northerly direction, as far as the point at which the river Las Cañas joins the mountain stream known as Masire or Las Tijeretas (13° 55′ 03″ N and 88° 15′ 45″ W); thence, taking a north-easterly direction, it follows its course upstream as far as the road from Torola to Colomoncagua and continues in the same direction as far as the Cerro La Cruz, Quecruz or El Picacho (13° 55′ 59″ N

and 88° 13′ 10″ W); thence, to the Monte Redondo, Esquinero or Sirin boundary marker (13° 56′ 55″ N and 88° 13′ 10″ W) and from there to the El Carrisal or Soropay marker (13° 57′ 41″ N and 88° 12′ 52″ W); from there it runs in a northerly direction to the Cerro del Ocote or hill of Guiriri (13° 59′ 00″ N and 88° 12′ 55″ W), and thence, in the same direction, to the marker of El Rincón, on the river Negro, Quiaguara or El Palmar (13° 59′ 53″ N and 88° 12′ 59″ W); thence, following the river Negro upstream, as far as the Las Pilas boundary marker at the source of that same river (14° 00′ 00″ N and 88° 06′ 30″ W), and from that place to the Malpaso de Similatón (13° 59′ 28″ N and 88° 04′ 21″ W).

5. Section of the land frontier lying between the point where the river Torola is joined by the Manzupucagua stream and the ford known as Paso de Unire. From the confluence of the Manzupucagua mountain stream with the Torola river (13° 54′ 00″ N and 87° 54′ 30″ W), following the river Torola upstream along the middle of its bed to its source, the mountain stream known as La Guacamaya (13° 53′ 30″ N and 87° 48′ 22″ W); from this point, in a straight line, to the pass of La Guacamaya (13° 53′ 20″ N and 87° 48′ 19″ W); thence in a straight line to a point on the river Unire (13° 52′ 37″ N and 87° 47′ 04″ W), close to the place known as El Coyolar, and from there, following the Unire river downstream, as far as the Paso de Unire or Limón ford (13° 52′ 07″ N and 87° 46′ 00″ W), on the said river.

6. Section of the land frontier lying between Los Amates and the Gulf of Fonseca. From the point known as Los Amates on the river Goascorán (13° 26′ 28″ N and 87° 43′ 20″ W), following the said river downstream along the middle of the bed by way of the Rincón de Muruhuaca and Barrancones, as far as its mouth to the north-west of the Ramaditas islands (13° 24′ 26″ N and 87° 49′ 05″ W) in the Bay of La Unión.

— to reject the submissions of the Government of El Salvador including those set forth in item I, paragraph 2, of the submissions of the Counter-Memorial and that relate to the delimitation of the land frontier;

B. With respect to the island dispute:

— to declare that only the islands of Meanguera and Meanguerita are in dispute between the Parties and that the Republic of Honduras has sovereignty over them.

C. With respect to the maritime dispute:

(1) Concerning the zone subject to delimitation within the Gulf:

— to adjudge and declare that the community of interests existing between El Salvador and Honduras by reason of their both being coastal States bordering on an enclosed historic bay produces between them a perfect equality of rights, which has nevertheless never been transformed by the same States into a condominium;

— to adjudge and declare, therefore, that each of the two States is entitled to exercise its powers within zones to be precisely delimited between El Salvador and Honduras;

— to adjudge and declare that the course of the line delimiting the zones falling, within the Gulf, under the jurisdiction of Honduras and El Salvador respectively, taking into account all the relevant circumstances for the purpose of arriving at an equitable solution, shall be defined as follows:

(a) the line equidistant from the low-water line of the mainland and island coasts of the two States, starting within the Bay of La Unión, from the mouth of the Rio Goascorán (latitude 13° 24′ 26″ N and longitude 87° 49′ 05″ W) and extending to the point situated at a distance of 1 nautical mile from the Salvadorian island of Conchaguita and from the Honduran island of Meanguera, to the south of the first and to the west of the second;

(b) from that point, the line joining points situated at a distance of 1 nautical mile from the island of Conchaguita, running to the south of that island up to a point situated at a distance of 3 nautical miles from the mainland coast of El Salvador;

(c) from that point onwards, the line joining points situated at a distance of 3 nautical miles from the Salvadorian coast as far as the point where it meets the closing line of the Gulf (see illustrative chart C.5);

— to adjudge and declare that the community of interests existing between El Salvador and Honduras as coastal States bordering on the Gulf implies an equal right for both to exercise their jurisdictions over maritime areas situated beyond the closing line of the Gulf;

(2) Concerning the zone outside the Gulf:

— to adjudge and declare that the delimitation line productive of an equitable solution, when account is taken of all the relevant circumstances, is represented by a line drawn on a bearing of 215.5°, starting from the closing line of the Gulf at a point situated at a distance of 3 nautical miles from the coast of El Salvador, and running out 200 nautical miles from that point, thus delimiting the territorial sea, exclusive economic zone and continental shelf of El Salvador and Honduras (see illustrative Chart C.6 in the Memorial of Honduras)."

24. In the course of the oral proceedings the following submissions were presented by the Parties:

On behalf of the Republic of El Salvador:

"The Government of El Salvador respectfully requests the Chamber of the International Court of Justice to adjudge and declare that:

A. Concerning the delimitation of the land frontier

The line of the frontier in the zones or sectors not described in Article 16 of the General Treaty of Peace of 30 October 1980, is as follows:

(i) in the disputed sector of Tepangüisir, in accordance with paragraph 6.69 and map 6.7 of the Memorial of El Salvador as set forth in Annex I to these submissions;

(ii) in the disputed sector of Las Pilas or Cayaguanca, in accordance with paragraph 6.70 and map 6.8 of the Memorial of El Salvador, as set forth in Annex II to these submissions;
(iii) in the disputed sector of Arcatao or Zazalapa, in accordance with paragraph 6.71 and map 6.9 of the Memorial of El Salvador, as set forth in Annex III to these submissions;
(iv) in the disputed sector of Nahuaterique, in accordance with paragraph 6.72 and map 6.10 of the Memorial of El Salvador, as set forth in Annex IV to these submissions;
(v) in the disputed sector of Polorós, in accordance with paragraph 6.73 and map 6.11 of the Memorial of El Salvador, as set forth in Annex V to these submissions; and
(vi) in the disputed sector of the Estuary of the Goascorán river, in accordance with paragraph 6.74 and map 6.12 of the Memorial of El Salvador, as set forth in Annex VI to these submissions.

B. Concerning the legal situation of the islands

The sovereignty over all the islands within the Gulf of Fonseca, and, in particular, over the islands of Meanguera and Meanguerita, belongs to El Salvador, with the exception of the island of Zacate Grande and the Farallones islands.

C. Concerning the determination of the legal situation of the maritime spaces

1. The Chamber has no jurisdiction to effect any delimitation of the maritime spaces.
2. The legal situation of the maritime spaces within the Gulf of Fonseca corresponds to the legal position established by the Judgement of the Central American Court of Justice of 9 March 1917.
3. The legal situation of the maritime spaces outside the Gulf of Fonseca is that:

(a) Honduras has no sovereignty, sovereign rights, or jurisdiction in or over them; and
(b) the only States which have sovereignty, sovereign rights, or jurisdiction in or over them are States with coasts that directly front on the Pacific Ocean, of which El Salvador is one."

"Annexes referred to in final submissions of El Salvador

ANNEX I

TEPANGÜISIR

Starting from the summit of the peak known as the Cerro Zapotal or Chiporro situated at latitude 14° 23′ 26″ N and longitude 89° 14′ 43″ W, the frontier continues in a straight line in the direction N 71° 27′ 20″ W for a distance of 3,530 metres as far as the peak known as the Cerro Piedra Menuda situated at latitude 14° 24′ 02″ N and longitude 89° 16′ 35″ W. From this peak, it continues in the direction N 57° 19′ 33″ W for a distance of 2,951 metres as far as the boundary marker known as the Mojón del Talquezalar on the river known as the Pomola situated at latitude 14° 24′ 54″ N and longitude 89° 17′ 58″ W. From this boundary marker, the frontier follows the course of the Pomola river upstream for a distance of

875 metres as far as the confluence of the streams known as the Pomola and Cipresales situated at latitude 14° 24′ 45″ N and longitude 89° 18′ 21″ W. From this confluence, the frontier follows the course of the Pomola stream upstream for a distance of 4,625 metres as far as its source situated at latitude 14° 26′ 05″ N and longitude 89° 20′ 12″ W. From this source, the frontier continues in a straight line in the direction S 51° 35′ 00″ W for a distance of 2,700 metres as far as the summit of the peak known as the Cerro Montecristo situated at latitude 14° 25′ 10.784″ N and longitude 89° 21′ 21.568″ W.

ANNEX II

LAS PILAS OR CAYAGUANCA

Starting from the confluence of the stream known as the Oscura or the Chiquita with the river known as the Sumpul situated at latitude 14° 20′ 26″ N and longitude 89° 04′ 58″ W, the frontier follows the course of the Sumpul river upstream for a distance of 10,500 metres as far as its source situated at latitude 14° 24′ 17″ N and longitude 89° 06′ 45″ W. From this source, the frontier continues in a straight line in the direction S 53° 46′ 31″ W for a distance of 7,404 metres as far as the peak known as the Peña de Cayaguanca situated at latitude 14° 21′ 54″ N and longitude 89° 10′ 04″ W.

ANNEX III

ARCATAO OR ZAZALAPA

Starting from the boundary marker known as the Mojón Poza del Cajón on the river known as the Guayquiquín, Gulacuquín or El Amatillo situated at latitude 14° 01′ 28″ N and longitude 88° 41′ 09″ W, the frontier follows the said river upstream for a distance of 5,000 metres as far as its source situated at latitude 14° 02′ 45″ N and longitude 88° 42′ 33″ W. From this source, the frontier continues in a straight line in the direction N 18° 21′ 16″ W for a distance of 9,853 metres as far as the summit of the peak known as the Cerro El Fraile situated at latitude 14° 07′ 49″ N and longitude 88° 44′ 16″ W. From this peak, the frontier continues in a straight line in the direction N 60° 30′ W for a distance of 7,550 metres as far as the summit of the peak known as the Cerro La Pintal situated at latitude 14° 09′ 49″ N and longitude 88° 47′ 55″ W. From this peak, the frontier continues in a straight line in the direction S 21° 30′ W for a distance of 2,830 metres as far as the source of the stream or river known as the Pacacio situated at latitude 14° 08′ 23″ N and longitude 88° 48′ 30″ W. From this source, the frontier follows the course of the Pacacio stream or river downstream for a distance of 5,125 metres as far as a point on the said Pacacio stream or river situated at latitude 14° 06′ 27″ N and longitude 88° 49′ 18″ W.

ANNEX IV

NAHUATERIQUE

Starting from the boundary marker known as the Mojón Mal Paso de Similatón situated at latitude 14° 00′ 53″ N and longitude 88° 03′ 54″ W, the frontier continues in a straight line in the direction N 3° W for a distance of 3,000 metres as far as the boundary marker known as the Antiguo

Mojón de la Loma situated at latitude 14° 02′ 32″ N and longitude 88° 03′ 59″ W. From this boundary marker, the frontier continues in a straight line in the direction N 31° 30′ W for a distance of 2,780 metres as far as the mountain known as the Montaña de la Isla situated at latitude 14° 03′ 49″ N and longitude 88° 04′ 47″ W. From this mountain, the frontier continues in a straight line in the direction N 89° 40′ 02″ W for a distance of 7,059 metres as far as the summit of the peak known as the Cerro La Ardilla situated at latitude 14° 03′ 51″ N and longitude 88° 08′ 43″ W. From this peak, the frontier continues in a straight line in the direction S 78° 35′ 13″ W for a distance of 6,833 metres as far as the summit of the peak known as the Cerro El Alumbrador situated at latitude 14° 03′ 08″ N and longitude 88° 12′ 26″ W. From this peak, the frontier continues in a straight line in the direction S 18° 13′ 36″ W for a distance of 4,222 metres as far as the summit of the peak known as the Cerro Chagualaca or Marquezote situated at latitude 14° 00′ 57″ N and longitude 88° 13′ 11″ W. From this peak, the frontier continues in a straight line in the direction S 66° 45′ W for a distance of 2,650 metres as far as an elbow of the river known as the Negro situated at latitude 14° 00′ 22″ N and longitude 88° 14′ 31″ W. From this elbow of this river, it follows the course of the Negro river upstream for a distance of 1,800 metres as far as the confluence with it of the river known as the La Presa, Las Flores or Pichigual situated at latitude 13° 59′ 38″ N and longitude 88° 14′ 16″ W. From this confluence, the frontier follows the course of the La Presa, Las Flores or Pichigual river upstream for a distance of 4,300 metres as far as a boundary marker situated on its course at latitude 13° 57′ 44″ N and longitude 88° 13′ 49″ W. From this boundary marker, the frontier continues in a straight line in the direction S 22° 40′ W for a distance of 2,170 metres as far as the summit of the peak known as the Cerro El Alguacil situated at latitude 13° 56′ 21″ N and longitude 88° 14′ 16″ W. From this peak, the frontier continues in a straight line in the direction S 73° 14′ 11″ W for a distance of 1,881 metres as far as an elbow of the river known as the Las Cañas or Yuquina situated at latitude 13° 56′ 21″ N and longitude 88° 15′ 16″ W. From this elbow of this river, the frontier follows the course of the de Las Cañas or Yuquina river downstream for a distance of 12,000 metres as far as the place known as the Cajón de Champate situated on its course at latitude 13° 53′ 33″ N and longitude 88° 19′ 00″ W. From this place, the frontier continues in a straight line in the direction N 71° 02′ 22″ W for a distance of 2,321 metres as far as the summit of the peak known as the Cerro El Volcancillo situated at latitude 13° 53′ 58″ N and longitude 88° 20′ 13″ W. From this point, the frontier continues in a straight line in the direction S 60° 25′ 12″ W for a distance of 930 metres as far as the source of the stream known as the La Orilla situated at latitude 13° 53′ 43″ N and longitude 88° 20′ 38″ W.

ANNEX V

POLORÓS

Starting from the place known as the Paso de Unire situated on the river known as the Unire, Guajiniquil or Pescado at latitude 13° 52′ 10″ N and longitude 87° 46′ 02″ W, the frontier follows the course of the Unire, Guajiniquil or Pescado river upstream for a distance of 8,800 metres as far as its source situated at latitude 13° 55′ 16″ N and longitude 87° 47′ 58″ W.

From this source, the frontier continues in a straight line in the direction N 56° 23′ 13″ W for a distance of 4,179 metres as far as the peak known as the Cerro Ribitá situated at latitude 13° 56′ 32″ N and longitude 87° 49′ 54″ W. From this peak, the frontier continues in a straight line in the direction S 87° 02′ 24″ W for a distance of 6,241 metres as far as the peak known as the Cerro López situated at latitude 13° 56′ 23″ N and longitude 87° 53′ 21″ W. From this peak, the frontier continues in a straight line in the direction S 40° 30′ W for a distance of 2,550 metres as far as the boundary marker known as the Mojón Alto de la Loza situated at latitude 13° 55′ 18″ N and longitude 87° 54′ 17″ W. From this boundary marker, the frontier continues in a straight line in the direction S 10° W for a distance of 500 metres as far as the source of the stream known as the Manzucupagua or Manzupucagua situated at latitude 13° 55′ 03″ N and longitude 87° 54′ 19″ W. From this source, the frontier follows the course of the Manzucupagua or Manzupucagua stream downstream as far as its mouth in the river known as the Torola situated at latitude 13° 53′ 59″ N and longitude 87° 54′ 30″ W.

ANNEX VI

THE ESTUARY OF THE GOASCORÁN RIVER

Starting from the old mouth of the Goascorán river in the inlet known as the de la Cutú Estuary situated at latitude 13° 22′ 00″ N and longitude 87° 41′ 25″ W, the frontier follows the old course of the Goascorán river for a distance of 17,300 metres as far as the place known as the Rompición de los Amates situated at latitude 13° 26′ 29″ N and longitude 87° 43′ 25″ W, which is where the Goascorán river changed its course."

On behalf of the Republic of Honduras:

"The Government of the Republic of Honduras asks that it may please the Chamber:

A. With respect to the land frontier dispute:

— to adjudge and declare that the course of the frontier between El Salvador and Honduras is constituted by the following line in the areas or sections not described in Article 16 of the General Peace Treaty of 30 October 1980:

1. Section of the land frontier lying between the point knows as El Trifinio, at the summit of the Cerro Montecristo, and the summit of the Cerro Zapotal. From the summit of the Cerro Montecristo (14° 25′ 20″ and 89° 21′ 28″ [1]), the tripoint between Honduras, El Salvador and Guatemala, running south-east to the northernmost source of the San Miguel Ingenio or Taguilapa river (14° 24′ 00″ and 89° 20′ 10″), known as the Chicotera stream, thereafter running downstream along the middle of the bed of the said river to the ford on the road from Citalá to Metapan (14° 20′ 55″ and 89° 19′ 33″) at Las Cruces. From the preceding point eastwards, in a straight line, as far as the confluence of the river Jupula with the river Lempa (14° 21′ 06″

[1] The first co-ordinate corresponds to latitude north and the second one to longitude west hereafter.

and 89° 13′ 10″), the said line passing through the place known as El Cobre, and from that confluence in a straight line to the summit of the Cerro Zapotal (14° 23′ 26″ and 89° 14′ 43″);

2. Section of the land frontier lying between the Cayaguanca rock and the confluence of the Chiquita or Oscura stream with the Sumpul river. From the Cayaguanca rock (14° 21′ 55″ and 89° 10′ 05″), in a straight line, as far as the confluence of the Chiquita or Oscura mountain stream with the river Sumpul (14° 20′ 25″ and 89° 04′ 57″);

3. Section of the land frontier lying between the Pacacio boundary marker and the boundary marker known as Poza del Cajón. From the Pacacio boundary marker (14° 06′ 28″ and 88° 49′ 20″), on the river of the same name, in a straight line as far as the confluence of the La Puerta stream with the Gualcinga river (14° 06′ 24″ and 88° 47′ 04″) and from there downstream along the middle of the bed of the said river to arrive at the Poza del Toro boundary marker (14° 04′ 14″ and 88° 47′ 00″), at the confluence of the river Gualcinga with the river Sazalapa, on La Lagartera, thence following the said river upstream along the middle of the bed to the Poza de la Golondrina boundary marker (14° 06′ 55″ and 88° 44′ 32″); from this point in a straight line as far as the La Cañada, Guanacaste or Platanar boundary marker (14° 06′ 04″ and 88° 43′ 52″) and from that boundary marker in a straight line to the El Portillo boundary marker on the Cerro del Tambor (14° 04′ 47″ and 88° 44′ 06″), also known as Portillo de El Sapo; from that boundary marker in a straight line as far as the Guaupa boundary marker (14° 04′ 33″ and 88° 44′ 40″), passing over the El Sapo hill; thence in a straight line to the summit of the Loma Redonda (14° 03′ 46″ and 88° 44′ 35″); from the Loma Redonda in a straight line to the summit of the Cerro del Ocotillo or Gualcimaca (14° 03′ 25″ and 88° 44′ 22″), passing over the Cerro del Caracol. From the El Ocotillo boundary marker, in a straight line, as far as the La Barranca or Barranco Blanco boundary marker (14° 02′ 55″ and 88° 43′ 27″); from there to the Cerro de La Bolsa (14° 02′ 05″ and 88° 42′ 40″); and from that place, in a straight line, to the Poza del Cajón boundary marker (14° 01′ 28″ and 88° 41′ 10″) on the river Amatillo or Gualcuquín;

4. Section of the land frontier lying between the source of the La Orilla stream and the boundary marker known as the Malpaso de Similatón. From the source of the stream called La Orilla (13° 53′ 50″ and 88° 20′ 30″) to the pass of El Jobo (13° 53′ 40″ and 88° 20′ 25″), at the foot of the mountain known as El Volcancillo; from there to the southernmost source of the Cueva Hedionda stream (13° 53′ 46″ and 88° 20′ 00″), following the course downstream along the middle of the river bed to the Champate boundary marker (13° 53′ 20″ and 88° 19′ 02″) as far as its confluence with the river Cañas or Santa Ana, thence following the *camino real*, passing by the boundary markers of Portillo Blanco (13° 53′ 40″ and 88° 18′ 24″), Obrajito (13° 53′ 50″ and 88° 17′ 28″), Laguna Seca (13° 54′ 03″ and 88° 16′ 46″), Amatillo or Las Tijeretas (13° 54′ 28″ and 88° 15′ 42″), and from there, in a northerly direction, as far as the point at which the river Las Cañas joins the stream known as Masire or Las Tijeretas (13° 55′ 03″ and 88° 15′ 45″); thence, taking a north-easterly direction, it follows its course upstream as far as the road from Torola to Colomoncagua and continues in the same direction as far as the Cerro La Cruz, Quecruz or El Picacho

(13° 55′ 59″ and 88° 13′ 10″); thence to the Monte Redondo, Esquinero or Sirin boundary marker (13° 56′ 55″ and 88° 13′ 10″) and from there to the El Carrisal or Soropay boundary marker (13° 57′ 41″ and 88° 12′ 52″); from there it runs in a northerly direction to the Cerro del Ocote or hill of Guiriri (13° 59′ 00″ and 88° 12′ 55″), and thence, in the same direction, to the marker of El Rincón, on the river Negro, Quiaguara or El Palmar (13° 59′ 33″ and 88° 12′ 59″); thence following the river Negro upstream, as far as the Las Pilas boundary marker at the source of that same river (14° 00′ 00″ and 88° 06′ 30″), and from that place to the Malpaso de Similatón (13° 59′ 28″ and 88° 04′ 21″);

5. Section of the land frontier lying between the point where the river Torola is joined by the Manzupucagua stream and the ford known as Paso de Unire. From the confluence of the Manzupucagua mountain stream with the Torola river (13° 54′ 00″ and 87° 54′ 30″), following the river Torola upstream along the middle of its bed to its source, the mountain stream known as La Guacamaya stream (13° 53′ 30″ and 87° 48′ 22″); from this point, in a straight line, to the pass of La Guacamaya (13° 53′ 20″ and 87° 48′ 19″); thence in a straight line to a point on the river Unire (13° 52′ 37″ and 87° 47′ 04″), close to the place known as El Coyolar, and from there, following the Unire river downstream, as far as the Paso de Unire or Limón ford (13° 52′ 07″ and 87° 46′ 00″), on the said river;

6. Section of the land frontier lying between Los Amates and the Gulf of Fonseca. From the point known as Los Amates on the river Goascorán (13° 26′ 28″ and 87° 43′ 20″), following the said river downstream along the middle of the bed by way of the Rincón de Muruhuaca and Barrancones, as far as its mouth to the north-west of the Ramaditas islands (13° 24′ 26″ and 87° 49′ 05″) in the Bay of La Unión;

— to reject the submissions of the Government of El Salvador including those set forth in item I, paragraph 2, of the submissions of the Counter-Memorial and that relate to the delimitation of the land frontier, included in its Memorial, Submissions Nos. 1 and 2.

B. With respect to the island dispute:

— to adjudge and declare that only Meanguera and Meanguerita islands are in dispute between the Parties and that the Republic of Honduras has sovereignty over them.

C. With respect to the maritime dispute:

(1) To adjudge and declare that the régime of the waters in the Bay of Fonseca, the delimitation of the maritime areas in that Bay, and the rights of Honduras beyond the closing line of the Bay of Fonseca, in the Pacific Ocean, and the delimitation of the maritime areas attaching to the two Parties by means of a line are matters of dispute to be decided by the Chamber of the Court in accordance with the Special Agreement concluded by the Parties in 1986.

(2) Concerning the zone subject to delimitation within the Gulf:

— to adjudge and declare that the community of interests existing between El Salvador and Honduras by reason of their both being coastal States bordering on an enclosed historic bay produces between them a perfect equality of rights, which has nevertheless never been transformed by the same States into a condominium;

— to adjudge and declare, therefore, that each of the two States is entitled to exercise its powers within zones to be precisely delimited between El Salvador and Honduras;
— to adjudge and declare that the course of the line delimiting the zones falling, within the Gulf, under the jurisdiction of Honduras and El Salvador respectively, taking into account all the relevant circumstances for the purpose of arriving at an equitable solution, shall be defined as follows:

the line equidistant from the low-water line of the mainland and island coasts of the two States, starting within the Bay of La Unión, from the mouth of the Río Goascorán (13° 24′ 26″ and 87° 49′ 05″) and extending to the point situated at a distance of 1 nautical mile from the Salvadorian island of Conchaguita and from the Honduran island of Meanguera, to the south of the first and to the west of the second;

from that point, the line joining points situated at a distance of 3 nautical miles from the Salvadorian coast as far as the point where it meets the closing line of the Gulf (see illustrative chart C.5, Memorial of Honduras, Vol. II);

— to adjudge and declare that the community of interests existing between El Salvador and Honduras as coastal States bordering on the Gulf implies an equal right for both to exercise their jurisdictions over maritime areas situated beyond the closing line of the Gulf;
— to adjudge and declare that the closing-line across the mouth of the Bay from Punta Amapala to Punta Cosiguina is the baseline from which a delimitation line outside the Bay shall be projected into the Pacific, and further to determine that this should be from a point which lies 3 miles from the low-water mark on the coast of El Salvador.

(3) Concerning the zone outside the Gulf:

— to adjudge and declare that the delimitation line productive of an equitable solution, when account is taken of all the relevant circumstances, is represented by a line extending for 200 miles on such a bearing as will give to Honduras a maritime area which is equitable and proportionate to the length of the Honduran coast, starting from the closing line of the Gulf at a point situated at a distance of 3 nautical miles from the coast of El Salvador, thus delimiting the territorial sea, exclusive economic zone and continental shelf of El Salvador and Honduras (see illustrative Chart C.6 in the Memorial of Honduras)."

* *

25. In its written statement submitted pursuant to Article 85 of the Rules of Court, Nicaragua presented a summary of its conclusions which reads as follows:

"The Government of Nicaragua submits that no régime of a community of interests has ever existed in respect of the Gulf of Fonseca. The legal considerations supporting this conclusion can be summarized thus:

(a) The issues presented in the pleadings of El Salvador and Honduras

relate to the law of the sea, except in so far as they relate to the question of condominium.

(b) The relevant principles of maritime delimitation cannot be displaced by the unjustified introduction of a concept of 'the perfect equality of States'.

(c) The consistent practice of the riparian States has recognized the absence of any special legal régime within the Gulf, apart from its having the character of an historic bay.

(d) The contentions of Honduras are designed to produce advantages for Honduras which would not be obtainable by the application of the equitable principles relating to maritime delimitation forming part of general international law. It is not equality but privilege which is the objective."

26. In the course of the oral proceedings, the Government of Nicaragua submitted conclusions entitled "formal conclusions" as follows:

"1. The status quo in the region of the Gulf of Fonseca is based upon the definitive boundary between Nicaragua and Honduras recognized in *Acta II* adopted in 1900, together with the principles and rules of general international law relating to the entitlements of coastal States, and the recognition by the coastal States of the right of innocent passage for Honduran vessels in accordance with local custom.

2. The Honduran claims presented in the form of a concept of a community of interests may affect the legal interests of Nicaragua directly and substantially, in particular, because, as the pleadings and submissions reveal, the community of interests would entail an entitlement to areas of maritime territory incompatible with the inherent rights of Nicaragua.

3. International law does not recognize a concept of community of interests, either in a form which could override the application of the principles of the law of the sea, or in any other form.

4. The Honduran claim to an entitlement involving a corridor of maritime territory or exclusive jurisdiction to the west of the legally definitive terminus of the boundary established between Honduras and Nicaragua is invalid in general international law and consequently is inopposable to any other State, whether or not a party in the present proceedings.

5. The legal entitlements of the coastal States, including Nicaragua, remain the same whether the waters of the Gulf are classified as internal waters or as territorial sea or as continental shelf.

6. Without prejudice to the above, there are substantial considerations of judicial propriety on the basis of which Honduran maritime claims, which form part of the submissions relating to a community of interests, should be treated as inadmissible.

7. No régime of condominium exists in the Gulf of Fonseca or any part thereof.

8. The Republic of Nicaragua reaffirms its position in respect of all questions of delimitation contained in its Written Statement of 14 December 1990."

* * *

GENERAL INTRODUCTION

27. As will be apparent from the terms of the Special Agreement of 24 May 1986, set out above, the dispute brought before the present Chamber of the Court by that Agreement is composed of three main elements: the dispute over the land boundary; the dispute over the legal situation of the islands; and the dispute over the legal situation of the maritime spaces. Each of these three elements is further subdivided: the land boundary dispute relates to six distinct sectors of the frontier; the island dispute involves not only determination of sovereignty over certain islands, but also disputes as to which islands are involved, and as to the applicable law; the maritime spaces concerned are both those within the Gulf of Fonseca, of which the two Parties and the intervening State — Nicaragua — are the coastal States, and the waters outside the Gulf; and there is also a dispute whether the role of the Chamber in that respect is or is not to delimit the waters. The Chamber will deal in turn with each of the elements of the dispute referred to above, but will first refer briefly to the background and history of the dispute.

28. The two Parties (and the intervening State) are States which came into existence with the break-up of the Spanish Empire in Central America, and their territories correspond to administrative sub-divisions of that empire. While it was from the outset accepted that the new international boundaries should be determined by the application of the principle generally accepted in Spanish America of the *uti possidetis juris*, whereby the boundaries were to follow the colonial administrative boundaries, the problem, as in the case of many other boundaries in the region, was to determine where those boundaries actually lay. In the words of the 1933 Award of the Arbitral Tribunal presided over by Chief Justice Charles Evans Hughes in the case concerning the border between Guatemala and Honduras, in which the task of the arbitrator was to determine the "juridical line" of the "*uti possidetis* of 1821",

> "It must be noted that particular difficulties are encountered in drawing the line of '*uti possidetis* of 1821', by reason of the lack of trustworthy information during colonial times with respect to a large part of the territory in dispute. Much of this territory was unexplored. Other parts which had occasionally been visited were but vaguely known. In consequence, not only had boundaries of jurisdiction not been fixed with precision by the Crown, but there were great areas in which there had been no effort to assert any semblance of administrative authority." (United Nations, *Reports of International Arbitral Awards*, Vol. II, p. 1325.)

29. The independence of Central America from the Spanish Crown was proclaimed on 15 September 1821. Thereafter until 1839, Honduras and El Salvador made up, together with Costa Rica, Guatemala and

Nicaragua, the Federal Republic of Central America, which broadly corresponded to what had formerly been the Spanish Captaincy-General of Guatemala, or Kingdom of Guatemala. On the disintegration of the Federal Republic, El Salvador and Honduras, along with the other component States, became, and have since remained, separate States.

30. It was in respect of the islands of the Gulf of Fonseca, all of which had been under Spanish sovereignty, that a dispute first became manifest. In 1854 there was a proposal that the Consul of the United States of America might purchase from Honduras land on the island of El Tigre. El Salvador, by a diplomatic Note of 12 October 1854, referred to this proposal, to which it objected, and made a clear claim to the islands of Meanguera and Meanguerita (see paragraph 352 below), where certain survey operations by Honduras had come to its notice. No response by Honduras to this communication has been produced, but no sale of islands was proceeded with.

31. Seven years later, on 14 May 1861, the El Salvador Minister for Foreign Relations addressed a Note to the Government of Honduras proposing that negotiations be entered into to demarcate the lands of the villages of Perquín and Arambala, in El Salvador, and Jucuara (or Jocoara), in Honduras (see paragraphs 203-207 below). This may be taken to mark the inception of the dispute over the land boundary, which subsequently expanded to extend to practically the whole land frontier at different dates between 1880 and 1972. The tripoint between the territories of Guatemala, Honduras and El Salvador, from which the boundary between the latter two States runs to the Gulf of Fonseca, was finally agreed only in 1935, after the arbitration of Chief Justice Hughes already referred to (see paragraph 28 above).

32. The maritime dispute was slower to come to light. An attempt was made in 1884 to delimit the waters of the Gulf between El Salvador and Honduras, by the inclusion of such a delimitation in a boundary convention, the Cruz-Letona Convention of 1884, which was however not ratified by Honduras, but the negotiation of this Convention enabled both Parties to indicate the nature of their claims. A delimitation of part of the waters of the Gulf was concluded between Nicaragua and Honduras in 1900; the effect of this in relation to El Salvador will be considered later in this Judgment. In 1916 proceedings were brought by El Salvador against Nicaragua before the Central American Court of Justice, which raised the question of the status of the waters of the Gulf. Subsequently with the development of the law of the sea, each Party modified its maritime legislation so as to indicate claims as to the legal régime of the waters outside the Gulf.

33. The dispute — particularly the land boundary dispute — has over the years been the subject of a number of direct negotiations between the

Parties in conferences, starting with the El Mono Conference in July 1861, and continuing with the Montaña de Naguaterique negotiations of 1869, and those held in the village of Saco (today Concepción de Oriente in El Salvador) in 1880. The Parties at that stage agreed to resort to the arbitration of the President of Nicaragua, General Joaquín Zavala, who however subsequently withdrew as arbitrator when he ceased to hold the Presidency. At meetings in March/April 1884 the delegate of Honduras, Francisco Cruz, and that of El Salvador, Lisandro Letona, drafted the Convention of 10 April 1884, already mentioned, which was rejected by the Honduran Congress and was therefore never ratified by Honduras. On 28 September 1886 another convention was concluded in Tegucigalpa, the Zelaya-Castellanos Convention, which contemplated arbitration if direct negotiations did not succeed, and provided that the authorities on each side should

> "maintain and respect the line of demarcation which was accepted as valid in 1884 and ratified by the status quo agreement between the governments of the two Republics, without regard to the boundary line traced by"

the Cruz-Letona Convention of 1884.

34. In November 1888 new negotiations took place at La Unión and Guanacastillo, which resulted in agreement on the Goascorán river as the recognized frontier, "uncontested and incontestable". At a later stage however the question was raised whether the current course of the river, or an older course, reaching the Gulf of Fonseca at a different point, was meant (see paragraphs 306 ff. below). In 1889 another arbitration convention, the Zelaya-Galindo Convention, was concluded, but the arbitration was never carried out. This Convention in turn inspired the Convention of 1895 which reaffirmed the principle of the *uti possidetis juris*. On 13 November 1897 new negotiations took place at the Hacienda Dolores, resulting in a further convention which was also never ratified. Negotiations in San José de Costa Rica in 1906 and Tegucigalpa in April 1918 also had frustrating results for lack of ratification by one side or the other. Further efforts towards settlement of the dispute failed likewise in 1949 and 1953, and attempts for settlement were only resumed with the "Third Convention of El Amatillo" of 1962, providing for a Commission of Enquiry and the establishment of a Boundary Commission. This was the last attempt to settle the problem of delimitation before armed conflict broke out in 1969.

35. In 1969 a series of border incidents occurred, which gave rise to tension between the two countries, the suspension of diplomatic and consular relations and, finally, armed conflict, which lasted from 14 to 18 July 1969. After one hundred hours of hostilities, the Organization of American States succeeded in bringing about a cease-fire and the withdrawal of troops; nevertheless the formal state of war between the two States was to persist for more than ten years. The XIIIth Meeting of Consultation of

Ministers for Foreign Affairs of American States appointed a Special Commission, which set up the basis for the approval on 27 October 1969 of seven resolutions: (1) Peace and Treaties, (2) Free Transit, (3) Diplomatic and Consular Relations, (4) Frontier Questions, (5) Central American Common Market, (6) Claims and Disputes, (7) Human Rights and the Family. In December 1969 negotiations in Managua, Nicaragua, with a view to enforcing the resolutions of the Organization of American States, under the aegis of a Moderator (José A. Mora, a former Secretary-General of that Organization), did not achieve more than the establishment of a 3-kilometre security zone.

36. In June 1972 delegations of the two countries met in Antigua, Guatemala, and came to agreement regarding the major part of the land boundary, leaving only six sectors to be settled. On 24 November 1973, El Salvador denounced the American Treaty on Pacific Settlement, known as the Pact of Bogotá, and on the 26th of the same month communicated to the United Nations Secretary-General its new declaration of acceptance of the compulsory jurisdiction of the International Court of Justice, with reservations in effect excluding the dispute with Honduras (*I.C.J. Yearbook 1973-1974*, p. 56). Honduras also replaced its declaration of acceptance of jurisdiction with a new one effectively excluding the present dispute, on 6 June 1986, after the conclusion of the Special Agreement seising the Court (*I.C.J. Yearbook 1986-1987*, p. 70). On 6 October 1976 there was concluded in Washington a "Convention for the Adoption of a Mediation Procedure between the Republics of El Salvador and Honduras", under the auspices of the Organization of American States, and the former President of the International Court of Justice, José Luis Bustamante y Rivero, was chosen as Mediator, the procedure of mediation to be conducted in Lima, Peru. The mediation process began on 18 January 1978 and led to the conclusion of a General Treaty of Peace, signed on 30 October 1980 in Lima, which was ratified by El Salvador on 21 November 1980 and by Honduras on 8 December 1980.

37. The General Treaty of Peace recorded, in Article 16, the agreement of the Parties to delimit seven sections of the land boundary "which do not give rise to controversy"; it further provided that a Joint Frontier Commission, which had been established on 1 May 1980, should, *inter alia*, delimit the frontier line in the remaining six sectors, and "determine the legal situation of the islands and the maritime spaces". The Commission worked from 1980 to 1985, holding 43 meetings, but did not succeed in delimiting the frontier in the six sectors "not described" in Article 16 of the General Treaty of Peace, or in determining the legal situation of the islands and maritime spaces. Articles 31 and 32 of the General Treaty of Peace provided that:

> *"Artículo 31. — Si a la expiración del plazo de cinco años establecido en el artículo 19 de este Tratado, no se hubiere llegado a un acuerdo total*

sobre las diferencias de límites en las zonas en controversia, en la situación jurídica insular, o en los espacios marítimos, o no se hubieren producido los acuerdos previstos en los artículos 27 y 28 de este Tratado, las Partes convienen en que, dentro de los seis meses siguientes, procederán a negociar y suscribir un compromiso por el que se someta conjuntamente la controversia o controversias existentes a la decisión de la Corte Internacional de Justicia.

Artículo 32. — El compromiso a que se refiere el artículo anterior deberá contener:

a) *El sometimiento de las Partes a la jurisdicción de la Corte Internacional de Justicia para que decida la controversia o controversias a que se refiere el artículo anterior.*
b) *Los plazos para la presentación de los escritos y el número de éstos; y*
c) *La determinación de cualquier otra cuestión de naturaleza procesal que fuese pertinente.*

Ambos Gobiernos acordarán la fecha para la notificación conjunta del compromiso a la Corte Internacional de Justicia, pero, en defecto de acuerdo, cualquiera de ellas podrá proceder a la notificación, comunicándolo previamente a la otra Parte por la vía diplomática."

[Translation]

"Article 31. — If, upon the expiry of the period of five years laid down in Article 19 of this Treaty, total agreement has not been reached on frontier disputes concerning the areas subject to controversy or concerning the legal situation in the islands or maritime areas, or if the agreements provided for in Articles 27 and 28 of this Treaty have not been achieved, the Parties agree that, within the following six months, they shall proceed to negotiate and sign a special agreement to submit jointly any existing controversy or controversies to the decision of the International Court of Justice.

Article 32. — The Special Agreement referred to in the preceding Article shall include:

(a) the submission of the Parties to the jurisdiction of the International Court of Justice so that it may settle the controversy or controversies referred to in the preceding Article;
(b) the time-limits for the presentation of documents and the number of such documents;
(c) the determination of any other question of a procedural nature that may be pertinent.

Both Governments shall agree upon the date for the joint notification of the Special Agreement to the International Court of Justice but, in the absence of such an agreement, any one of them may proceed with the notification, after having previously informed the other Party by the diplomatic channel."

Article 35 of the Treaty provided that the express submission thereby made to the jurisdiction of the Court "deprives of any effect, as far as

relations between the Parties are concerned", any reservations to their declarations under Article 36, paragraph 2, of the Statute.

38. In view of the failure of the Joint Frontier Commission to accomplish its mandate within the period laid down in the General Treaty of Peace, Article 31 of the same Treaty came into effect, requiring the referral of the dispute to the International Court of Justice. In accordance with the provisions of that Article, the six-month period allowed to the parties to negotiate and sign a special agreement began to run from 10 December 1985. Negotiations began in January 1986 and were concluded on 24 May 1986, with the signature in Esquipulas, Guatemala, of the Special Agreement set out at the beginning of this Judgment.

39. Article 36 of the Treaty provides as follows:

> *"Las Partes convienen en ejecutar en un todo y con entera buena fé el fallo de la Corte Internacional de Justicia, facultando a la Comisión Mixta de Límites para que inicie, dentro de los seis meses contados a partir de la fecha de la sentencia de la Corte, la demarcación de la línea fronteriza establecida en dicho fallo. Para dicha demarcación se aplicarán las normas establecidas sobre la materia en este Tratado."*
>
> *[Translation]*
>
> "The Parties agree to execute in its entirety and in complete good faith the decision of the International Court of Justice, empowering the Joint Frontier Commission to initiate, within six months from the date of the Court's decision, the demarcation of the frontier laid down in that decision. For the demarcation in question the norms laid down in this respect in this Treaty shall be applied."

However, by an Agreement of 11 February 1986, the Parties established a Special Demarcation Commission, and it is provided in the Special Agreement that that Commission "will begin the demarcation of the frontier line fixed by the Judgment not later than three months after the date of the said Judgment and will diligently continue to work until the demarcation is completed". In the light of these provisions, there was some discussion between counsel at the hearings as to the respective roles of the Chamber and the Commission. In response to a suggestion by counsel for El Salvador that "once the basic legal concepts have been established by the Chamber", the Commission should identify and locate the boundary markers referred to in the ancient titles, counsel for Honduras insisted that the task of the Commission was demarcation only, and it was for the Chamber "to delimit" the boundary, i.e., "indicate what are the geographical points of a line susceptible of defining the frontier". Counsel for El Salvador agreed in principle, but reserved

> "the possibility of complementary demarcations [by the Commission] on the basis of the concepts and decisions adopted by the

> Chamber only with respect to certain concrete points, if and when it is found impossible, or enormously difficult, to determine, for instance, the actual location of a given geographical accident".

In the view of the Chamber, it is its duty to give such indications of the line of the frontier in the disputed sectors as will enable the Special Demarcation Commission to demarcate it by a technical operation.

* * *

THE LAND BOUNDARY: INTRODUCTION

40. Both Parties are agreed that the primary principle to be applied for the determination of the land frontier is the *uti possidetis juris*; even though this, unusually for a case of this kind, is not expressly mentioned in Article 5 of the Special Agreement, nor in the General Treaty of Peace, to which, as explained below, the Chamber is referred by the Special Agreement. For Honduras the norm of international law applicable to the dispute is simply the *uti possidetis juris*; El Salvador, relying on the terms of Article 26 of the General Treaty of Peace, strongly contests that this is the sole law applicable, and invokes, as well as the *uti possidetis juris*, what have been variously called "arguments of a human nature" or *"effectivités"*, to be examined further on in this Judgment.

41. There can be no doubt about the importance of the *uti possidetis juris* principle as one which has, in general, resulted in certain and stable frontiers throughout most of Central and South America, or about the applicability of that principle to the land boundary between the Parties in the present case. Nevertheless these certain and stable frontiers are not the ones that find their way before international tribunals for decision. These latter frontiers are almost invariably the ones in respect of which *uti possidetis juris* speaks for once with an uncertain voice. It can indeed almost be assumed that boundaries which, like the ones in this case, have remained unsettled since independence, are ones for which the *uti possidetis juris* arguments are themselves the subject of dispute. It is not a matter of surprise, therefore, that the Chamber has not found these land-frontier questions easy to determine; and it may be useful briefly to indicate some of the considerations that have tended to be common to the sectors submitted to the Chamber.

42. The meaning of the principle of *uti possidetis juris* is authoritatively stated in the Judgment of the Chamber in the *Frontier Dispute* case:

> "The essence of the principle lies in its primary aim of securing respect for the territorial boundaries at the moment when independence is achieved. Such territorial boundaries might be no more than

> delimitations between different administrative divisions or colonies all subject to the same sovereign. In that case, the application of the principle of *uti possidetis* resulted in administrative boundaries being transformed into international frontiers in the full sense of the term." (*I.C.J. Reports 1986*, p. 566, para. 23.)

And in the Arbitral Award of the Swiss Federal Council of 24 March 1922 concerning certain boundary questions between Colombia and Venezuela, it had been observed that:

> "This general principle offered the advantage of establishing an absolute rule that there was not in law in the old Spanish America any *terra nullius*; while there might exist many regions which had never been occupied by the Spaniards and many unexplored or inhabited by non-civilized natives, these regions were reputed to belong in law to whichever of the Republics succeeded to the Spanish province to which these territories were attached by virtue of the old Royal ordinances of the Spanish mother country. These territories, although not occupied in fact were by common consent deemed to be occupied in law from the first hour by the new Republic . . ." (*UNRIAA*, Vol. I, p. 228.)

Thus the principle of *uti possidetis juris* is concerned as much with title to territory as with the location of boundaries; certainly a key aspect of the principle is the denial of the possibility of *terra nullius*.

43. To apply this principle is not so easy when, as in Spanish Central America, there were administrative boundaries of different kinds or degrees; for example, besides "provinces" (a term of which the meaning was different at different periods), there were *Alcaldías Mayores* and *Corregimientos* and later on, in the 18th century, *Intendencias*, as well as the territorial jurisdictions of a higher court *(Audiencias)*, Captaincies-General and Vice-Royalties; and indeed the territories which became El Salvador and Honduras were, before 1821, all part of the same larger administrative area, the Captaincy-General or Kingdom of Guatemala. Furthermore, the jurisdictions of general administrative bodies such as those referred to did not necessarily coincide in territorial scope with those of bodies possessing particular or special jurisdictions, e.g., military commands. Besides, in addition to the various civil territorial jurisdictions, general or special, there were the ecclesiastical jurisdictions, which were supposed to be followed in principle, pursuant to general legislation, by the territorial jurisdiction of the main civil administrative units in Spanish America; such adjustment often needed, however, a certain span of time within which to materialize. Fortunately, in the present case, insofar as the sectors of the land boundary are concerned, the Parties have indicated to which colonial administrative divisions they claim to have succeeded; the problem is to identify the areas, and their boundaries,

which corresponded to these divisions, to be referred to herein, for the sake of simplicity, as "provinces" which in 1821 became respectively El Salvador and Honduras, initially as constituent States of the Federal Republic of Central America. Moreover it has to be remembered that no question of international boundaries could ever have occurred to the minds of those servants of the Spanish Crown who established administrative boundaries; *uti possidetis juris* is essentially a retrospective principle, investing as international boundaries administrative limits intended originally for quite other purposes.

44. Neither Party has however produced any legislative or similar material indicating specifically, with the authority of the Spanish Crown, the extent of the territories and the location of the boundaries of the relevant provinces in each area of the land boundary. Both Parties have instead laid before the Chamber numerous documents, of different kinds, some of which, referred to collectively as "titles" *(títulos)*, concern grants of land in the areas concerned by the Spanish Crown, from which, it is claimed, the provincial boundaries can be deduced. Some of these actually record that a particular landmark or natural feature marked the boundary of the provinces at the time of the grant; but for the most part this is not so, and the Chamber is asked, in effect, to conclude, in the absence of other evidence of the position of a provincial boundary, that where a boundary can be identified between the lands granted by the authorities of one province and those granted by the authorities of the neighbouring province, this boundary may be taken to have been the provincial boundary and thus the line of the *uti possidetis juris*. Thus it was the territorial aspect of that principle rather than its boundary aspect that was the one mainly employed by both Parties in their arguments before the Chamber. The location of boundaries seemed often, in the arguments of the Parties, to be incidental to some "claim", or "title", or "grant", respecting a parcel of territory, within circumambient boundaries only portions of which are now claimed to form an international boundary. It is rather as if the disputed boundaries must be constructed like a jig-saw puzzle from certain already cut pieces so that the extent and location of the resulting boundary depend upon the size and shape of the fitting piece.

45. The term "title" has in fact been used at times in these proceedings in such a way as to leave unclear which of several possible meanings is to be attached to it; some basic distinctions may therefore perhaps be usefully stated. As the Chamber in the *Frontier Dispute* case observed, the word "title" is generally not limited to documentary evidence alone, but comprehends "both any evidence which may establish the existence of a right, and the actual source of that right" (*I.C.J. Reports 1986*, p. 564,

para. 18). In one sense, the "title" of El Salvador or of Honduras to the areas in dispute, in the sense of the source of their rights at the international level, is, as both Parties recognize, that of succession of the two States to the Spanish Crown in relation to its colonial territories; the extent of territory to which each State succeeded being determined by the *uti possidetis juris* of 1821. Secondly, insofar as each of the two States inherited the territory of particular administrative units of the colonial structure, a "title" might be furnished by, for example, a Spanish Royal Decree attributing certain areas to one of those. As already noted, neither Party has been able to base its claim to a specific boundary line on any "titles" of this kind applicable to the land frontier. Reserving, for the present, the special status attributed by El Salvador to "formal title-deeds to commons" (paragraphs 51-53 below), the *títulos* submitted to the Chamber recording the grant of particular lands to individuals or to Indian communities cannot be considered as "titles" in this sense; they could rather be compared to "colonial *effectivités*" as defined by the Chamber formed to deal with the *Frontier Dispute*: "the conduct of the administrative authorities as proof of the effective exercise of territorial jurisdiction in the region during the colonial period" (*I.C.J. Reports 1986*, p. 586, para. 63). These, or some of them, are however "titles" in a third, municipal-law, sense, in that they evidence the right of the grantees to ownership of the land defined in them. In some cases, the grant of the "title" in this third sense was not perfected; but the record, particularly of any survey carried out, nevertheless remains a "colonial effectivity" which may be of value as evidence of the position of the provincial boundary. In respect of one particular class of these *títulos*, referred to as the "formal title-deeds to commons", El Salvador has claimed for them a particular status in Spanish colonial law which would elevate them to the rank of "titles" of the second category, acts of the Spanish Crown directly determining the extent of the territorial jurisdiction of an administrative division; this contention will be examined at a later stage.

46. The six disputed sectors of the land boundary are merely breaks in the continuity of the boundary of which seven sectors were agreed in the General Peace Treaty of 1980 (paragraph 37 above); their geographical location is indicated on the General Map[1] annexed to this Judgment.

[1] A copy of the maps annexed to the Judgment will be found in a pocket at the end of this fascicle or inside the back cover of the volume of *I.C.J. Reports 1992*. *[Note by the Registry.]*

Nevertheless, no argument was addressed to the Chamber by either Party concerning the compatibility of a claimed boundary with that already agreed in the General Treaty of Peace and to which each sector of the claimed boundary must be joined at one or both ends. Moreover, no information has been vouchsafed to the Chamber about the particular reasons which determined those parts of the common boundary which were agreed in the General Treaty of Peace, and which are to be continued by the claimed boundary. In the circumstances the Chamber is entitled to assume that the agreed boundary was arrived at applying principles and processes similar to those urged upon the Chamber by the Parties for the non-agreed sectors. In this connection the Chamber also observes the predominance of local features, particularly rivers, in the definition of the agreed sectors, and considers that given the task of delimitation, it is entitled and bound to have an eye to the topography of each land sector. When therefore the very many instruments cited, even after minute examination, are found to give no clear and unambiguous indication, the Chamber has felt it right similarly to take some account of the suitability of certain topographical features to provide an identifiable and convenient boundary. The Chamber is here appealing not so much to any concept of "natural frontiers", but rather to a presumption underlying the boundaries on which the *uti possidetis juris* operates. Considerations of this kind have been a factor in boundary-making everywhere, and accordingly are likely, in cases otherwise dubious, to have been a factor also with those who made the provincial boundaries previous to 1821.

47. The 1980 General Treaty of Peace does not specify the criteria employed for the determination of the sectors of the land boundary which were recorded in it as already agreed. There is however a link between the task of the Chamber and the task of the Joint Frontier Commission initially entrusted by the General Treaty of Peace with the delimitation of the non-agreed sectors; this link is provided by the reference in Article 5 of the Special Agreement itself to the provisions of that Peace Treaty. That Article provides:

> "In accordance with the provisions of the first paragraph of Article 38 of the Statute of the International Court of Justice, the Chamber, when delivering its Judgment, will take into account the rules of international law applicable between the Parties, including, where pertinent, the provisions of the General Treaty of Peace."

This reference to the rules of international law and to the "first paragraph" of Article 38 obviously excludes the possibility of any decision *ex aequo*

et bono. The reference to the General Treaty of Peace which, as a treaty between the Parties, would in any event have to be applied by the Chamber by reason of Article 38 of the Court's Statute is presumably intended to make it clear to the Chamber that it should also apply, "where pertinent", even those Articles which in the Treaty are addressed specifically to the Joint Frontier Commission. The treaty provision that has played the greatest part in the pleadings before the Chamber is Article 26. It reads:

> *"Para la delimitación de la línea fronteriza en las zonas en controversia, la Comisión Mixta de Límites tomará como base los documentos expedidos por la Corona de España o por cualquier otra autoridad española, seglar o eclesiástica, durante la época colonial, que señalen jurisdicciones o límites de territorios o poblaciones. Igualmente serán tomados en cuenta otros medios probatorios y argumentos y razones de tipo jurídico, histórico o humano o de cualquier otra índole que le aporten las Partes, admitidos por el Derecho Internacional."*
>
> *[Translation]*
>
> "For the delimitation of the frontier line in areas subject to controversy, the Joint Frontier Commission shall take as a basis the documents which were issued by the Spanish Crown or by any other Spanish authority, whether secular or ecclesiastical, during the colonial period, and which indicate the jurisdictions or limits of territories or settlements. It shall also take account of other evidence and arguments of a legal, historical, human or any other kind, brought before it by the Parties and admitted under international law."

48. For an understanding of the meaning and intent of this Article, it is well to have in mind, however, that it was, as mentioned above, originally addressed to the Joint Frontier Commission; a body whose task was juridically different from the Chamber's, for the Commission's task, as regards the land boundary, was not to decide but to propose a frontier line to the two Governments (General Treaty of Peace, Art. 27). It is clearly, therefore, not drafted as an applicable law clause, but rather a provision about evidence submitted to the Commission by the Parties, intended to make sure that all such evidence was duly taken account of, for what it might be worth, in the Commission's work. This is reinforced by the phrase "where pertinent" in Article 5 of the Special Agreement; and it is obviously for the Chamber to decide on pertinence. For Article 26 is, as might be expected, in comprehensive terms; and it seems to the Chamber to be doubtful whether any list of priorities of one kind of evidence over another can properly be read into this very general provision. It is very clear, however, that the kind of evidence first referred to in Article 26, namely documents indicating the jurisdictions or limits of territories or settlements, is directed to establishing the boundaries according to the *uti possidetis juris*

of 1821; even though that principle is not expressly mentioned in either the Special Agreement or the General Treaty of Peace.

49. It is in this light that a contention of El Salvador has to be examined concerning the interpretation of Article 26 of the General Treaty of Peace in relation to one particular kind of document issued by the Spanish authorities which constitutes the main basis of the claims of El Salvador in respect of the land boundary, namely the "formal title-deeds to commons" — the so-called *títulos ejidales*. As the matter was put by counsel for El Salvador:

> "As the Chamber is aware, El Salvador is relying on as evidence of the *uti possidetis juris*, and thus as the fundamental basis of its claims, the following six Formal Title-Deeds to Commons: that of Citalá of 1776; those of Arambala y Perquín of 1815; that of Torola of 1743; that of Polorós of 1760; that of Arcatao of 1724; and, lastly, that of La Palma of 1829."

Drawing attention to the word *"poblaciones"* (settlements) in Article 26 (quoted in paragraph 47 above) of the 1980 General Treaty of Peace, El Salvador contends that

> "To determine the limits between the municipal territories of these Indian 'poblaciones' or settlements and not between ancient Spanish provinces or the limits of private land properties, is what has been agreed in Article 26, as the method to be applied in order to implement in this case the principle of *uti possidetis juris*. And this may be done only on the basis of the *títulos ejidales* invoked by El Salvador."

This does not however signify that the formal title-deeds to commons are, in El Salvador's contention, the only documents to be taken into consideration, but that they are "the best possible evidence, the supreme means of proof, in relation to the application of the principle of *uti possidetis juris*".

50. El Salvador, in this connection, also draws attention to the word *"señalan"* ("indicate") in Article 26 of the General Treaty, and argues that the use of this verb means that

> "the evidence which the Chamber must take into account for the purpose of applying the principle of *uti possidetis juris* must consist of the precise and definite boundaries consisting of geographical features and of boundary markers (*'mojones'*). These *mojones* only emerge from the Formal Title-Deeds to Commons of the sort being relied upon by El Salvador."

In arguing the relevance of a title of 1776 to the first disputed sector, coun-

sel for El Salvador said (in a proposition presumably intended to be valid in general terms and not only for the first sector):

> "What El Salvador is contending is that the discovery and resurrection of ancient colonial provincial boundaries is not the objective nor the purpose which was intended by the first sentence of Article 26 of the General Peace Treaty of 1980. What are supposed to be established under this provision are the boundaries between territories and *'poblaciones'*; and this means, in relation to the present sector, the boundary between Ocotopeque and Citalá."

If El Salvador is arguing that the Parties have by treaty adopted a special rule or method of determination of the *uti possidetis juris* boundaries, for the purposes of the present dispute, the Chamber is not persuaded by this contention. It was the administrative boundaries between Spanish colonial administrative units, not the boundaries between Indian settlements as such, that were transformed, by the operation of the *uti possidetis juris*, into international boundaries in 1821. The Chamber is unable to read the text of the General Treaty of Peace as contemplating that the international boundaries should instead follow the limits of *poblaciones*.

51. El Salvador refers also to the words of the first sentence of Article 26 in support of its contention that the commons whose formal title-deeds are being relied on by El Salvador were not private properties, but belonged to the municipal councils of the *poblaciones* in question; and that once a particular common was adjudicated to a particular indigenous settlement, the administrative and financial control over those communal lands was exercised by the municipal authorities, and over and above them, by the governing authorities of the colonial province to which the commons had been declared to belong. The practical consequence which El Salvador deduces from this is that if such a grant of commons was made to a community in one province, extending to lands situated within another province, while this did not bring about any "automatic" modification of the provincial boundaries — which would have required a *Cédula Real* from the Spanish Crown, or at least a decision of the superior government, the Captaincy-General of Guatemala — it was nonetheless the administrative control of the province to which the community belonged which was material, or indeed determinative, for the application of the *uti possidetis juris*; i.e., that on independence the whole area of the commons appertained to the State within which the community was situated.

52. A further aspect of the argument about the "formal title-deeds to commons" granted to Indian communities was whether, if they were to be capable of having this effect, they had to fall within the category called by some experts in Spanish legal history that of *"ejidos de reducción"*, and not that of *"ejidos de composición"*. The distinction, broadly stated, appears to be that *ejidos de reducción* were granted to Indian communities in an

endeavour to settle permanently those whose nature was to be nomadic; and *ejidos de composición* were granted against a payment to the Crown and, it was urged, were creative of proprietary interests in land and were for that reason irrelevant to the question of administrative boundaries. Accordingly, counsel on each side spent considerable time arguing whether each *ejido* did or did not fall into the former category.

53. It will be apparent that the controversy described in the previous paragraph is only of practical relevance in cases where it is claimed that the land comprised in a grant of this kind is situated on the other side of a pre-existing provincial boundary from the community to which it was granted, or straddles such a boundary. The Chamber is in fact faced with a situation of this kind in three of the six disputed sectors. However, in each of these cases, the Chamber, on examination of all the material facts and evidence, has found that it is possible to resolve the issue in dispute between the Parties in the sector concerned without having to determine this question, and therefore sees no reason to attempt to do so, or to examine it further in the present Judgment.

54. It need not be doubted that some of these instruments may have been of great importance in a period when the progressive settlement of the land must have been a prime aim of governmental policy; but most of the instruments relied on in this case date from the 18th century. In the absence of legislative instruments formally defining provincial boundaries, not only the grants to Indian communities but also land grants to private individuals afford some evidence which might indicate where the boundaries were thought to be or ought to be. Titles of the kind under discussion were granted, following enquiries and surveys by the authorities of a particular province, by the *Audiencia* of the Kingdom of Guatemala, and both Parties have emphasized to the Chamber the strict respect for limits of territorial jurisdiction which was required of servants of the Spanish Crown. There must be a presumption that such grants, for jurisdictional reasons and for reasons of administrative convenience, would normally avoid the straddling of an existing, established, and working boundary between different administrative authorities. And indeed where the provincial boundary location was doubtful — as could well be the case in often partially explored country — the common boundaries of two grants by different provincial authorities could well have become the provincial boundary. The Chamber will therefore consider the evidence of each of these grants on their merits in each of the sectors and in relation to other arguments, but will not treat them as necessarily conclusive.

55. At the time of the independence of the two States, much — but not all — of the land making up the territory of the administrative units to which they succeeded had thus been the subject of grants of various kinds by the Spanish Crown, either to Indian communities or to individuals. These are the *títulos* of which so much has been made in argument. The remaining land in the relevant Spanish colonial provinces remained in the ownership of the Crown, and fell into the category of "crown lands", *tierras realengas*. In the same category fell, as the Parties agree, land which had been granted to an Indian community which had ceased to exist, like that of San Miguel de Sapigre, discussed in relation to the boundary in the fifth sector. The Parties agree that such land was not however unattributed for purposes of administrative control and jurisdiction, but appertained to the one province or the other, and accordingly passed, on independence, into the sovereignty of the one State or the other. The absence of any specific grant of the land, for which a survey would have been effected, merely makes it more difficult to ascertain the position of the provincial boundary in areas of this kind.

56. There is one further problem concerning the grants or titles which requires mention; and that is how far so-called "republican titles", grants made after independence, in the time of the Federal Republic of Central America, 1821-1839, and thereafter, may be considered as evidence of the 1821 boundary. This question has arisen as an issue between the Parties in more than one sector of the land boundary, as will appear below. There seems to the Chamber to be no sensible reason to reject the whole category of these grants as evidence just because they are subsequent to 1821. Such republican titles, particularly those granted in the years immediately following independence, may well provide some evidence of what the position was in 1821, and both Parties have offered them as such. The Chamber will, therefore, consider republican titles on their merits, as possible evidence of the *uti possidetis juris* position in 1821, wherever they have been pleaded as such by the Parties. The matter has however a certain relationship with what have been referred to by the Parties as *effectivités*, which are now to be examined.

57. As already mentioned above, El Salvador contends that the *uti possidetis juris* principle is the primary, but not the only, legal element to be taken into consideration for the determination of the land boundary. It has put forward in addition in that respect a body of arguments referred to either as "arguments of a human nature" or as arguments based on *"effectivités"*. In terms of the governing texts, the justification for invoking these human arguments or *effectivités* is the second part of Article 26 of the 1980 General Treaty of Peace, already quoted above, which provides that the

Joint Frontier Commission "shall also take into account other evidence and arguments of a legal, historical, human or any other kind, brought before it by the Parties and admitted under international law". Honduras also recognizes a certain confirmatory role for *effectivités*, and has submitted evidence of acts of administration of its own for that purpose, or to show that its own *effectivités* in the areas concerned were stronger than those of El Salvador; but at this stage of the Chamber's analysis, it will be convenient to examine in particular certain arguments of El Salvador.

58. The factual considerations which El Salvador has brought to the attention of the Chamber fall into two categories. On the one hand, there are arguments and material relating to demographic pressures in El Salvador creating a need for territory, as compared with the relatively sparsely populated Honduras; and on the other the superior natural resources (e.g., water for agriculture and hydroelectric power) said to be enjoyed by Honduras. On the first point, El Salvador apparently does not claim that a frontier deriving from the principle of the *uti possidetis juris* could be adjusted subsequently (except by agreement) on the grounds of unequal population density, and this is clearly right. It will be recalled that the Chamber in the *Frontier Dispute* case emphasized that even equity *infra legem*, a recognized concept of international law, could not be resorted to in order to modify an established frontier inherited from colonization, whatever its deficiencies (see *I.C.J. Reports 1986*, p. 633, para. 149). El Salvador claims that such an inequality existed even before independence, and that its ancient possession of the territories in dispute, "based on historic titles, is also based on reasons of crucial human necessity". The Chamber will not lose sight of this dimension of the matter; but it is one without direct legal incidence. For the *uti possidetis juris*, the question is not whether the colonial province needed wide boundaries to accommodate its population, but where those boundaries actually were; and post-independence *effectivités*, where relevant, have to be assessed in terms of actual events, not their social origins. As to the argument of inequality of natural resources, the Court, in the case concerning the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, took the view that economic considerations of this kind could not be taken into account for the delimitation of the continental shelf areas appertaining to two States (*I.C.J. Reports 1982*, p. 77, para. 107); still less can they be relevant for the determination of a land frontier which came into existence on independence.

59. A further category of considerations urged by El Salvador relates to the alleged occupation of the disputed areas by Salvadorian citizens, their ownership of land in those areas, the supply of public services there by the Government of El Salvador, and its exercise there of judicial, administra-

tive and political competences, and military jurisdiction. On this basis, El Salvador makes the following claims:

> "1. That, by virtue of the practice of effective administrative control, the *'animus'* on the part of the administrative organs of State of El Salvador to possess these disputed territories has been expressly demonstrated.
>
> 2. That, in consequence, El Salvador has satisfied the requirements of *'effectivité'* by means of the effective exercise of State authority over the territories claimed by Honduras, such authority having been exercised continuously and notoriously through a quite incontrovertible administrative system.
>
> 3. That, alongside the *'animus occupandi'*, El Salvador has exercised and continues to exercise a physical possession of these territories which can in no sense be categorized as fictitious.
>
> 4. That, by means of these *'effectivités'*, El Salvador has sufficiently proven the existence of the two elements which are necessary in order to establish sovereign title and the manifestation of State authority."

These claims by El Salvador relate both to areas which it asserts appertain to it on the basis of the *uti possidetis juris* boundary derived from consideration of *títulos ejidales*, and to areas lying outside the lands comprised in those *títulos*. It appears however that El Salvador no longer maintains the far-reaching reliance on administrative control and *effectivités* presented in its Reply and quoted in the preceding paragraph; at the hearings, its counsel contended only that *effectivités* could be taken into account to confirm the *títulos ejidales*, or independently of them, in some marginal areas of limited size, where there is no such applicable title.

60. Honduras rejects the applicability of any argument of "effective control"; it suggests that that concept only refers, in the terms of the Arbitral Award in the Guatemala/Honduras arbitration (quoted in paragraph 28 above), to administrative control during the period prior to independence, based on the will of the Crown of Spain, and that El Salvador's theory of "administrative control" is anachronistic. So far as acts of administrative control subsequent to independence are concerned, Honduras considers that, at least since 1884, no acts of sovereignty in the disputed areas can be relied on in view of the duty to respect the status quo in an area of dispute. It has however presented considerable material (as an Annex to its Reply) to show that Honduras also can rely on arguments of a human kind, that there are "human settlements" of Honduran nationals in the disputed areas in all six sectors, and that various judicial and other authorities of Honduras have exercised and are exercising their functions in those areas. This material has been presented under such headings as: criminal proceedings; police or security; appointment of Deputy Mayors; public education; payment of salaries of employees and

remuneration to public officials; land concessions; transfer or sale of immovable property; registration of births; registration of deaths; and miscellaneous, including parish baptismal records.

61. Both Parties have invoked, in relation to this claim of El Salvador, the analysis in the Judgment of the Chamber of the Court in the *Frontier Dispute* case of the relationship between "titles" and *"effectivités"* (*I.C.J. Reports 1986*, pp. 586-587, para. 63). As already noted above, the Chamber in that case was dealing with the "colonial *effectivités*", i.e., the conduct of the administrative authorities during the colonial period, whereas the acts relied on by El Salvador in the present case occurred after the independence of the two States, and in some cases in very recent years. The Chamber in the *Frontier Dispute* case referred also *(inter alia)* to the hypothesis of administration of a disputed territory by a State (not a colonial sub-division) other than the one possessing legal title (*loc. cit.*, p. 587); it may be taken to have had post-colonial *effectivités* also in mind. The passage in question reads as follows:

> "The role played in this case by such *effectivités* is complex, and the Chamber will have to weigh carefully the legal force of these in each particular instance. It must however state forthwith, in general terms, what legal relationship exists between such acts and the titles on which the implementation of the principle of *uti possidetis* is grounded. For this purpose, a distinction must be drawn among several eventualities. Where the act corresponds exactly to law, where effective administration is additional to the *uti possidetis juris*, the only role of *effectivité* is to confirm the exercise of the right derived from a legal title. Where the act does not correspond to the law, where the territory which is the subject of the dispute is effectively administered by a State other than the one possessing the legal title, preference should be given to the holder of the title. In the event that the *effectivité* does not co-exist with any legal title, it must invariably be taken into consideration. Finally, there are cases where the legal title is not capable of showing exactly the territorial expanse to which it relates. The *effectivités* can then play an essential role in showing how the title is interpreted in practice." (*I.C.J. Reports 1986*, pp. 586-587, para. 63.)

62. With regard to the interrelation of title and *effectivité*, it should however be borne in mind that the *títulos* submitted to the Chamber by both Parties, including the "formal title-deeds to commons" are not what are here referred to as "the titles on which the implementation of the principle of *uti possidetis* is grounded"; as already explained, they can be compared

to "colonial *effectivités*", to the extent that they are acts of effective administration by the colonial authorities, not acts of private individuals. What the Chamber has to do in respect of the land frontier is to arrive at a conclusion as to the position of the 1821 *uti possidetis juris* boundary; to this end it cannot but take into account, for reasons already explained, the colonial *effectivités* as reflected in the documentary evidence of the colonial period submitted by the Parties. The Chamber may have regard also, in certain instances, to documentary evidence of post-independence *effectivités* when it considers that they afford indications in respect of the 1821 *uti possidetis juris* boundary, providing a relationship exists between the *effectivités* concerned and the determination of that boundary.

63. It is in connection with evidence of *effectivités* after the date of independence that El Salvador made a particular application to the Chamber, which should here be mentioned. During the hearings, counsel for El Salvador observed that that Government had

> "experienced serious difficulties in furnishing to the Chamber the full evidence of its *effectivités* in certain disputed areas of the land frontier which it would have liked to present. These have arisen as a consequence of sporadic acts of violence which have been occurring in some of the disputed areas. These have not only produced a certain amount of interference with some of the governmental activities normally carried out by the Government of El Salvador in these areas, but have also brought about a significant exodus on the part of the normal population thereof . . ."

In reply to a suggestion by counsel for Honduras that evidence of acts of administration in remote areas could be found not only in the areas concerned but also in central archives, counsel also stated that, "for all sorts of reasons that it is not feasible for me to go into now", there are no duplicate records available in central registries and archives in El Salvador. The Chamber fully appreciates the difficulties experienced by El Salvador in collecting its evidence, caused by the interference with governmental action resulting from acts of violence. It cannot however apply a presumption that evidence which is unavailable would, if produced, have supported a particular party's case; still less a presumption of the existence of evidence which has not been produced.

64. In view of the difficulties, however, El Salvador made a specific request to the Chamber. Counsel observed that both Parties had repeatedly stated that they were exercising authority over the disputed sectors of the land boundary, and both Parties had maintained that these sectors were populated by inhabitants of their respective nationality and origin, and asked: "How then is the Chamber to decide on these conflicting claims when one of the Parties, through no fault whatsoever of the other

Party, has been unable to present full evidence of its *'effectivités'*?" On behalf of the Government of El Salvador, counsel then presented the following request:

> "the Government of El Salvador hereby requests that the Chamber consider exercising its functions pursuant to Article 66 of the Rules of Court with regard to the obtaining of evidence *in situ* in the disputed areas of the land frontier. The objective would be to establish the true situation of these disputed territories, over which both Parties to this litigation have alleged that they maintain authority and control.
>
> In addition, the Government of El Salvador would welcome any order by the Chamber pursuant to Article 67 of the Rules of Court, arranging for an enquiry or an expert opinion on these matters and to the same ends."

This request was reaffirmed by the Agent of El Salvador in his closing address at the hearings. The Government of Honduras made no objection to the course proposed by El Salvador.

65. At the close of the oral proceedings, the President of the Chamber stated that the Chamber considered that it was not yet in a position to reach a decision on whether it would be appropriate in the case to exercise its powers under Articles 66 and 67 of the Rules of Court, and would announce its decision in due course. The Parties were subsequently informed that, after deliberation, the Chamber had decided that it did not consider it necessary to exercise its functions with regard to the obtaining of evidence, as contemplated by Article 66 of the Rules of Court, in the disputed areas of the land frontier, as suggested by El Salvador, nor did it consider it necessary to exercise its powers, under Article 50 of the Statute and Article 67 of the Rules of Court, to arrange for an enquiry or expert opinion in the case.

*

66. The Chamber will examine in relation to each disputed sector of the land boundary the evidence of post-independence *effectivités* presented by each Party. It cannot be excluded, however, that even when such claims of *effectivités* are given their due weight, the situation may arise in some areas whereby a number of the nationals of the one Party will, following the delimitation of the disputed sectors, find themselves living in the territory of the other, and property rights apparently established under the laws of the one Party will be found to have been granted over land which is part of the territory of the other. The Chamber has every confidence that such measures as may be necessary to take account of this situation will be framed and carried out by both Parties, in full respect for acquired rights,

and in a humane and orderly manner. In this regard, the Chamber notes with satisfaction the recognition, in a joint declaration made by the Presidents of the two Parties in San Salvador on 31 July 1986, of the need to set up "... *una Comisión Especial que estudie y proponga soluciones a los problemas humanos, civiles y económicos que pudieran afectar a sus connacionales, una vez resuelto el problema fronterizo* ..." ("... a Special Commission to study and propose solutions for the human, civil and economic problems which may affect their compatriots, once the frontier problem has been resolved ...").

67. There has also been some argument between the Parties about the "critical date" in relation to this dispute. The principle of *uti possidetis juris* is sometimes stated in almost absolute terms, suggesting that the position at the date of independence is always determinative; in short, that no other critical date can arise. As appears from the discussion above, this cannot be so. A later critical date clearly may arise, for example, either from adjudication or from a boundary treaty. Thus, in the previous Latin American boundary arbitrations it is the award that is now determinative, even though it be based upon a view of the *uti possidetis juris* position. The award's view of the *uti possidetis juris* position prevails and cannot now be questioned juridically, even if it could be questioned historically. So for such a boundary the date of the award has become a new and later critical date. Likewise there can be no question that the parts of the El Salvador/Honduras boundary fixed by the General Treaty of Peace of 1980 now constitute the boundary and 1980 is now the critical date. If the *uti possidetis juris* position can be qualified by adjudication and by treaty, the question then arises whether it can be qualified in other ways, for example, by acquiescence or recognition. There seems to be no reason in principle why these factors should not operate, where there is sufficient evidence to show that the parties have in effect clearly accepted a variation, or at least an interpretation, of the *uti possidetis juris* position.

* * *

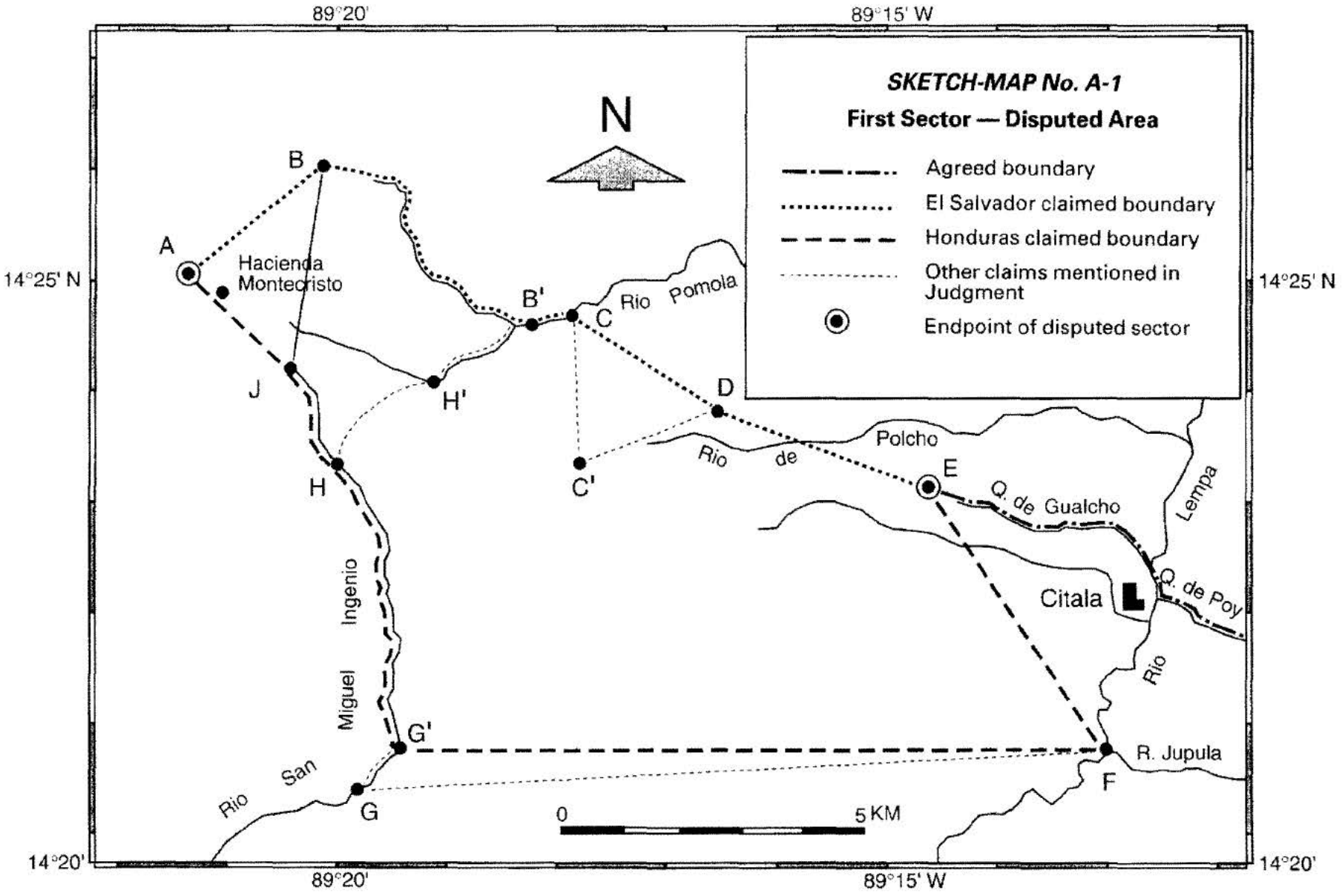
First Sector of the Land Boundary

68. The first disputed sector of the land boundary runs from the agreed tripoint where the frontiers of El Salvador, Guatemala and Honduras converge, a point referred to in Article 16 of the 1980 General Treaty of Peace as the first of the "sections which do not give rise to controversy", and defined as the "point known as El Trifinio on the summit of the Cerro Montecristo". This tripoint was defined by a Special Commission comprised of representatives of the three States in a document drawn up on

23/24 June 1935 in Chiquimula, Republic of Guatemala. There is nevertheless a discrepancy between the contentions of the Parties as to the co-ordinates of latitude and longitude to define the position of the agreed tripoint. It however appears that the different co-ordinates given by the Parties in fact designate the same point, the discrepancy resulting from the choice of a different datum; as explained below (paragraph 103), the Chamber will, when defining the boundary line, use the co-ordinates appropriate to the maps used to illustrate the Judgment. The disputed sector is bounded at the other end by the most westerly point of the second agreed section of the boundary, referred to in Article 16 of the General Treaty of Peace as the "summit of the Cerro Zapotal". These two points are indicated as points A and E on sketch-map No. A-1 annexed, which also indicates the claims of the two Parties as to the course of the boundary between them; according to El Salvador, it should follow the line A-B-B′-C-D-E on sketch-map No. A-1; according to Honduras it should follow the line A-J-H-G′-F-E.

69. It is recognized by both Parties that the greater part of the area between the lines put forward by them as defining the boundary corresponds to the area of land the subject of a *título ejidal* granted in 1776 to the Indian community of San Francisco de Citalá, which was situated in, and under the jurisdiction of, the province of San Salvador. There is some dispute between the Parties as to the interpretation of the survey record contained in the title. First, there is a small discrepancy as to the course of the southern boundary of the land in the title; according to El Salvador, the land granted in 1776 was bounded by the line E-F-G-H on sketch-map No. A-1, while according to Honduras the line was E-F-G′-H. Secondly there are two versions, also indicated on the sketch-map, of the course of the boundary of the *ejido* in the north-west corner: El Salvador argues for the line H-J-B-B′-C, and Honduras for the line H-H′-B′-C. Honduras also claims that a subsequent *título*, that of Ocotepeque of 1818-1820 (see paragraph 83), a community in the province of Gracias a Dios, and thus now in Honduras, includes a triangular piece of land (marked C-C′-D on sketch-map No. A-1) which El Salvador regards as included in the Citalá *ejido*. El Salvador does not claim that the Citalá *ejido* extended so far to the north-west as the international tripoint of Cerro Montecristo, but claims an intervening area (ABJ on sketch-map No. A-1), which was formerly "crown lands" *(tierras realengas)*, on the basis of *effectivités*, a claim disputed by Honduras. These questions will be considered in due course (paragraphs 95 ff. below).

70. The main issue in dispute between the Parties is as follows. The Citalá title was based on a survey and grant carried out in 1776 by the subordinate land judge *(juez de tierras)* based in the judicial district of Chalatenango in the province of San Salvador, and was granted to the


89°20'
89°15' W
14°25' N
14°20'
N
SKETCH-MAP No. A-1
First Sector — Disputed Area
Agreed boundary
El Salvador claimed boundary
Honduras claimed boundary
Other claims mentioned in Judgment
Endpoint of disputed sector
A
B
B'
C
C'
D
E
F
G
G'
H
H'
J
Hacienda Montecristo
Rio Pomola
Rio de Polcho
Q. de Gualcho
Lempa
Q. de Poy
Citala
Rio Ingenio Miguel
Rio San
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Indian community of San Francisco de Citalá under the jurisdiction of that province. The survey and grant was carried out in the context of a long-standing dispute, which involved also other areas, between the Indians of Citalá and those of the community of Ocotepeque, in the province of Gracias a Dios, which province became part of Honduras at the time of independence. It is the contention of El Salvador that in 1821, the boundary of the two provinces was, in this area, defined by the north-eastern boundary of the Citalá *ejido*.

71. Honduras however draws attention to what it regards as an exceptional feature of the procedure whereby the area in question was granted to the Indians of Citalá. When on 10 February 1776 the Indians of San Francisco de Citalá requested the Chalatenango district sub-delegate judge, Don Lorenzo Jiménez Rubio, to survey the land of the "mountain of Tepanquisir", adjacent to their village, the decision of the judge was

> *"Estas partes ocuran a su señoria el Sr Jues principal de Tierras deste Reino para que en vista de lo que espresan, y de no residir jurisdicsion en mi para lo que pretenden, por estar las Tierras en estraña Provincia . . ."*[1]
>
> *[Translation]*
>
> "Let these parties apply to His Lordship the *Juez Principal de Tierras* of this Kingdom so that in view of what they say and since I have no jurisdiction for what they claim, as the lands are in another province . . ."

The request was then brought by the community of Citalá before the *Juez Principal de Tierras*, whose decision was:

> *". . . libro el presente por el qual conzedo Facultad al Subdelegado del partido de Chalatenango don Lorenzo Ximenez Rubio, para que prozeda a la medida de la montaña de Tecpanguisir, que solicita el Comun de Yndios del Pueblo de San Francisco Sitalá, arreglandose en Todo a la Real instrucción, y pasando noticia al Subdelegado de la Provincia de Gracias a Dios, para que este enterado, de que por este Juzgado pribatibo se le ha allanado la Jurisdiccion para solo el presente Caso. Y no se haga en contrario por ningun pretexto . . ."*
>
> *[Translation]*
>
> ". . . I deliver these presents to confer power on the *Subdelegado* of the *partido* of Chalatenango, Don Lorenzo Jiménez Rubio, to pro-

[1] Practically all the documents constituting evidence submitted to the Chamber in this case are in the Spanish language; and many of them, dating from the 17th and 18th centuries, employ the spellings of the period. Where the Chamber relies in the present Judgment on passages in these documents it will, for the sake of clarity, set out the original Spanish together with a translation. That translation sometimes differs from the translation into English or French supplied by one of the Parties pursuant to Article 51, paragraph 3, of the Rules of Court.

ceed to survey the mountain of Tecpanguisir as requested by the Indians of the village of San Francisco de Citalá, complying in all respects with the Royal regulations, and giving notice to the *Subdelegado* of the province of Gracias a Dios so that he may be aware that this *Juzgado privativo* has entered into his area of jurisdiction for the present case only and that no action inconsistent with this be taken on any pretext . . ."

When the Citalá Indians were granted a title over the Tepangüisir lands in July 1776, those lands were specifically stated to be "*tierras realengas* [crown lands] on the mountain of Tepangüisir in the province of Gracias a Dios". On this basis, Honduras contends that the area of the *ejido* so granted then fell within the jurisdiction of the Honduran province of Gracias a Dios. The provincial boundary in 1821, according to Honduras, therefore coincided, not with the north-eastern boundary of the Citalá *ejido*, dividing it from the lands of the community of Ocotepeque, but with the other boundaries of that *ejido*, dividing it from the lands of the Citalá community within the province of San Salvador; and this is the line (H-G'-F-E) claimed by Honduras, indicated on sketch-map No. A-1. El Salvador disputes this view of the matter, principally on the ground that the effect of the grant of an *ejido* over lands in one province, to a community situate in another, was that the administrative control over the lands of the *ejido* was thereafter exercised from the province of the community to which the grant had been made, and that, for the purposes of the *uti possidetis juris*, this signified that the lands of the *ejido* would come under the sovereignty of the State which succeeded to that province.

72. The Chamber considers however that it is not required to resolve this question, since there is a further important element which the Chamber finds to be decisive, which requires to be carefully stated. The evidence before the Chamber shows that it was only in 1972 that Honduras first advanced its contention that the west, south and east boundaries of the lands of the Citalá *ejido* (the line H-G'-F-E) should be the boundary between the two States. During all previous negotiations, while the Parties had been in dispute as to the location of the frontier in this sector, and no admission had been made by Honduras on that point, the negotiations were conducted on the basis, accepted by both sides, that it was the boundary between the *ejidos* of Citalá and Ocotepeque that defined the frontier.

73. It will be useful in this connection to recall negotiations between the Parties in the years 1881 and 1884, as well as events in 1914 and 1935, which will be dealt with in turn; but the Chamber will first consider the question of the propriety of recourse to the record of previous negotiations. It is of course well established, according to the jurisprudence of the Court, and of the Permanent Court of International Justice, that it is not open to the Chamber to

"take account of declarations, admissions or proposals which the

> Parties may have made in the course of direct negotiations which have taken place between them, declarations which, moreover, have been made without prejudice in the event of the points under discussion forming the subject of judicial proceedings",

when the negotiations in question have not led to an agreement between the parties (*Factory at Chorzów, Jurisdiction, P.C.I.J., Series A, No. 9*, p. 19; see also *Factory at Chorzów (Claims for Indemnity), Merits, P.C.I.J., Series A, No. 17*, pp. 51, 62-63). This observation however refers to the common and laudable practice — which, indeed, is of the essence of negotiations — whereby the parties to a dispute, having each advanced their contentions in principle, which thus define the extent of the dispute, proceed to venture suggestions for mutual concessions, within the extent so defined, with a view to reaching an agreed settlement. If no agreement is reached, neither party can be held to such suggested concessions. The situation in the present instance is quite different. As will appear, in 1881 and 1884, the extent of the dispute was simply to determine where was the limit between the Citalá and Ocotepeque lands. It was the common understanding that that limit was also the international frontier. No account could be taken by the Chamber of any negotiating concessions which might have been made as to the *position* of the limit; but the Chamber is entitled to take account of the shared view in 1881 and 1884 of the Parties as to the basis and extent of their dispute.

74. In 1881 it was agreed between the Governments of El Salvador and Honduras that, in order to resolve a boundary dispute between the municipalities of Ocotepeque and Citalá there should be a demarcation by a commission including two surveyors, with possible recourse to a third surveyor, of Guatemalan nationality, in case of disagreement. The official record of the survey commission recorded that one member "represented the Government of Honduras" and the other "represented the Government of El Salvador", and the two surveyors had each been nominated by one of those Governments; they had met ". . . to begin the delimitation of the *ejidos* of the town of Ocotepeque and hamlet of La Hermita, with the village of Citalá, *which delimit the territories of the two Republics* . . ." (emphasis added) (*". . . dar principio al deslinde de los ejidos de la Ciudad de Ocotepeque y aldea de la Hermita y con el pueblo de Citalá que marcan los territorios de ambas Repúblicas . . .*"). The result of the work of the commission was inconclusive; but it is clear that its brief was to establish the line between Ocotepeque lands and Citalá lands, not between the former province of Gracias a Dios and the former province of San Salvador.

75. Although the only 18th century title incorporated in the record of the 1881 negotiations is a 1740 *título* of Jupula, Honduras recognizes that those negotiations involved the confrontation of the 1776 Citalá title over the mountain of Tepangüisir and the title of the lands of Ocotepeque of

1818-1820 (paragraph 83 below). Honduras's interpretation (cf. the plan drawn up in 1881) is that indicated on sketch-map No. A-1 annexed by the lines C-C'-D-E, as shown by a map incorporated in the Honduran Memorial; and in its Reply Honduras states that

> "the line discussed during these negotiations ran down to the south-west as far as the Peña de Tepangüisir, south of the line of the 1776 title, and back up to the north again; the negotiations having taken into account the Honduran title of Ocotepeque of 1818-1820 to form this triangle".

76. The significant aspect of the 1881 negotiations is, as noted above, the shared view of the Parties as to the basis and extent of their dispute. They were concerned with the dividing line between the lands comprised in the 1776 Citalá title and those in the title of Ocotepeque, on the basis that that line corresponded to a delimitation "of the territories of the two Republics". There is no trace in the records of the 1881 negotiations of any insistence by Honduras that the line between the Tepangüisir lands of Citalá and the Ocotepeque lands was no more than the division between lands, all situate in Honduras, of two communities, one of which communities was in El Salvador. The frontier line corresponding to Honduras's current interpretation of the legal effect of the 1776 Citalá title was, according to the material laid before the Chamber, first put forward by Honduras in the context of the negotiations which took place between the two Governments at Antigua in Guatemala in 1972, as recorded on 11 June 1972.

77. A similar picture emerges from the negotiations which led to the signature, in 1884, of a treaty between the two States known as the Cruz-Letona Convention, which for lack of ratification by Honduras never came into force. The delimitation, in the sector now under consideration, which would have resulted from the adoption of this treaty follows, so far as relevant at the present stage of discussion, a line which was clearly intended to represent the delegates' understanding of the position of the north-east boundary of the *ejido* of Citalá. The records of the work of the representatives of the Governments appointed for the delimitation of the frontier show that they considered the documents produced on each side, and noted that the documents concerning Citalá were "more ancient" and had "greater authority". The Chamber is aware that by a subsequent treaty (the Zelaya-Castellanos Convention, paragraph 33 above) the Parties agreed that no legal effect was to be attached to the unratified Cruz-Letona Convention; but what is relevant for present purposes is that in 1884, as in 1881, the shared view of the Parties was that the boundary in this part of the disputed sector ran somewhere through the area where the northern limit of the 1776 Citalá title was generally supposed to be located.

78. A further indication that the Parties, while not necessarily in agree-

ment as to the position of the boundary between Citalá and Ocotepeque, were agreed that that boundary defined the frontier between them, is afforded by the republican title of San Andrés de Ocotepeque, to the north of Citalá, granted by Honduras in 1914, to be considered further below (paragraph 85). According to Honduras's own interpretation of this title, it coincided, in the area with which the Chamber is concerned, with the Ocotepeque title of 1818-1820, also to be examined below (paragraph 83), save that the overlapping triangle C-C'-D on sketch-map No. A-1, which Honduras claims was included in the 1818 title, was excluded from the 1914 title. For the present all that needs to be noted from the 1914 survey is that the Honduran surveyors reported that the boundary marker of Tepangüisir, between those of Talquezalar and Piedra Menuda, and to the south-west of the latter marker, "is today in Salvadorian territory"; i.e., in 1914 the Honduran surveyors regarded the Citalá lands to the south-west of the Ocotepeque lands as part of El Salvador.

79. Yet again, in 1934-1935 tripartite negotiations between El Salvador, Guatemala and Honduras were held for the purpose of fixing the tripoint where the frontier of the three States met, following the decision of the Arbitral Tribunal presided over by Chief Justice Charles Evans Hughes in the frontier dispute between Guatemala and Honduras. In the course of those negotiations, to be examined further below (paragraph 99), the representatives of El Salvador put forward a proposal as to the course of the frontier which included the stretch between Talquezalar and the river Lempa. The line proposed was the line corresponding, in El Salvador's contention, to the north-eastern boundary of the title of Citalá of 1776. The representatives of Honduras explained that they were not empowered to deal with the question of the frontier east of Talquezalar, but observed that "the line proposed by the delegates of El Salvador varied only slightly from that suggested by Honduras".

80. As already explained (paragraph 67 above), the Chamber does not consider that the effect of the application of the principle of the *uti possidetis juris* in Spanish America was to freeze for all time the provincial boundaries which, with the advent of independence, became the frontiers between the new States. It was obviously open to those States to vary the boundaries between them by agreement; and some forms of activity, or inactivity, might amount to acquiescence in a boundary other than that of 1821. Even on the hypothesis that Honduras's analysis of the legal effect, under Spanish colonial law, of the grant of the Citalá *título ejidal* is correct, so that from 1776 onward the provincial boundary remained to the south-west of the land comprised in that title (and followed the line E-F-G'-H-J-A), the conclusion does not follow that that is the course of the international frontier today. The situation was susceptible of modification by acquiescence in the lengthy intervening period; and the Chamber finds that the conduct of Honduras from 1881 until 1972 may be regarded as amounting to such acquiescence in a boundary corresponding to the

boundary between the Tepangüisir lands granted to Citalá and those of Ocotepeque.

81. The disagreement between the Parties as to the course of the southern boundary of the title thus becomes irrelevant, since it is in any event not that boundary that defines the frontier. In order to complete the Chamber's task in this sector, however, there still remain two questions to be settled. From point B′ to point C and from point D to point E on sketch-map No. A-1 annexed the Parties agree on the interpretation of the Citalá title; but there remain, first, the question of the triangular area (C-C′-D on sketch-map No. A-1 annexed) where, according to Honduras, the title of Ocotepeque overlaps the boundary of Citalá, and secondly the disagreement between the Parties as to the interpretation of the Citalá survey as regards the north-western area (A-B-B′-H-J-A). On the first point, it is necessary to define precisely the scope of the acquiescence of Honduras. If Honduras were to be taken to have acquiesced in a boundary following the northern limit of the Citalá title as granted in 1776, then there is no need to enquire what the effect might have been on that boundary of the grant of the Ocotepeque title of 1818; but the Chamber does not consider that Honduras's position can be equated with acquiescence to that effect. Honduras, in the Chamber's view, acquiesced in a boundary corresponding to the boundary, as it stood in 1821, between the lands of Ocotepeque and Citalá. Another way of defining its position, as seen by the Chamber, is that Honduras in effect waived the point as to the possible appurtenance of the Tepangüisir lands of Citalá to the province of Comayagua in 1821, and thus treated them as having then appertained to El Salvador.

82. The Chamber has thus to resolve the question whether there was a penetration of the Citalá lands by the Ocotepeque survey of 1818, and if so, what was the effect of this. The 1776 Citalá survey, which was expressed to relate to an area called the *"montaña de Tecpanguisir"*, started from a place *"... que es un serrito de piedra menuda, el que no tiene Nombre, y se halla en vista del serro que nombran tecpanguisir ..."* ("... which is a small hill of small stones, with no name, in sight of the hill they call Tecpanguisir ..."). The Parties agree in identifying this point with Piedra Menuda, point D on sketch-map No. A-1. The survey party took a west-north-west direction, and arrived at the *"... quebrada que llaman de pomola"* (the "... *quebrada*[1] called the Pomola ...") after measuring 54 cords (2,241 metres). The distance on the maps between point D and point C — the marker on the Pomola — is some 2,900 metres. The survey closed on the starting point by arriving from a *"... cerro que dizen llamarse el sapotal*

[1] The Spanish word *quebrada* appears frequently in the 17th and 18th century titles, and has been translated into English and French in various ways. The Chamber understands it to refer to a small stream: the *Diccionario de la Lengua Española* of the Real Academia Española gives, as a definition of the word as used in Spanish America, *"Arroyo o riachuelo que corre por una quiebra"*. To avoid confusion, the Spanish word will generally be used throughout the present Judgment.

que es aseranado, alto, y redondo . . ." (". . . a hill which they say is called El Sapotal, which is flat-topped, high and rounded . . ."), the distance from this hill to Piedra Menuda being 26 cords (1,079 metres); on the maps produced these two landmarks are however 3,500 metres apart. There is no indication that the course of the 1776 survey ran through the hill of Tepangüisir, or that there was a boundary marker of that name. Such a boundary marker is first mentioned in an 1817 survey of the lands of Ocotepeque. This survey arrives at "the high crest of the Pomola hill", and from there runs south, "passing by the high rounded hill of Tepangüisir, which is a landmark of the *ejidos* of the village of Citalá", and continues "in a straight line to the confluence of the *quebrada* Gualcho with the river Lempa".

83. In 1820, following a survey in 1818 a title was granted to the community of Ocotepeque, in the province of Gracias a Dios, by the authorities of that province, over land lying to the north of the Citalá lands. The relevant passage of the 1818 survey record reads as follows:

> *". . . dejando la quebrada de Pomola se buscó para el Serro de Tepanguisir adonde se llegó con sesenta y una Cuerdas y se abivó el mojon antiguo poniendole mas piedras y otra Cruz y cambiando el rumbo se siguio al oriente y con sesenta y ocho Cuerdas se llegó a un serrillo que llaman de Piedra menuda y en efecto tiene bastante allí estaban todos los Justicias y principales del Pueblo de Citala, con sus títulos y haviendo enseñado un mojon que alli estava dixeron los de citala ser el que divide sus tierras y las de Ocotepeque . . ."*
>
> *[Translation]*
>
> ". . . leaving the *quebrada* de Pomola the hill of Tepanguisir was looked for, and was reached after 61 cords, and the old landmark was restored, with additional stones and a new cross, and changing direction we proceeded to the east and with 68 cords we came to a small hill which they call Piedra menuda [small stone] where there are indeed a good many such, and here were all the justices and principal men of the community of Citala, with their titles, and when a landmark at this place was indicated those of Citala said that that is the one which divides their lands from those of Ocotepeque . . ."

84. In Honduras's contention, the 1817 Tepangüisir marker and the 1818 "hill of Tepanguisir" is the point marked C′ on sketch-map No. A-1, the "Piedra Menuda" being the same as the 1776 landmark of that name, i.e., at point D on that map. It does not however seem to be possible that this can be the "hill of Tecpanguisir" mentioned in the 1776 survey, at least assuming the Piedra Menuda to have been correctly identified. The 1776 record calls the Tepangüisir hill a *"cerro"* and the Piedra Menuda a *"cerrito"*; but the maps show point D (Piedra Menuda) as an elevation of

over 1,500 metres, and point C′ as around 1,400 metres, surrounded, and almost blocked from sight from Piedra Menuda, by markedly higher hills. Furthermore, there seems some uncertainty as to its exact position in relation to the Piedra Menuda and Talquezalar markers: on the maps produced to the Chamber it is 2,500 metres from Talquezalar and 2,350 metres from Piedra Menuda; the Honduran geographer José Maria Bustamante in 1890 however gave these distances as 1,300 and 1,912 metres respectively. The same distances were given in the report made the same year by the civil engineer A. W. Cole, together with compass bearings. Of these distances and bearings, only that defining the relationship between Piedra Menuda and Tepangüisir are consistent with the placing of Tepangüisir at point C′; the other figures given are quite irreconcilable with the position now identified with the Talquezalar marker, or with the further course of the line westward. This discrepancy must cast doubt on the position of the "hill of Tepanguisir".

85. The 1914 Honduran republican title of Ocotepeque adopts this one consistent distance and bearing among those given by Cole in 1890. In 1914 the surveyors, having arrived at Piedra Menuda (point D on sketch-map No. A-1 annexed), recorded that

> *"En esta línea se ha hecho abstracción del mojón de Tepangüicir en virtud de quedar hoy en territorio Salvadoreño; pero se halla con respecto a Piedra Menuda al Sur sesenta y tres grados treinta y tres minutos Oeste (S. 63° 33′ O) y á una distancia de mil novecientos dos metros."*
>
> *[Translation]*
>
> "On this line, we have disregarded the Tepangüicir boundary marker, since it is today in Salvadorian territory; but we can say that it is situate S 63° 33′ W from Piedra Menuda, at a distance of 1,902 metres."

86. At the time of the negotiations in 1935 for the establishment of the El Salvador/Guatemala/Honduras tripoint, a map was drawn up by the surveyor Sidney H. Birdseye (see sketch-maps Nos. A-2 and A-3 annexed) and signed as approved by the representatives of the three States on the Demarcation Commission. This map shows the hill in question as "Peña de Tepanguisir", marked with a symbol which the legend of the map explains as used for *"Cerros y mojones"*: "hills and boundary markers". It is also to be noted that an annotation on the map records that "*(Hond.) (El Salv.) . . . indican aceptación de nombres por el pais respectivo cuando hay controversia en la designación . . .*" ("(Hond.) (El Salv.) . . . indicate acceptance of names by the country referred to, when there is controversy as to such designation . . ."). No such indication appears at

SKETCH-MAP No. A-2

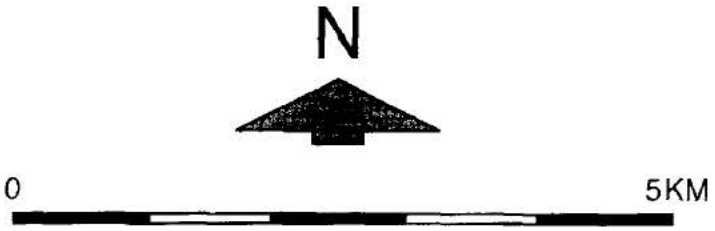
First Sector — Pomola:
The Birdseye Map

Proposed boundary

Watercourses

Water partings

The original map was produced by Mr. Birdseye in 1934 for the 3-nation Special Commission. This is a reproduction of part of the 2.5 times reduced version presented as Honduras Map I.3. The solid line joining Cerro Montecristo and the Río Pomola represents the boundary agreed between El Salvador and Honduras (in the case of El Salvador, *ad referendum*) at the meeting of the Commission in 1934.



CROQUIS N° A-2

Premier secteur — Pomola:
la carte de M. Birdseye

Frontière proposée

Cours d'eau

Lignes de partage des eaux

La carte initiale a été établie par M. Birdseye en 1934 pour la commission spéciale constituée entre les trois pays. Il s'agit ici d'une reproduction partielle de la version réduite deux fois et demie présentée par le Honduras comme carte I.3. Le trait plein entre le Cerro de Montecristo et le Río Pomola représente la frontière ayant fait l'objet d'un accord entre El Salvador et le Honduras (dans le cas d'El Salvador *ad referendum*) lors de la réunion de la commission en 1934.

SKETCH-MAP No. A-3

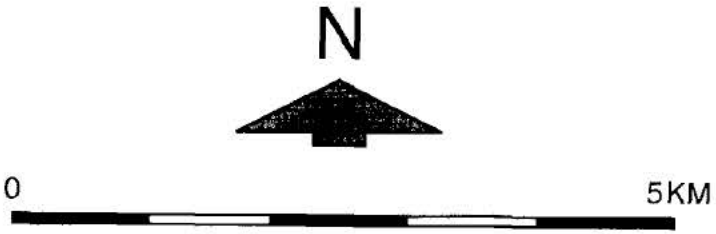
First Sector — Interpretation of Birdseye Map

Proposed boundary

Watercourses

Water partings

This is a simplified version of sketch-map No. A-2 to show more clearly the drainage pattern and water partings in the area. The boundary accepted, *ad referendum*, in 1934 follows the water parting between Cerro Montecristo and the confluence of the *quebrada* Pomola and *quebrada* Cipresales.



CROQUIS N° A-3

Premier secteur — Interprétation de la carte de M. Birdseye

Frontière proposée

Cours d'eau

Lignes de partage des eaux

Il s'agit d'une version simplifiée du croquis n° A-2 indiquant plus clairement le réseau hydrographique et le partage des eaux dans la région. La frontière acceptée *ad referendum* en 1934 suit la ligne de partage des eaux entre le Cerro de Montecristo et le confluent des *quebradas* de Pomola et de Cipresales.

Tepangüisir, from which it may be deduced that both States accepted the identification of the Tepangüisir hill with point C'. Indeed, both sides have argued their cases before the Chamber on that basis, and on the basis that the Talquezalar and Piedra Menuda markers are at C and D on sketch-map No. A-1.

87. Honduras does not deduce from its interpretation of the Ocotepeque title that the triangular area, which it contends was included in that title, was not included in the Citalá title; it accepts, as already noted, the northern boundary of that title as presented by El Salvador. It rather asserts that the Ocotepeque title "penetrates" the Citalá lands as far as the hill of Tepangüisir, "to the south of the limits drawn by the Citalá title of 1776". El Salvador does not accept that any such overlap occurred, but contends that the boundaries of the Ocotepeque lands coincided with those of Tepangüisir, and was in any case irrelevant in view of the terms of the later, republican, title of San Andrés de Ocotepeque (see paragraph 78 above).

88. In the view of Honduras, this overlap would have been without importance, because it contends that the triangular area was in any event part of the jurisdiction of Gracias a Dios, as indicated in the Citalá title itself. It suggests further that the existence of the overlap confirms the appurtenance of the lands referred to in the Citalá title to the province of Gracias a Dios, implying that since if the Citalá lands had been in the neighbouring province, such an encroachment would have required special authorization like that given to the judge of Chalatenango in 1776 (paragraph 81 above). Even on the basis, however, that both titles were in Gracias a Dios, the Chamber does not consider that such an overlapping, involving a derogation from a previous grant to an Indian community, would have been consciously made. It appears to the Chamber that, whatever the legal powers of the authorities empowered to grant *ejidos*, in practical terms the system of surveys, with convocation of the inhabitants of neighbouring villages, was designed to prevent inclusion in the lands surveyed and to be granted to one community, of any part of the lands already surveyed and granted to another. The 1818 title of Ocotepeque gives no hint that there was any intention to penetrate the Tepangüisir lands; on the contrary, the Indians of Citalá had been summoned and were present to indicate their boundaries (see paragraph 83 above). This, in the Chamber's view, also militates against the conclusion that an overlap came about by mistake, which should only be accepted if there is no doubt that the two titles are not compatible.

89. The text of the documents produced by the Parties does not appear to the Chamber to bear out the theory of a "penetration" of the Citalá title. It is clear from the 1776 survey (quoted in paragraph 91 below) that the *quebrada* de Pomola was a limit of the Citalá lands; yet the 1817 survey of the lands of Ocotepeque does not mention the *quebrada*, but only a Pom-

ola hill, before reaching "the high rounded hill of Tepangüisir, *which is the boundary marker of the* ejidos *of the village of Citalá*" (emphasis added). The 1818 survey mentions the *quebrada*, not the hill of Pomola, and then the hill of Tepangüisir; the representatives of Citalá are not mentioned as present until the point called Piedra Menuda. They there drew attention to a boundary marker "which divides their lands from those of Ocotepeque", and followed the surveyor to check that the survey did not prejudice them in any way, but there is no indication that they had similarly verified the status of Tepangüisir as a boundary point, and its position. In short, the geographical identification of the Tepangüisir hill or Tepangüisir marker is dubious.

90. In 1914, when the Ocotepeque title was re-issued (paragraph 78 above), the Honduran surveyors, presumably following — to this extent only — the 1890 Cole survey, considered that the boundary marker referred to as "Tepanguisir hill" in 1818 was at point C′ on sketch-map No. A-1, and at the time of the tripartite negotiations of 1935, this was recognized by both sides. This however does not persuade the Chamber to accept that the identification in 1890 of the "Tepanguisir hill" was correct. The identification of the various geographical locations referred to in the survey records of 1776, 1817 and 1818 cannot, it seems to the Chamber, be achieved with sufficient certainty to demonstrate an overlap between Ocotepeque and Citalá. It follows that the boundary line between points B′ and E on sketch-map No. A-1 annexed, which both Parties recognize as to follow the north-eastern boundary of the Citalá title, should follow the line B-B′-C-D, and should not diverge to the south to pass through point C′.

*

91. As regards the position of the boundary of the Citalá title, the main disagreement between the Parties concerns the area to the west of point B′ on sketch-map No. A-1. The dispute arises out of the following passage in the survey record of the 1776 title of Citalá:

> *"... y al mencionado rumbo desde dicho serrillo se continuo caminando hasta vajar á la quebrada que llaman de Pomola y á ella se llegó con cinquenta y cuatro cuerdas, donde para maior claridad de esta medida mande poner Un montón de piedras por señal y mojon, y mudando de rumbo y tirando para el Oeste aguas arriva de dicha quebrada de Pomola por entro de una cañada honda de precipicios se tantearon á ojo por la asperidad de la montaña quarenta cuerdas hasta la cavesera de Pomola, en donde se deja esta medida para proseguirla el dia de mañana por ser las seis horas de la tarde... en prosecución de la Medida en que estoy entendiendo... mande á los medidores tendiesen la cuerda lo que con efecto hicieron en este paraje que es la cavesera de Pomola*

donde el dia de ayer se suspendió esta dicha medida, desde donde al rumbo del sudueste, llevando á la Derecha tierras realengas, y á la ysquierda las que se Van midiendo, se caminó á dicho rumbo por la junta de la quebrada que nombran de Taguilapa, y aguas abajo de ella se continuo por entre la espesura de la montaña, dando á ojo por lo yntransitable quarenta cuerdas hasta Un paraje que llaman de las Cruzes . . ."

[Translation]

". . . and we continued climbing down the hill in question, heading in the direction stated, until we reached the *quebrada* called Pomola. Up to that point we counted 54 cords and, in order to make for greater clarity in the measurements, I had a large heap of stones set up to serve as boundary marker and, changing direction so as to head west and following the *quebrada* de Pomola upstream through a deep gully formed by precipices, we estimated visually, on account of the ruggedness of the terrain, 40 cords up to the source of the Pomola. We thus completed our work for today, to be resumed tomorrow, since it was 6 in the afternoon . . . continuing the survey with which I am charged . . . I asked the surveyors to stretch out the cord, which they did, at the source of the Pomola, where we had left off the survey yesterday, and from there, heading south-west, and having on our right-hand side crown lands *[tierras realengas]* and on the left side the ones we are measuring, we walked in the said direction along the confluence of the *quebrada* called Taguilapa, and continued downstream through the thick vegetation covering the mountain, estimating by eye on account of the impracticable nature of the terrain, 40 cords up to a place called Las Cruces . . ."

The two interpretations of this passage in geographical terms are illustrated on sketch-map No. A-1 annexed: El Salvador contends that the boundary follows the line C-B′-B-J-H, and Honduras the line C-B′-H′-H.

92. The first objection of Honduras to the interpretation by El Salvador is that the point identified by El Salvador as the *"cavesera* [or *cabecera*] *del Pomola"* (point B on sketch-map No. A-1 annexed) cannot be right, because it lies not to the west, as indicated in the survey, of the previous marker (point C on the sketch-map), but to the north-west, and because that point is more than 4,000 metres in a straight line from the previous marker, which is far more than the "40 cords" (about 1,660 metres) referred to in the survey. So far as this objection is concerned, El Salvador contends that on setting out upstream along the *quebrada* de Pomola, the surveyor began moving to the west, and recorded that direction, but then had to follow the undulations of the stream. The Chamber notes that while the *quebrada* identified by El Salvador as the *quebrada* de Pomola runs generally north-west to south-east, that selected by Honduras (indicated on El Salvador's maps as the *quebrada* Cipresales) runs, in its relevant portion, generally south-west to north-east, so that while neither corresponds precisely to the western direction of the survey as recorded in the

1776 title, the explanation of the discrepancy of direction offered by El Salvador applies equally well to both *quebradas*. So far as can be discerned from the contour indications on the maps produced, either could fit the description in the survey record of passing through "a deep gully formed by precipices".

93. Secondly, Honduras points out that the direction of the survey from the "source of the Pomola" was to the south-west, whereas the course of El Salvador's line from what it identifies as the source of the Pomola (point B on sketch-map No. A-1) was to the south. El Salvador retorts that the latter objection could also be made to the Honduran version of the line from the *"cabecera del Pomola"* (point H′ on sketch-map No. A-1) to the next marker point (point H on the sketch-map), but on inspection of the maps, this does not appear to the Chamber to be so. On the contrary, it is this consideration which entitles a choice to be made, in the view of the Chamber, between the two competing identifications of the *"cabecera del Pomola"*. In the interpretation of El Salvador, the line from the source of the Pomola to what is marked on its map as the "La Chicotera gorge" (line B-J on sketch-map No. A-1 annexed) — which apparently, in El Salvador's contention, corresponds to, or leads to, the "*quebrada* called Taguilapa" — runs at only 5 degrees west of due south. On Honduras's interpretation the line from the *"cabecera del Pomola"* to the *"quebrada de Taguilapa"* (line H′-H on sketch-map No. A-1) runs for most of its course some 55 degrees west of south, only turning to a more southward orientation for the last 1,000 metres or so of its course. Honduras has also drawn attention to a contemporary scaled plan of the area of the Citalá title surveyed in 1776; neither the area identified by Honduras as the Citalá lands nor that so identified by El Salvador coincides to a really satisfactory degree with this 1776 plan, but the shape of El Salvador's version of the surveyed lands departs far more radically from the sketch-map than does Honduras's version.

94. The Chamber, for all the above reasons, concludes that on this point the Honduran interpretation of the 1776 survey-record is to be preferred, and therefore that, prima facie, in 1821 the *uti possidetis* line west of Talquelazar was as indicated on sketch-map No. A-1 annexed by the line C-B′-H′-H. However in order to complete the international frontier in this sector, the Chamber has still to consider the area to the west of that line.

*

95. As will be apparent from sketch-map No. A-1 annexed, the lands included in the 1776 Citalá title do not extend, even in the interpretation of El Salvador of that title, so far west as the international tripoint from which the first sector of the disputed frontier runs. From the terms of the 1776 title itself, it is clear that the land to the west of the line from the *"cabecera del Pomola"* to the place called "Las Cruzes" was *tierras realengas*, since the survey states that the land to the right of the surveying party, as they moved south-west, was such land (see paragraph 91 above); and Honduras observes that since the survey was being effected, according to the record of it, in the province of Gracias a Dios, these must have been *tierras realengas* of that province, and consequently now part of Honduras. El Salvador does not, as it does in other sectors of the frontier, base any claim to this area on its status as *tierras realengas*. The absence of any justification in the 1776 Citalá title for El Salvador's claim to this area is recognized by El Salvador, which claims that "this triangular area forms part of the forestry reserve of El Salvador and is inhabited by citizens of El Salvador . . .". El Salvador however claims this area on the basis that, by Article 26 of the General Peace Treaty of 1980, the Joint Frontier Commission, and consequently the Chamber (see paragraphs 47 ff. above), should "take into account other evidence and arguments of a legal, historical, human or any other kind, brought before it by the Parties and admitted under international law". In its Reply El Salvador lists a number of villages or hamlets belonging to the municipality of Citalá which fall within the disputed area, and has produced some material relating to rural schools in these places, but of these only the Hacienda de Montecristo (marked south-west of point A on sketch-map No. A-1) lies in the *tierras realengas* and not in the area covered by the Citalá title.

96. No evidence has however been adduced that the Hacienda de Montecristo, or more generally this area, or its inhabitants, have been under the administration of the municipality of Citalá. It has been stated by counsel for El Salvador that the Hacienda de Montecristo was donated to the Government of El Salvador by its former owners, to be used as a forestry reserve. The only evidence of *effectivités* to which attention has been drawn, and which El Salvador apparently regards as sufficient, and as applicable to this area, is a report by a Honduran Ambassador, H.E. Mr. Max Velásques Díaz, dated October 1988, entitled "Observations sur les chapitres 2 et 7 du mémoire d'El Salvador"; in this report the Ambassador states that the lands of the disputed area of Tepangüisir "form part of the property of the inhabitants of the municipality of San Francisco de Citalá in El Salvador"; the report however continues: "but the right to them belongs to the Republic of Honduras . . .". The report is, it is suggested, a recognition by Honduras of the existence of *effectivités* in the form of occupation and possession of the lands by citi-

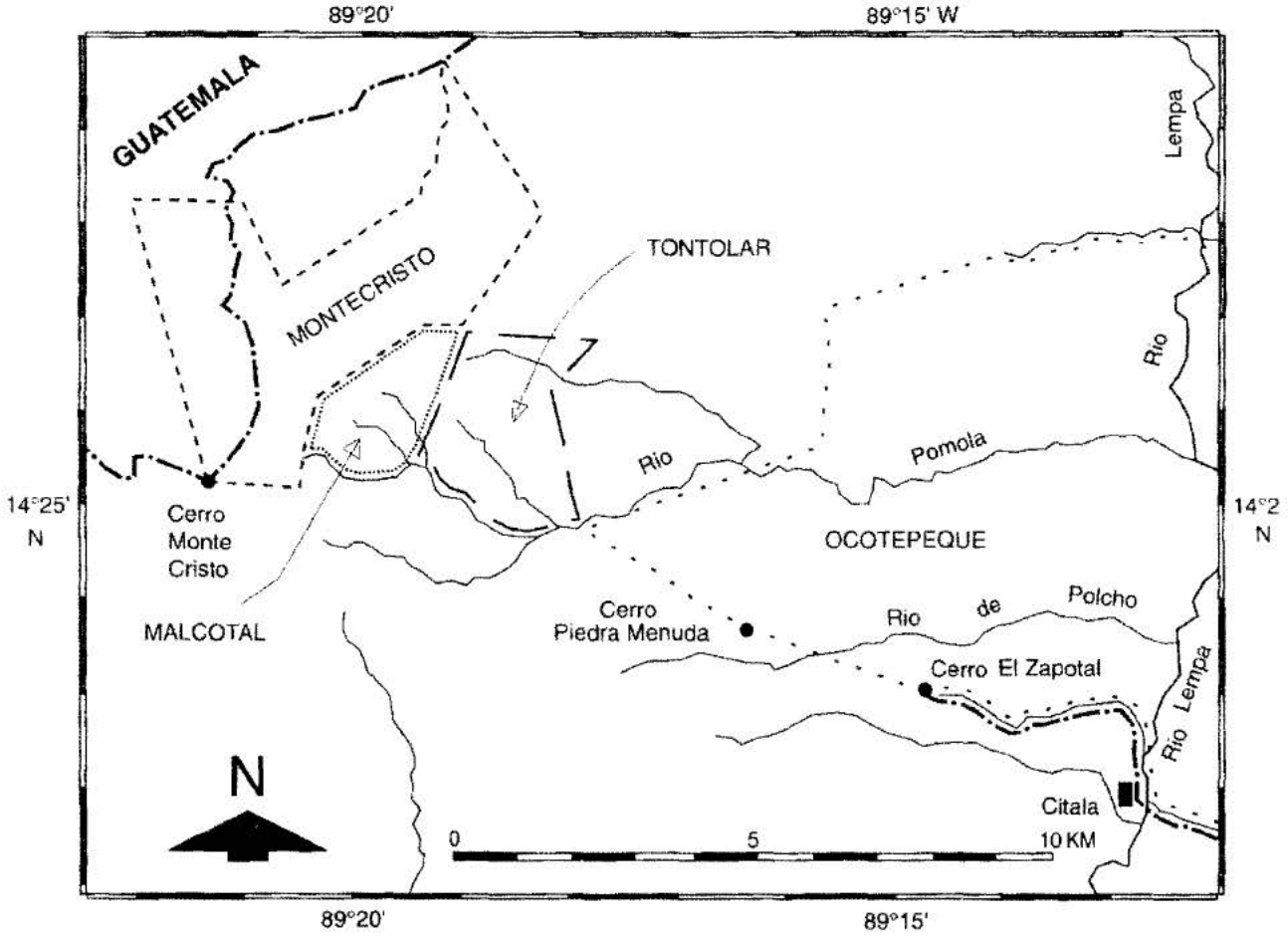
zens of El Salvador. The Chamber cannot however regard this as sufficient; to constitute an *effectivité* relevant to the delimitation of the frontier, what would be required is, at least, some recognition or evidence of the effective administration of the municipality of Citalá in the area, which has been asserted but not proved. Nor has any evidence been offered to show the extent of the Hacienda de Montecristo, or other Salvadorian interests in the area, so as to justify the line claimed rather than any other line connecting the international tripoint with the limits of the 1776 Citalá title.

97. El Salvador has drawn attention to a provision in the Constitution of Honduras whereby land within 40 kilometres of the Honduran frontier can only be acquired or possessed by native Hondurans, on which it bases two arguments. First, it asserts that the ownership of land by Salvadorian nationals in the disputed area less than 40 kilometres from the line which Honduras asserts to be the frontier is in itself sufficient to show that the disputed area is not part of Honduras, and therefore part of El Salvador. The Chamber cannot accept this contention. At the very least, some recognition on the part of Honduras of the ownership of the land by citizens of El Salvador would have to be shown; but there is no evidence of this beyond the Ambassador's report of October 1988, which is in too general terms. El Salvador argues that

> "the existence of even a few Salvadorian landowners in a disputed sector claimed by Honduras produces a strong argument of a human nature for not delimiting the boundary in such a way that that land becomes part of the Republic of Honduras".

The effect of the Chamber's Judgment will however not be that certain areas will "become" part of Honduras; the Chamber's task is to declare what areas are, and what are not, *already* part of the one State and the other. If Salvadorians have settled in areas of Honduras, neither that fact, nor the consequences of the application of Honduran law to their properties, can affect the matter. Furthermore, counsel for Honduras has indicated to the Chamber that the Honduran constitutional provision referred to could not be applied retroactively to dispossess Salvadorian landowners.

98. In the Honduran Reply, attention has been drawn to the granting by Honduras of a number of republican titles extending to the south of the line claimed by El Salvador between the tripoint of Montecristo and the headwaters of the Pomola: the titles of Montecristo (1886), Malcotal (1882) and Tontolar (1845), the extent of which, as interpreted by Honduras, is illustrated on sketch-map No. A-4 annexed. These are relied on by Honduras as showing that the area in question which, according to the



SKETCH-MAP No. A-4

First Sector — Honduran Republican Titles (as plotted by Honduras)

—·—·— Agreed international boundaries

- - - - - - - Montecristo 1886 title

. . . . . San Andrés de Ocotepeque 1914 title

..... Malcotal 1882 title

—— —— Tontolar 1845 title

Citalá title, was in 1776 *tierras realengas* of the province of Gracias a Dios, was treated as Honduran territory after independence. Neither the fact of the granting of these titles by Honduras nor their extent as indicated on the map annexed to the Honduran Reply, has been challenged by El Salvador.

99. Reference has already been made above (paragraph 79) to the negotiations held between El Salvador, Guatemala and Honduras in 1934-1935 for the purpose of fixing the tripoint where their frontiers meet. In the course of the negotiations, both El Salvador and Honduras advanced claims as to the position of their frontier running eastwards from the agreed tripoint. Eventually agreement was reached on a frontier line lying between the lines asserted by the Parties, though the agreement by the representatives of El Salvador was only *ad referendum*, since they did not consider that they were empowered to agree to it on behalf of the Government of El Salvador. In the official records of the negotiations, this line, which is indicated on sketch-maps Nos. A-2 and A-3 annexed, was described as follows:

> *"Las Delegaciones de El Salvador y Honduras convinieron en la siguiente sección de línea fronteriza entre sus respectivos Países, al Este del trifinio: de la cima del Cerro Montecristo a lo largo de la divisoria de las aguas de los ríos Frío o Sesecapa y del Rosario, hasta la conjunción de esta divisoria con la divisoria de las aguas de la cuenca de la Quebrada de Pomola; de aquí en dirección general hacia el Noreste, a lo largo de la divisoria de la cuenca de la Quebrada de Pomola, hasta la conjunción de dicha divisoria con la divisoria de las aguas entre la Quebrada de Cipresales y las Quebradas del Cedrón, Peña Dorada y Pomola propiamente dicha; de este punto, a lo largo de la divisoria de aguas últimamente mencionada, hasta la confluencia de las líneas medias de las Quebradas de Cipresales y de Pomola; de éste, aguas abajo por la línea media de la Quebrada de Pomola, hasta el punto de dicha línea media, más próximo al mojón de Pomola en El Talquezalar; y de este punto en línea recta hasta dicho mojón."*
>
> *[Translation]*
>
> "The delegations of El Salvador and Honduras have agreed on the following section of the frontier line between their two respective countries to the east of the tripoint: from the top of the Montecristo mountain along the watershed between the rivers Frío or Sesecapa and Del Rosario as far as the junction of this watershed with the watershed of the basin of the *quebrada* de Pomola; thereafter in a north-easterly direction along the watershed of the basin of the *quebrada* de Pomola until the junction of this watershed with the watershed between the *quebrada* de Cipresales and the *quebradas* del Cedrón, Peña Dorada and Pomola proper; from that point, along the last-named watershed as far as the intersection of the centre-lines of the *quebradas* of Cipresales and Pomola; thereafter, downstream

along the centre-line of the *quebrada* de Pomola, until the point on that centre-line which is closest to the boundary marker of Pomola at El Talquezalar; and from that point in a straight line as far as that marker."

100. So far as the Chamber is informed, while the Government of El Salvador did not ratify the terms which had been agreed *ad referendum* by its representatives, neither did it denounce them; and Honduras gave no indication that it regarded the consent given by its representatives as retracted on the grounds of non-endorsement by El Salvador of the settlement. The matter remained in abeyance at least until 1972. During the discussion of 1985, Honduras proposed the adoption of the line agreed *ad referendum* in 1934 between Cerro Montecristo and Talquezalar, coupled with a particular line between Talquezalar and the Cerro Zapotal; El Salvador had no difficulty in accepting the first line, but rejected the second.

101. In the circumstances, the Chamber considers that it may adopt the 1935 line, taking account primarily of the fact that the line for the most part follows the watersheds, which provide a clear and unambiguous boundary. As the Chamber has stated (paragraph 46 above) the suitability of topographical features to provide a readily identifiable and convenient boundary is a material aspect where no conclusion unambiguously pointing to another boundary emerges from the documentary material. The line also leaves to Honduras the areas comprised in the Honduran republican titles referred to in paragraph 98 above, and leaves to El Salvador the Hacienda de Montecristo. It is however also material that the line was agreed — if only *ad referendum* — in 1934, probably in view of its practical merits, and the provisional agreement was so long left unchallenged.

102. In this first sector the Chamber has finally to deal with the material put forward by Honduras in its Reply concerning settlement of Honduran nationals in the disputed areas and the exercise there by Honduran authorities of judicial and other functions (paragraph 60 above). In this sector the evidence offered, apart from some 19th century minor criminal procedures, which appear to the Chamber to be without significance in view of the Honduran acquiescence in the Citalá/Ocotepeque limit as the boundary, consists of material relating to the administration of rural schools at El Peñasco, La Laguna, Montecristo, San Rafael and El Volcán, and dating from the period 1952-1969; registration of births in places called Los Planes, La Montanita, Talquezalar, La Laguna, Zapotal, Tontolar and Malcotal (1926 to 1975), and baptismal records back to 1791 in the parish of San José, Ocotepeque, relating to births in La Cuestona, Talquezalar, La Ermita, Los Planes, El Peñasco, and some isolated records of other places. Even assuming that all these localities fall on the El Salvador side of the line of the boundary indicated in this Judgment,

which the Chamber is unable to determine without specific map indications, this material does not appear sufficient by way of *effectivités* to be capable of affecting the decision.

103. The conclusion at which the Chamber arrives in respect of the first disputed sector of the land frontier is as follows. It begins at the tripoint with Guatemala, the "point known as El Trifinio on the summit of the Cerro Montecristo", indicated as point A on Map No. I[1] annexed. The co-ordinates of this point are given by the Parties as follows: Honduras: 14° 25′ 20″ N, 89° 21′ 28″ W; El Salvador: 14° 25′ 10.784″ N, 89° 21′ 21.568″ W. As explained in paragraph 68 above, the discrepancy results solely from the choice of datum; the co-ordinates to be used in this Judgment are derived from the maps used to illustrate the Judgment (supplied by the United States Defense Mapping Agency: see below), and are for this point: 14° 25′ 10″ N, 89° 21′ 20″ W. From this point, the frontier between El Salvador and Honduras runs in a generally easterly direction, following the direct line of watersheds, in accordance with the agreement reached in 1935, and accepted *ad referendum* by the representatives of El Salvador, namely the line drawn on the aerial survey map produced by the surveyor Sidney H. Birdseye, signed by him at Chiquimula, Guatemala, in June 1935, and approved by the delegations of the three States engaged in the Chiquimula negotiations (see sketch-maps Nos. A-2 and A-3). In accordance with the 1935 agreement (paragraph 99 above), the frontier runs "along the watershed between the rivers Frío or Sesecapa and Del Rosario as far as the junction of this watershed with the watershed of the basin of the *quebrada* de Pomola" (point B on Map No. I annexed); "thereafter in a north-easterly direction along the watershed of the basin of the *quebrada* de Pomola until the junction of this watershed with the watershed between the *quebrada* de Cipresales and the *quebradas* del Cedrón, Peña Dorada and Pomola proper" (point C on Map No. I annexed); "from that point, along the last-named watershed as far as the intersection of the centre-lines of the *quebradas* of Cipresales and Pomola" (point D on Map No. I annexed); "thereafter, downstream along the centre-line of the *quebrada* de Pomola, until the point on that centre-line which is closest to the boundary marker of Pomola at El Talquezalar; and from that point in a straight line as far as that marker" (point E on Map No. I annexed). From the boundary marker of El Talquezalar, the frontier continues in a straight line in a south-easterly direction to the boundary marker of the Cerro Piedra Menuda (point F), and thence in a straight line to the boundary marker of the Cerro Zapotal (point G). For the purposes of illustration, the line is indicated on Map No. I annexed, which is composed of the following sheets of the United States of America

[1] A copy of the maps annexed to the Judgment will be found in a pocket at the end of this fascicle or inside the back cover of the volume of *I.C.J. Reports 1992. [Note by the Registry.]*

Defense Mapping Agency 1 : 50,000 maps, supplied to the Chamber by the courtesy of the United States Government:

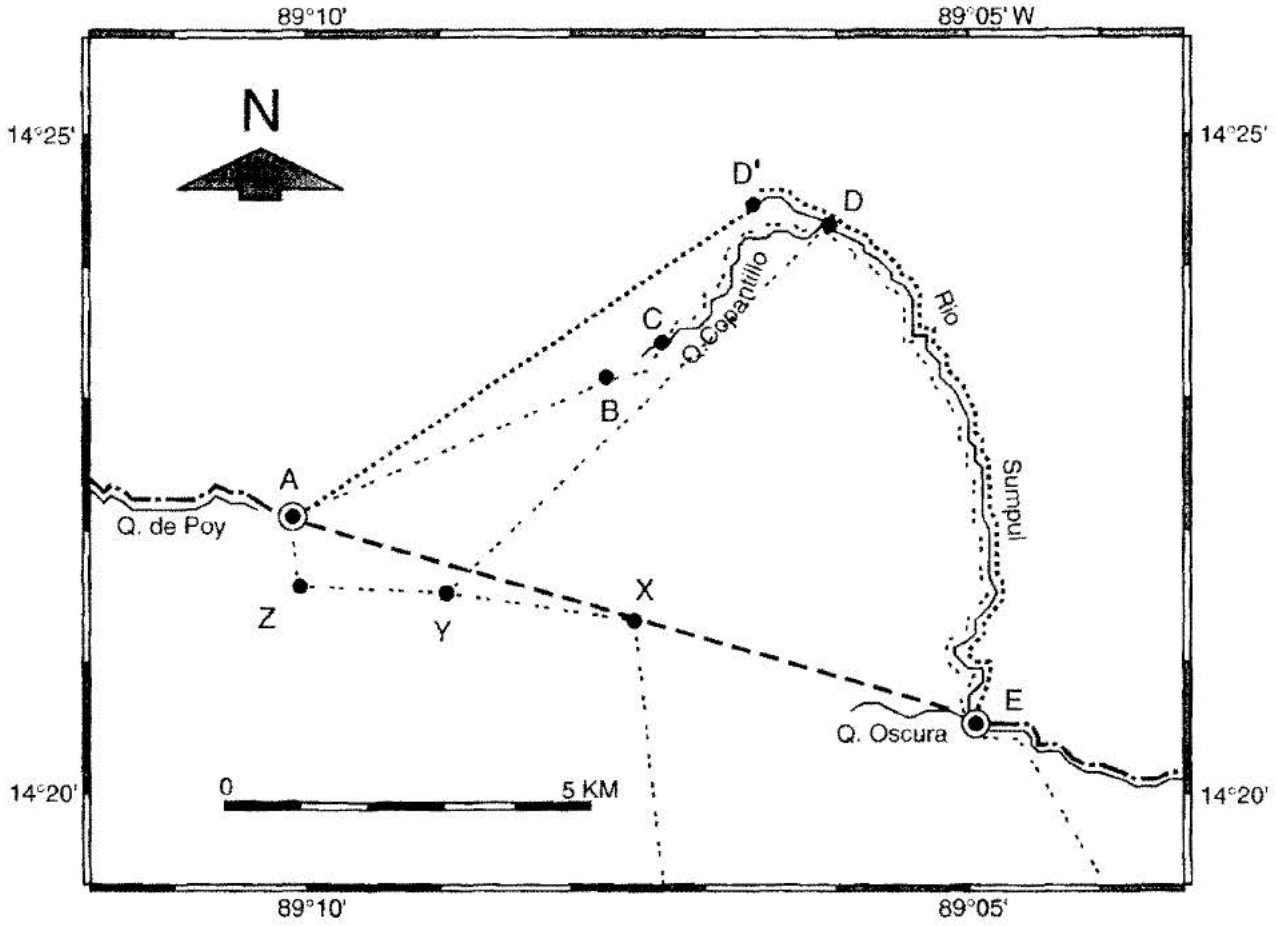
Series E752	Sheet 2359 II	Edition 2-DMA
Series E754	Sheet 2359 III	Edition 1-DMA.

The Chamber notes that concrete boundary markers were erected on the Cerro Piedra Menuda and the Cerro Zapotal for the purposes of the 1935 aerial survey, and that the co-ordinates of the Cerro Zapotal are agreed by both Parties to be 14° 23′ 26″ N and 89° 14′ 43″ W, which also correspond to the co-ordinates derived from the United States Defense Mapping Agency maps annexed to the Judgment.

* * *

SECOND SECTOR OF THE LAND BOUNDARY

104. The second disputed sector of the land boundary lies between the Peña de Cayaguanca, the most easterly point of the second agreed section of the frontier (point A on sketch-map No. B-1 annexed), and the confluence of the stream of Chiquita or Oscura with the river Sumpul, the most westerly point of the third agreed section (point E on sketch-map No. B-1 annexed). That sketch-map shows the area in dispute, as defined by the divergent claims of the Parties as to the position of the frontier: Honduras claims that the boundary should run in a straight line from point A to point E on the map, while El Salvador claims that it should follow the course A-D′-D-E. Honduras bases its claim principally on a *título* of 1742, that of Jupula. El Salvador, while referring also to 17th century records, relies principally on a Salvadorian republican title granted shortly after independence: it has been referred to as that of Dulce Nombre de la Palma, though the lands to which it applies were called Río Chiquito and Sesesmiles, and were granted in 1833 to the community of La Palma in the Republic of El Salvador on the basis of a survey effected in 1829. In the contention of Honduras, its rights on the basis of the *uti possidetis juris* of 1821, based on the 1742 Jupula title, extend to the whole of the area in dispute. El Salvador concedes that the title of Dulce Nombre de la Palma does not extend to the whole of the area: it claims that the boundary of the title, in the relevant area, followed the line A-B-C-D-E on sketch-map No. B-1, thus excluding a narrow triangular strip of land, between that line and the line A-D′-D-E, which El Salvador originally characterized as *tierras realengas*, but claimed at the hearings solely on the basis of Salvadorian *effectivités* in the area. This claim will be examined in due course; it will first be convenient to examine the main titles relied on by the Parties in chronological order, reserving for the present the question of the weight to be attached to a republican title of 1829-1833 for purposes of the *uti possidetis juris* of 1821 (see paragraph 56 above).



SKETCH-MAP No. B-1

Second Sector — Disputed Area

- Agreed boundary
- El Salvador claimed boundary
- Honduras claimed boundary
- Other claims mentioned in Judgment
- Endpoint of disputed sector

105. The title of 1742, relied upon by Honduras, was issued in the context of the long-standing dispute, already referred to (paragraph 70 above) between the Indians of Ocotepeque in the province of Gracias a Dios, and those of Citalá, in the province of San Salvador. Application was made to the *Juez Privativo del Real Derecho de Tierras* of the Audiencia of Guatemala, who designated a *Juez Subdelegado* from each of the two provinces concerned to summon the two communities and to endeavour to settle the dispute. The principal outcome, as recorded in the title, was the confirmation and agreement of the boundaries of the lands of Jupula, over which the Indians of Ocotepeque claimed to have rights, which were attributed to the Indians of Citalá. These lands lie to the south-west of the area now in dispute, and on the El Salvador side of the second agreed section of the international frontier, as indicated on Map B.6.3 to the Honduran Memorial; no question therefore arises for the Chamber so far as they are concerned. It was however recorded that the inhabitants of Ocotepeque, having recognized the entitlement of the inhabitants of Citalá to the land surveyed, also made the following request:

> *". . . solo suplican se les deje libre una montaña llamada Cayaguanca que está arriba del río de Jupula que es realenga y tienen cultivada los naturales del barrio del Señor San Sebastián del dicho su pueblo con las que quedan contentos y recompensados por las de Jupula . . ."*
>
> *[Translation]*
>
> ". . . they merely request that there be left free for them a mountain called Cayaguanca which is above the Jupula river, which is crown land, and which the natives of the quarter of San Sebastian of the said town have cultivated, with which they would consider themselves satisfied and compensated for those of Jupula . . ."

106. A further indication of the location of the "mountain called Cayaguanca which is above the Jupula river" is provided by the following passage in the title: the landmarks indicating the division between Citalá lands and Ocotepeque lands were surveyed

> *". . . hasta que se llegó al pie de un peñasco blanco que está en la cumbre de un cerro muy alto en donde se refrendó montón de piedras que se halló en el título mencionado en cuyo paraje los naturales del pueblo de Ocotepeque dijeron que la montaña que tenian pedida como consta de estos autos era la que corría de este mojón último para el Oriente que llamen 'Cayaguanca' que es la que cultivan los de Ocotepeque y que dejandoles esta montaña quedan contentos . . ."*
>
> *[Translation]*
>
> ". . . until reaching the foot of a white rock which is on the summit of a very high hill, where it was confirmed that there was a pile of stones mentioned in the said title-deed, at which place the natives of the town of Ocotepeque said that the mountain they had asked for, as is

herein recorded, was the one which ran from this landmark to the east, called Cayaguanca, which is the one the people of Ocotepeque cultivate, and that if this mountain were left to them they would be satisfied . . ."

The two land judges in 1742 recorded further that

". . . *mandamos a los de Ocotepeque usen de la dicha montaña* . . ."

[Translation]

". . . we command the people of Ocotepeque to make use of the said mountain . . ."

107. On this basis, Honduras claims pursuant to the *uti possidetis juris* of 1821, that the "mountain of Cayaguanca" must fall within Honduras; and it identifies the whole area in dispute in this sector, and further land to the north-west, with the "mountain of Cayaguanca". It therefore claims that the frontier should follow the line A-E indicated on sketch-map No. B-1 annexed hereto. It is conceded that the 1742 Jupula title gives no indication of the boundaries of the mountain, other than that it lay to the east of the boundary marker described in the extract from the title set out above; both Parties accept that that boundary marker corresponds to the point now known as the Peña de Cayaguanca, the point from which the boundary in this second disputed sector will run. Honduras suggests that the limits of the mountain of Cayaguanca were well known to those concerned in 1742, and argues that the line it puts forward "is in conformity with a reasonable interpretation of an imprecise title", and "in harmony with the text and context"; it also states that this is the line which it has always claimed to be the boundary between the two Republics.

108. Independently of the problem of ascertaining the precise location and extent of the "mountain of Cayaguanca", a number of objections of substance have been made by El Salvador to the reliance of Honduras on the Jupula title. Honduras claims that by virtue of the 1742 proceedings, the community of Ocotepeque acquired rights over the mountain of Cayaguanca which was *tierras realengas*. El Salvador claims that on the contrary the provision for the use of the mountain by the community of Ocotepeque was not a grant of a formal title, but merely a permission to use the land, did not constitute an element of the operative part of the deed, and did not comply with contemporary legal requirements. In the view of the Chamber, however, it is not necessary for it to go into the question of the precise legal effect, under Spanish colonial law, of the Jupula title as regards the mountain of Cayaguanca. The title is evidence that in 1742 the mountain of Cayaguanca was *tierras realengas* (see the first passage quoted above); and since the community of Ocotepeque, situate in the province of Gracias a Dios, was authorized to cultivate it, it may be concluded, in the absence of evidence to the contrary, that the mountain was *tierras realengas* of that province. On this basis, if there was no relevant change in the provincial boundaries between 1742 and 1821, the

mountain of Cayaguanca must on independence have formed part of Honduras on the basis of the *uti possidetis juris.* It is however another matter to determine the location and extent of the mountain.

109. El Salvador disputes the claim of Honduras that the "mountain of Cayaguanca" is in, and extends over the whole of, the disputed area in this sector. In this respect it interprets the words *"arriba del río de Jupula"* ("above the river Jupula") as signifying that the mountain of Cayaguanca is in Honduras north of the second agreed section of the frontier, because on the Honduran map "the río de Jupula is shown as ending before the meridian of the peak of Cayaguanca", so that the "the mountain called Cayaguanca is situated symmetrically above the río de Jupula in the territory of Honduras". However, El Salvador's own maps show the Río Jupula rising some 2-3 kilometres further east. Furthermore, in the view of the Chamber, to interpret "above" in the sense of "to the north of" is to strain the ordinary meaning of the word "above", and could be misplaced, with reference to a period when the convention of placing the north at the top of a map was not habitual. The various contemporary sketch-plans produced with the survey records in these proceedings are aligned in whatever way most conveniently fits the paper, so that north may be at the top, bottom or side of the sheet. The meticulously drawn map of the parishes of the province of San Miguel drawn in 1804 and submitted by Honduras places the north at the bottom of the map. The Chamber considers that the expression *"arriba del río de Jupula"* does not detract from — nor add anything useful to — the geographical indication elsewhere in the 1742 document that the mountain was to the east of the most easterly boundary marker of Jupula.

110. El Salvador also relies on the 1818 title of Ocotepeque, which has already been referred to (paragraphs 87-89 above) in connection with the first disputed sector of the land boundary. This title was issued to the community of Ocotepeque for the purpose of re-establishment of the boundary markers of their lands, and it is the contention of El Salvador that the "mountain of Cayaguanca" would necessarily have been included in the 1818 title if it was truly awarded to the inhabitants of Ocotepeque in 1742. The survey of 1818 began and ended at the "Cerro de Cayaguanca", which appears to be identical with the "Peña de Cayaguanca", which is the endpoint of the present disputed sector. Counsel for Honduras conceded at the hearings that what is claimed as the "mountain of Cayaguanca" did not fall within the title of Ocotepeque as surveyed in 1818. El Salvador contends that this indicates that the community of Ocotepeque did not possess rights over the "mountain of Cayaguanca", but the Chamber does not consider that this conclusion follows. In view of the status of the mountain of Cayaguanca in 1742 as *tierras realengas* of the province of Gracias a Dios, the fact that an Indian community could enjoy rights of

various kinds, and the fact that only the community of Citalá, not that of Ocotepeque, received a *título* in 1742 (paragraph 105 above) over lands over which Ocotepeque had claimed rights, the Chamber considers that the fact that Cayaguanca does not appear in the 1818 Ocotepeque title does not imply that the Ocotepeque community had no right to land further south-east, from which it could be argued that the provincial boundary was defined, in the area now under consideration, by the south-east boundary of the 1818 Ocotepeque title. It may be noted in passing that the lands of Ocotepeque were the subject of the republican title of San Andrés de Ocotepeque, granted by Honduras in 1914 (see paragraph 78 above); the 1914 survey apparently covered the same ground as the 1818 Ocotepeque survey, so that this 1914 title does not appear to assist the Chamber further, in this respect.

111. The position then appears to the Chamber to be that in 1821 the Indians of Ocotepeque, in the province of Gracias a Dios, were entitled to the lands re-surveyed in 1818, but were in addition entitled to rights of usage over the "mountain of Cayaguanca" somewhere to the east — which could also mean north-east or south-east; and that the area subject to these rights, being *tierras realengas* of the province of Gracias a Dios, became Honduran territory with the accession of the two States to independence. The problem however remains of determining the extent of the area in question. The Chamber sees no evidence of its boundaries, and in particular none to support the Honduran claim that the area referred to in 1742 as the "mountain of Cayaguanca" extended as far east as the river Sumpul, and was bounded by the line A-E on sketch-map No. B-1, as claimed by Honduras (see paragraph 107 above). It is possible to regard as doubtful an interpretation of the 1742 title as generating a straight line connecting the two endpoints, only to be defined in 1980, of a disputed sector of the inter-State frontier.

112. It is appropriate therefore next to consider what light may be thrown on the matter by the republican title of Dulce Nombre de la Palma. As already explained (paragraph 56 above), the Parties have disputed the relevance or value as evidence of the republican titles. In this specific case the Chamber considers that the title of Dulce Nombre de la Palma is a piece of evidence which the Chamber is entitled to take into account, because the 1742 Jupula title is not capable of showing exactly the territorial expanse of the mountain of Cayaguanca to which it refers, one of the situations contemplated in the dictum of the Chamber in the *Frontier Dispute* case quoted in paragraph 61 above. Thus the title of Dulce Nombre de la Palma is of significance, in that it shows how the *uti possidetis juris* position was understood at that time; for it was granted very shortly after the independence of the two States from Spain, and indeed at a time when they were both still constituent States of the Federal Republic of Central America. It shows that the system for surveying and granting lands to

Indian communities had changed very little with the breaking of the link with Spain; it covers most of the areas in dispute; the record shows that the neighbouring Honduran community of Ocotepeque was notified of the survey; there is no comparable pre-independence title, or other evidence of the pre-independence period, with which it can be shown to conflict; and it has not been suggested that the Dulce Nombre de la Palma title was issued in order to strengthen the territorial claim of the Republic of El Salvador.

113. One of the boundaries of the title of Dulce Nombre de la Palma about which there can be no dispute is the river Sumpul, which determines the eastward extent of the lands included in the title. Honduras excludes from its claim the southern part of those lands, between the Cerrito de Llarunconte (point Z on sketch-map No. B-1 annexed) and the Peñasco Blanco (point X on the sketch-map), i.e., the area A-X-Y-Z-A (but see paragraph 126 below). The boundary of the title which is disputed is the north-western side, between the junction of the Sumpul river with the *quebrada* del Copantillo (point D on sketch-map No. B-1), and the Peñasco Blanco (point X on the sketch-map). The two versions of this boundary line of the title of Dulce Nombre de la Palma put forward by the Parties are indicated on sketch-map No. B-1: the line claimed by El Salvador is the line X-Y-Z-A-B-C-D; that claimed by Honduras is the line X-Y-D. The passage in the title itself which has provoked these conflicting interpretations is as follows:

> *"En treinta y uno del presente mes siguiendo el mismo rumbo desde la dicha Piedra hasta la unión de la quebrada del Copantillo con el Río Sumpul aguas arriba de este, llegamos treinta y nueve cuerdas, y aquí se plantó una Cruz calzada de piedras por mojón, y de este punto se cambio el rumbo aguas arriba de la quebradita al Sud-Oeste cuatro grados al Sud-SudOeste y se midieron treinta y cinco más hasta el parage llamado el pital, donde quedando otra igual cruz, y piedras por mojón, . . . En primero de agosto . . . en el dicho parage el pital siguiendo el mismo rumbo se tiró la cuerda y llegamos a la cercanía del copo de Cayaguanca con sesenta dichas, de donde prosiguiendo todavía este rumbo se tiraron treinta y siete mas para llegar a la cabecera del rio de Jupula, y quedando por mojón otra Cruz y piedras . . . "*
>
> *[Translation]*
>
> "On the thirty-first of the present month and following the same course from the afore-mentioned Rock [sc., the Piedra del Púlpito] to the confluence of the *quebrada* del Copantillo with the Sumpul River, following the river upstream, we extended the cord 39 times, and here we planted a cross surrounded with stones as landmark, and from here we changed course as follows: upstream of the *quebradita* to the south-west with four degrees of declination to the south-south-west, and walking along this route we measured 35 cords more, to the

> place called El Pital, where we left another similar cross and stones as landmark . . . On August the first, . . . beginning at the place of El Pital and following the same direction as yesterday, we extended the cord and came near to the Copo de Cayaguanca, which was 60 of the said cords, wherefrom and still in that direction 37 more were measured to reach the headwaters of the Jupula River, and we left as landmark another cross and stones . . ."

114. The contention of Honduras, on the basis of this text, is that from the confluence of the *quebrada* del Copantillo with the river Sumpul, the survey party travelled continuously in a straight line, in the direction south-south-west; it follows that they left to the west of the line of Honduras's interpretation of the La Palma title, not merely the Cerro El Pital but also the Cerro de Cayaguanca. El Salvador however contends that the survey party turned up the *quebrada* del Copantillo, in a generally south-south-west direction, and followed it to the "place called El Pital". The Chamber considers that this is the more convincing interpretation of the document. From the contours drawn on the maps submitted, it is clear that to follow a straight line on a consistent bearing would have been so difficult as to be barely practicable; and it is highly unlikely that the survey party, who were engaged in laying down a boundary, would have ignored so clear a landmark as a stream flowing in an appropriate direction, to follow a straight line roughly parallel to it, whose position would be difficult to define and re-establish. Some significance may also be attached to the fact that two of the Honduran republican titles brought to the Chamber's notice (see paragraph 120 below), those of the Volcán de Cayaguanca, granted in 1824 and 1838, are bounded to the south-east, according to Honduras's delineation of them on the map, by the *quebrada* del Copantillo (though the text of the Honduran republican titles themselves makes no mention of it).

115. On the other hand, from the head of the *quebrada* del Copantillo onwards, the Chamber does find the interpretation of the title advanced by Honduras more convincing than that of El Salvador. The question to be resolved is the interpretation of the expression *"el parage llamado el pital"*, the place called El Pital, in the 1829 survey record. In the view of El Salvador, this refers to the peak called the Cerro El Pital; but Honduras observes that this would signify that the survey party climbed the Cerro El Pital, which is 2,780 metres high, and if they had done so in one day, the fact would surely have been recorded. This is however to overlook that the survey party was not starting from sea-level; the Piedra del Púlpito, where they started from that day, is already at an elevation of some 1,850 metres, according to the maps submitted by the Parties. Honduras however also draws attention to the use of the word *"parage"* ("place") rather than any word signifying a peak, which would surely have been used if the Cerro El Pital had been meant. The Chamber thinks that this is a valid

point: if it had been intended to indicate that the survey line passed over the summit of the Cerro El Pital, the neutral word *"parage"* would not have been used. For reasons now to be considered, the line of the survey, in the view of the Chamber, passed over the lower peak or spur indicated on the map produced by El Salvador as "El Burro", and this is probably therefore the "*parage* called El Pital".

116. After passing the "*parage* called El Pital", the *"Copo de Cayaguanca"* and the headwaters of the river Jupula (see quotation above), the survey continued as follows:

> *"En tres del citado mes yo el referido comisionado y asistentes advertido de la inaccecibilidad del antedicho mojón a la loma de Santa Rosa me constituí a ella por diverso camino en donde hallé el lindero divisorio que empalma con los egidos de este pueblo conforme al dicho general y al plano del Ciudadano agrimensor Camino. Estando pues en el, puse la brújula en la rosa hacia el anterior mojón y apuntó al Oeste NorOeste, dos grados al NorOeste, quedando este de Santa Rosa (Alias Marrano) con respecto de aquel al mismo rumbo que trajo la cuerda de la quebrada del Copantillo. En este citado me convencí de lo impenetrable de los quebrados que se preparan de este punto al Peñasco Blanco, con los que me resolví a hacer otra igual operación que en el anterior, y apuntó hacia el Este-Sud-Este, dos grados al Sud-Este. Demarcado así este lugar por la coincidencia de los rumbos, tomé el compás de la escala y medí al mojón cabecera del río de Jupula ochenta y cuatro y media cuerdas, y al dicho Peñasco Blanco, ciento veinte y una."*
>
> *[Translation]*
>
> "On the third of the said month, I, the said Commissioner and assistants, having observed the inaccessibility from the beforesaid landmark to the hillock of Santa Rosa, I reached it by a different route, where I found the dividing boundary with the common lands of this town according to general report and to the sketch of the citizen Surveyor Caminos. From there, therefore, I set the magnetic needle on the Nautical rose, and oriented towards the preceding landmark it pointed to the west-north-west, two degrees to the north-west, so that to this of Santa Rosa (also named Marrano) in relation to that one, is the same direction kept by the cord from the *quebrada* del Copantillo. The same day I reached the conviction of the impenetrability of the ravines that lie between here and the point of Peñasco Blanco, so that I decided to make the same operation as with the precedent landmark, and it pointed to the east-south-east, two degrees to the south-east. Having thus demarcated this place by means of the coincidence of courses, I took the scaled compass and measured 84.5 cords to the landmark of the headwaters of the Jupula, and 121 to the said Peñasco Blanco."

117. This survey record does not make clear what procedure the surveyor followed to locate the position of the Santa Rosa hillock. The record was referred to a contemporary Salvadorian revising surveyor, who found some ambiguities in the bearings; from the original record and plan, the comments of the revising surveyor and his revised plan it can be deduced that the hillock of Santa Rosa is at the intersection of the prolongation of the general direction of the *quebrada* del Copantillo the bearing of which was recorded by the surveyor as SW 4° SSW (or S 41° W in more modern notation), with a bearing of WNW 2° NW (or W 24½° N) from Peñasco Blanco. The distances from the Santa Rosa hillock to the headwaters of the Jupula river and to Peñasco Blanco were presumably scaled by the surveyor from his sketch-plan. The title of Dulce Nombre de la Palma was granted on this basis. It is thus clear that from the point where the survey left the *quebrada* del Copantillo to the Santa Rosa hillock the line was essentially a straight one on a consistent bearing of S 41° W, corresponding to the general direction of the *quebrada* del Copantillo itself, and this is consistent with the sketch-plan prepared by the surveyor and included in the title. Since magnetic variation in the region at the time was some 7° E, the 1829 magnetic bearing of S 41° W is equal to about S 48° W true.

118. However the line mapped by El Salvador as corresponding to this survey makes two changes of direction, each amounting to almost a right angle, at the points identified by El Salvador as the "Copo de Cayaguanca" and the "headwater of the Jupula river". Without these angles, it is impossible to make the line arrive at the Peña de Cayaguanca, the terminal point of the second agreed section of the frontier, and which El Salvador identifies with the "Copo de Cayaguanca" referred to in the 1829 survey. The 1829 survey does not however state that the line ran to the Copo de Cayaguanca, but merely near it: *". . . se tiró la cuerda y llegamos a la cercanía del Copo de Cayaguanca . . ."* (". . . we extended the cord and came to near the Copo de Cayaguanca . . ."). In the Chamber's view, furthermore, the identification of the 1829 Copo de Cayaguanca with the agreed position of the Peña de Cayaguanca is not self-evident. The 1980 General Treaty of Peace indicates that the Peña de Cayaguanca is near (or above) the source of the *quebrada* known as, *inter alia*, the *quebrada* Pacaya (Art. 16, Second Section); this apparently follows the identification in the records of the Cruz-Letona negotiations in 1884, where mention is made of "the mountain of Cayaguanca, between the villages of Citalá and Ocotepeque, where the *quebrada* de Las Pacayas has its source". In 1889, the geographer Bustamente referred to the Jupula boundary marker of the *"peñasco blanco"* as being ". . . on the summit of the mountain called Cayaguanca . . ." *(". . . que está en la cumbre de la montaña llamada Cayaguanca . . .")*. On the other hand Honduras, as already noted, interprets the reference in the 1742 title of Jupula to the "mountain of

Cayaguanca" as signifying the whole massif of which the Cerro El Pital is the highest point.

119. Similarly, the point at which the line drawn by El Salvador meets the river Jupula is identified as the "headwaters" *(cabecera)* of the Jupula, mentioned in the 1829 survey; yet, as noted above (paragraph 109), on El Salvador's own map, the river is shown as rising some 2-3 kilometres to the east of this point, fed by the *quebrada* El Aguacate and the *quebrada* El Botoncillal. It appears, from a map attached to the El Salvador Counter-Memorial, that this interpretation has the effect of making the 1833 Dulce Nombre de la Palma title contiguous, on the west, with the Jupula title of 1742 even though the two marker points in that title are differently specified. Furthermore, El Salvador's identification of the "Peñasco Blanco" referred to in the 1829 title of Dulce Nombre de la Palma is inconsistent with its placing of the north-west landmark of the Jupula title, also referred to as "Peñasco Blanco".

120. The Chamber considers that the title of Dulce Nombre de la Palma must be interpreted according to its terms, and that if it is impossible to read it as extending as far west as what is today called the Peña de Cayaguanca and the source of the *quebrada* de Pacaya, or as coterminous with the land surveyed in 1742 for the Jupula title, the conclusion has to be accepted that there was an intervening area not covered by either title. The presence of such an area was in fact to be expected, given the reference in 1742 to the rights of the Indian community of Ocotepeque over the "mountain of Cayaguanca" eastwards of the Jupula title. In this connection, the Chamber notes that the community of Ocotepeque was summoned to appear when the survey of Dulce Nombre de la Palma was to be carried out, but did not do so, or present a rival title. This however is quite consistent with the existence of rights of Ocotepeque over the mountain of Cayaguanca since 1742, which rights had not been recorded in a formal title embodying a survey, which could be produced.

121. The Chamber concludes that the north-western boundary of the title of Dulce Nombre de la Palma runs from the confluence of the *quebrada* del Copantillo with the river Sumpul, up the *quebrada* del Copantillo to its source, from there to the ridge or peak marked on El Salvador's Map 6.II as "El Burro", and on Honduran maps as "Piedra Rajada", and thence in a straight line on a bearing of approximately S 48° W (see paragraph 115 above) to a hill indicated on the maps of both Parties as the Loma de Los Encinos. This hill, which lies on the correct bearing and close to a settlement marked on those maps as Santa Rosa, appears to the Chamber to be, in all probability, the "Santa Rosa hillock" referred to in the 1829 survey. The further course of the boundary of Dulce Nombre de la Palma is not material to the dispute before the Chamber, since the Loma de Los Encinos is already in territory recognized by Honduras as part of El Salvador.

122. The title of Dulce Nombre de la Palma is not the only republican title granted in this area. Honduras has drawn attention to the existence of three republican titles in the disputed area issued by the authorities of Honduras: Volcán de Cayaguanca (1824); Volcán de Cayaguanca (1838); and Las Nubes (1886). The first of these, that of 1824, in fact antedates the title of Dulce Nombre de la Palma; as already noted, neither this title nor that of 1838 conflicts with the Dulce Nombre de la Palma title, but on the contrary appear to be coterminous with it along the two banks of the *quebrada* del Copantillo (paragraph 113 above). The republican title of Las Nubes on the other hand, according to Honduras's delineation of it on the map, falls within the area of land which the Chamber has found to be covered by the Dulce Nombre de la Palma title. The Chamber does not, however, consider that the Honduran mapping of the title of Las Nubes is correct. From the text of the title submitted to the Chamber it is clear that the lands surveyed abutted to the south-east on lands of a title of 1856 called Botoncillal, or San Martín de Cayaguanca, the text of which was reproduced in the Las Nubes title. From that title it is clear that the Botoncillal lands abutted in turn on those of La Palma. The Chamber concludes that there is here no conflict with republican land-titles of Honduras which might throw doubt on the Chamber's interpretation of the title of Dulce Nombre de La Palma of El Salvador.

123. Mention has been made of the *effectivités* claimed by each of the Parties, which the Chamber considers that it should examine, to ascertain whether they support the conclusion based on the title of Dulce Nombre de la Palma. Reference to the map supplied in the Memorial of El Salvador to show the human settlements in this sector which, it is claimed, are composed of Salvadorians and administered by El Salvador, shows that, with one possible exception, they all lie within the area of the Dulce Nombre de la Palma title as interpreted by the Chamber. The exception is the Hacienda de Sumpul, the precise position of which is not clear: in the Memorial of El Salvador it is referred to as being to the north of the *quebrada* del Copantillo, which would place it outside the 1829 title: on the map presented during the hearings the name "Sumpul" is placed to the south of that *quebrada*, within the area claimed as the Dulce Nombre de la Palma title. In any event, the Chamber notes that none of the evidence of administration by El Salvador in this sector supplied with the Memorial relates to Sumpul. Honduras has also presented evidence (cf. paragraph 60 above) of the existence of settlements of Honduran nationals and the exercise by Honduran authorities of their functions in the area. This consists essentially of records of administration of a rural school at Río Chiquito, real property transactions registered in Ocotepeque of various pieces of land (including "Las Nubes": see paragraph 122 above), a few birth and death registrations and baptismal registrations with indications of place of birth. Assuming Río Chiquito to be where indicated on both Parties' maps, this shows that the school in question will lie on the El Salvador side of the boundary line; but neither this circumstance nor

the other material presented appear to the Chamber to rank as an *effectivité* capable of affecting the decision. The Chamber concludes that there is no reason to alter its finding as to the position of the boundary in this region.

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124. It is appropriate at this point to turn to the area in this sector which is claimed by El Salvador outside the lands of Dulce Nombre de La Palma, namely the narrow triangular strip of land along and outside the north-west boundary of the Dulce Nombre de la Palma title (i.e., as interpreted by El Salvador, between the lines A-D'-D and A-B-C-D on sketch-map No. B-1). In its Memorial El Salvador referred in support of this claim to documents of 1695 and 1718 referring to lands in the "Valle de Sumpul", but it does not appear possible to identify the location of these. According to the 1829 Dulce Nombre de La Palma title, the representatives of Citalá then stated that the land then surveyed abutted to the north on the State of Honduras. It was stated by counsel at the hearings that "This marginal area is totally occupied by citizens of El Salvador, and is administered and run by the authorities and public services of El Salvador". However no evidence to that effect has been laid before the Chamber. El Salvador relies on a passage in the Reply of Honduras which it regards as an admission by Honduras of the existence of Salvadorian *effectivités* in this area. The passage in question reads as follows:

> "After the critical date of 1821, effective practice in this sector proves to be incomplete in itself and perhaps insufficient for Honduran sovereignty over the Cayaguanca mountain sector to be claimed independently and beyond doubt. But this is not Honduras's argument in the present case. On the contrary, what it is doing is submitting to the Chamber of the Court complementary *a posteriori* arguments to confirm the *uti possidetis juris*, not as a substitute for it."

125. The Chamber is unable to read this as an admission of El Salvador's *effectivités* in the sector. The Chamber recognizes a Honduran entitlement, on the basis of the 1821 *uti possidetis juris*, outside the bounds of the Dulce Nombre de la Palma title, so that the question whether "effective practice" is sufficient to show Honduran sovereignty does not arise. In any event, in a remote and mountainous region like this, the absence of Honduran *effectivités* does not necessarily imply the presence, throughout the region, of Salvadorian *effectivités*. There being no other evidence to support the claim of El Salvador to the narrow triangular strip between

the source of the Sumpul and the Peña de Cayaguanca, the Chamber holds that it appertains to Honduras, having formed part of the "mountain of Cayaguanca" attributed to the community of Ocotepeque in 1742.

126. The only question remaining in this sector is that part of the boundary which extends between the Peña de Cayaguanca (point A), terminus of the second agreed sector of the boundary, and the western boundary of the area covered by the title of Dulce Nombre de la Palma. The Chamber considers that El Salvador has not made good any claim to any area further west than the Loma de Los Encinos or "Santa Rosa hillock", the most westerly point of the title of Dulce Nombre de la Palma. Honduras has only asserted a claim, on the basis of the rights of Ocotepeque to the "mountain of Cayaguanca", so far south as a straight line (line A-X-E on sketch-map No. B-1) joining the Peña de Cayaguanca to the beginning of the next agreed sector — the confluence of the river Sumpul and the *quebrada* Chiquita or Oscura. The Chamber, however, considers that neither the principle *ne ultra petita*, nor any suggested acquiescence by Honduras in the boundary asserted by it, debars the Chamber from enquiry whether the "mountain of Cayaguanca" might have extended further south, so as to be coterminous with the eastern boundary of the Jupula title. In view of the reference in that title to Cayaguanca as lying to the east of the most easterly landmark of Jupula, the Chamber considers that the area between the Jupula lands and the La Palma lands belongs to Honduras, and that in the absence of any other criteria for determining the southward extent of that area, the boundary line between the Peña de Cayaguanca and the Loma de Los Encinos should be a straight line.

127. Accordingly, the conclusion of the Chamber as to the course of the frontier in this sector is as follows; for purposes of illustration, the line is indicated on Map No. II[1] annexed, which is taken from Series E752, Sheet 2359 II, Edition 1-DMA of the United States of America Defense Mapping Agency 1:50,000 maps. From point A on Map No. II annexed, the Peña de Cayaguanca, the frontier runs in a straight line somewhat south of east to the Loma de Los Encinos (point B on Map No. II), and from there in a straight line on a bearing of N 48° E, to the hill shown on the map produced by El Salvador as El Burro (and on the Honduran maps and the United States Defense Mapping Agency maps as Piedra Rajada) (point C on Map No. II). The frontier then takes the shortest course to the head of the *quebrada* del Copantillo, and follows the *quebrada* del Copantillo downstream to its confluence with the river Sumpul (point D on Map No. II), and follows the river Sumpul in turn downstream until

[1] A copy of the maps annexed to the Judgment will be found in a pocket at the end of this fascicle or inside the back cover of the volume of *I.C.J. Reports 1992. [Note by the Registry.]*

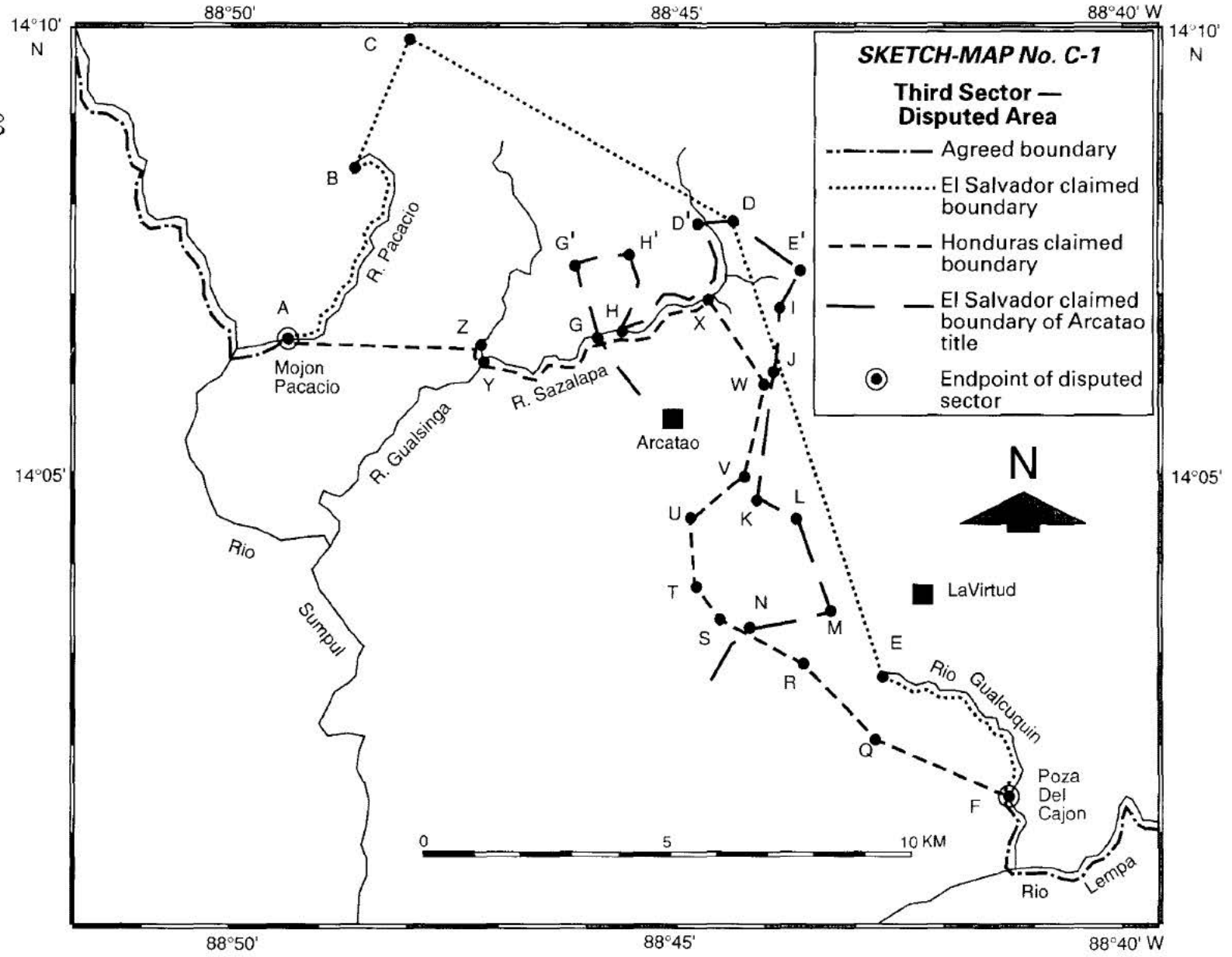
its confluence with the *quebrada* Chiquita or Oscura (point E on Map No. II).

* * *

THIRD SECTOR OF THE LAND BOUNDARY

128. The third sector of the land boundary in dispute is that between the boundary marker of the Pacacio, on the river of that name, and the boundary marker called Poza del Cajón, on the river known as El Amatillo or Gualcuquín. The respective claims of the Parties are illustrated on sketch-map No. C-1 annexed, and are as follows. El Salvador claims that from the boundary marker of the Pacacio (point A on sketch-map No. C-1), the line should follow the Pacacio river upstream to its source, identified by El Salvador as point B on sketch-map No. C-1; from there in a straight line to the La Pintal Hill (point C); from there in a straight line to the El Fraile Hill (point D); from there in a straight line to the headwaters of the Gualcuquín river (point E), and along that river downstream to the Poza del Cajón (point F). Honduras claims that the following should be the line (the names given to the various boundary markers are those given to them by Honduras): from the boundary marker of the Pacacio in a straight line to the confluence of the *quebrada* La Puerta with the Gualsinga river (point Z on sketch-map No. C-1), and from there downstream along the river to its confluence with the river Sazalapa (or Zazalapa), the Poza del Toro (point Y); from there up the river Sazalapa (through points G and H on the sketch-map) to the Poza de la Golondrina (point X); from there in a series of straight lines to the La Cañada, Guanacaste or Platanar boundary marker (point W), the El Portillo boundary marker (point V), the Guampa boundary marker (point U), the Loma Redonda (point T), the El Ocotillo boundary marker (point S), the Barranco Blanco boundary marker (point R), the Cerro de la Bolsa (point Q), and finally from there in a straight line to the Poza del Cajón (point F). In terms of the grounds asserted for the claims of the Parties, the disputed area may be divided into three parts.

129. In the first of these three parts, the north-western area, between the lines A-B-C-D and A-Z-Y-G-H-X-D, Honduras invokes the *uti possidetis juris* of 1821, in reliance on a number of land titles granted between 1719 and 1779. El Salvador on the contrary claims the major part of the area on the basis of *effectivités* or arguments of a human nature, namely "long term exercise of effective jurisdiction over the diverse aspects of the life of the communities affected"; it does however claim the area bounded by the line G-G'-H'-H as part of the lands of the title of San Bartolomé de Arcatao of 1724. In the second part, the section between the line X-W-V-U-T-S-R and the line X-D'-D-E'-I-J-K-L-M-N, the essential question is the validity, extent and relationship to each other of the Arcatao title relied on by El Salvador and two titles, of 1741 and 1779, invoked by Honduras.


SKETCH-MAP No. C-1
Third Sector — Disputed Area
Agreed boundary
El Salvador claimed boundary
Honduras claimed boundary
El Salvador claimed boundary of Arcatao title
Endpoint of disputed sector
14°10' N
88°50'
88°45'
88°40' W
14°05'
C
B
A
Z
Y
D
D'
E'
I
J
W
X
G
H
G'
H'
V
U
K
L
T
N
M
S
R
Q
E
F
Mojon Pacacio
R. Pacacio
R. Sazalapa
R. Gualsinga
Arcatao
LaVirtud
Rio Sumpul
Rio Gualcuquin
Poza Del Cajon
Rio Lempa
N
0
5
10 KM

In this region El Salvador is not claiming the area D-E′-I-J-D, notwithstanding the fact that it considers that this area lies within the limits of the 1724 Arcatao title. In the third part, the south-east section, between the lines S-R-Q-F and J-E-F, there is a similar conflict between the Arcatao title and a lost title, that of Nombre de Jesús in the province of San Salvador, on the one hand, and the Honduran title of San Juan de Lacatao, supplemented by the Honduran republican titles of La Virtud and San Sebastian del Palo Verde, on the other. El Salvador claims a further area, outside the asserted limits of the Arcatao and Nombre de Jesús titles, on the basis of *effectivités* and human arguments: this area is defined by the lines J-K-L-M-N (eastern limit of the Arcatao title as interpreted by El Salvador) and J-E (eastern limit of area claimed).

*

130. In the first, north-western, part of this sector, west of point G on sketch-map No. C-1, El Salvador has not expressed any view on where the line of the 1821 *uti possidetis juris* should be drawn; it confines itself to a claim on the basis of post-independence *effectivités*. Before examining that claim, the Chamber will however briefly consider the Honduran contentions as to the *uti possidetis juris* line in this area, in order to arrive at a complete picture of the situation in 1821 throughout this sector, before considering the possible impact on it of subsequent events.

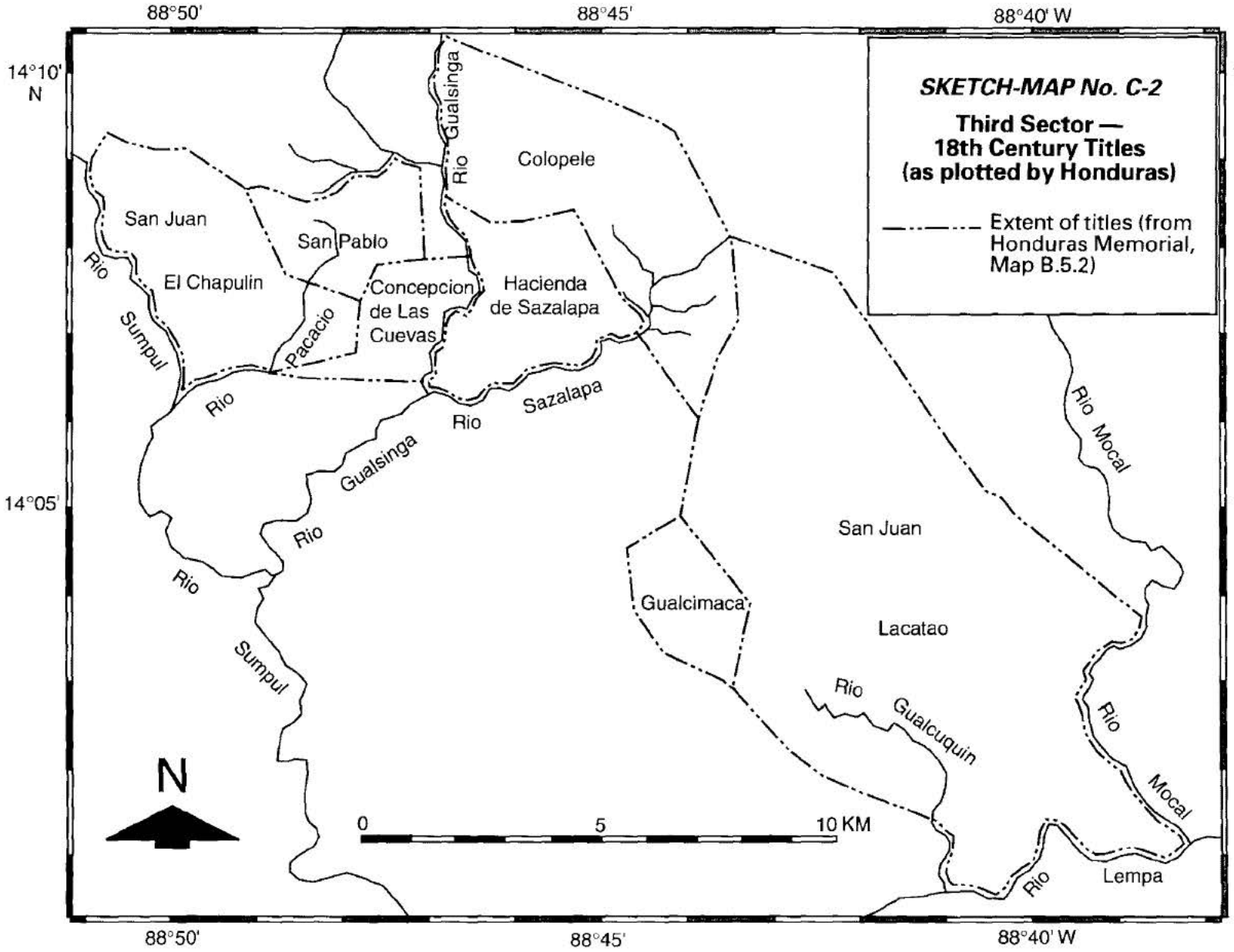
131. Honduras asserts that the limits of the jurisdiction of the pre-independence provinces can be derived from 18th century titles: specifically, those of San Juan El Chapulín of 1766, San Pablo of 1719, Concepción de las Cuevas of 1719, and Hacienda de Sazalapa of 1746. The location of these, according to Honduras, is indicated on sketch-map No. C-4 annexed to this Judgment. With regard to the titles of San Juan El Chapulín (which, El Salvador emphasizes, was a grant to a private individual) and Concepción de las Cuevas, El Salvador objects that "in neither of these titles were the inhabitants of Arcatao" — or of any other community in the neighbouring province — "either cited or present and as a result these Title-Deeds did not fix the jurisdictional boundaries of the two provinces". The lands of the 1724 title of Arcatao as mapped by El Salvador did not overlap with or abut on these two Honduran titles; the Chamber has no information as to what titles (if any) in the province of San Salvador were so placed as to justify the relevant communities or owners being so cited to appear. In any event, the question is not whether the said titles relied on "fixed" the provincial boundaries, but simply whether they

are evidence from which the position of the provincial boundary can be deduced.

132. While El Salvador thus has objections in principle to reliance on these 18th century titles, it has only addressed specific criticisms to the Honduran interpretation of that of the Hacienda de Sazalapa, not to the other three; it has offered its own geographical interpretation only of the Sazalapa title. As will be seen from sketch-map No. C-2, it is not contended that the title of San Pablo abuts on the provincial boundary. Each of the others contains a survey record, and each of them clearly states that the lands measured appertained to the jurisdiction of Gracias a Dios. The Chamber upholds Honduras's contention in principle that the position of the provincial boundary is defined by the two titles of San Juan El Chapulín and Concepción de las Cuevas, between the boundary marker of the Pacacio and the point on the river Sazalapa where, according to Honduras, the eastern boundary of the title of Concepción de las Cuevas is formed by the river Gualsinga, which joins the Sazalapa at point Z on sketch-map No. C-1. The question of where precisely the southern limit of those two titles lay is reserved, since if the Chamber finds in favour of El Salvador's claim based on *effectivités*, that question will not need to be decided. Further to the east, the interpretation advanced by Honduras of the title of Hacienda de Sazalapa is contested by El Salvador insofar as it would, according to that interpretation, include the area G-G′-H′-H, claimed to be part of the Salvadorian title of San Bartolomé de Arcatao; and it is to that title, which is the principal plank in El Salvador's case in this sector, that the Chamber must now turn.

133. The Parties disagree over the geographical interpretation to be given to the survey record of the Arcatao title: on sketch-map No. C-1 annexed the two versions of the boundary of the land comprised in the title are indicated by the line G-G′-H′-H-X-D′-D-E′-I-J-W, advanced by El Salvador and the line G-H-X-W advanced by Honduras. The survey record of Arcatao at certain points states specifically the location of the provincial boundary at the time of the survey, in 1723. In particular, the surveyor, who was commissioned by the Spanish colonial authorities of the province of San Salvador, reports that he arrived at a *quebrada* which ran down into the confluence of the rivers Gualquire and Sazalapa (identified by El Salvador as point H on sketch-map No. C-1); he then continues:

> *"Y siguiendo el mismo rumbo arriba de Zazalapa, lindando con la provincia de Gracias a Dios, que son tierras de la hacienda de Zazalapa . . ."*
>
> *[Translation]*
>
> "And following the same direction above Zazalapa, bordering with the province of Gracias a Dios, which are lands of the Hacienda de Zazalapa . . ."


88°50'
88°45'
88°40' W
14°10' N
14°05'
SKETCH-MAP No. C-2
Third Sector —
18th Century Titles
(as plotted by Honduras)
Extent of titles (from Honduras Memorial, Map B.5.2)
Rio Gualsinga
Colopele
San Juan
San Pablo
El Chapulin
Rio Sumpul
Concepcion de Las Cuevas
Hacienda de Sazalapa
Pacacio
Rio Sazalapa
Rio Gualsinga
Rio Mocal
San Juan
Gualcimaca
Lacatao
Rio Gualcuquin
Rio Mocal
Lempa
Rio Sumpul
N
0
5
10 KM

The identity and location of the river Zazalapa or Sazalapa are agreed by both Parties; it runs from east to west following the course D'-X-H-G-Y indicated on sketch-map No. C-1, to unite with the river Gualsinga. In this area, where the Parties differ is as to the position and extent of the section of it which the surveyor followed on the Arcatao survey, and whether he in fact crossed it on two occasions.

134. It will be apparent from sketch-map No. C-1 that according to El Salvador's interpretation of the title of Arcatao the survey party crossed the Sazalapa river from south to north at a point identified by El Salvador as the "Colmariguan Gorge" referred to in the survey (point G), and recrossed it from north to south, following what El Salvador identifies as the Gualquire river, which merges with the Sazalapa at point H. The result is to produce a protrusion, about a square kilometre in extent, to the north of the Sazalapa. Honduras, on the other hand identifies the various features mentioned in the survey, including the "Colmariguan Gorge" and the confluence with the Gualquire, with appropriate features further southwest, producing thus an interpretation whereby the Arcatao lands would at no point extend north of the Sazalapa.

135. The title document of Arcatao does not (as does, for example, the title of the Dulce Nombre de la Palma) give precise compass bearings, but merely directions such as "north to south", "west to east"; distances are given with greater precision, in terms of numbers of cords of defined length, but these are insufficient in themselves to define the situation of the area without more precise bearings or clearly identifiable landmarks. The landmarks in fact referred to, such as "a big hill where there are many large rocks" are far from being unmistakably recognizable; and where watercourses are mentioned, there is often no way of telling which of the watercourses indicated on modern maps corresponds to that named in the title. After careful consideration of the maps and documents produced to it, the Chamber has to conclude that, simply on the basis of matching the terms of the survey record with the features of the terrain, either of the interpretations offered by the Parties could be correct.

136. The Chamber has therefore to base its decision in this part of the sector on certain salient points of a circumstantial kind. First and most important, Honduras has drawn attention to the undisputed fact that the survey nowhere mentions specifically that the survey party crossed the river Sazalapa. El Salvador argues in reply, first, that

> "the surveyor had no reason to mention the crossing of the rio Zazalapa at this particular point of their measurement, simply because at

this point this river was not used either to constitute or to denote the boundary . . .".

The Chamber however notes that a few lines before the reference to the river which has been quoted above, the survey record mentions the crossing of a mere *quebrada ("habiendo atravesado una quebrada")* which also does not serve as a boundary; and a similar mention appears later in the survey record (see the passage quoted in paragraph 151 below). Furthermore, the survey record mentions specifically that the river Sazalapa constituted the provincial boundary, at least for some of its course; since what is claimed is a protrusion across the river, if the surveyor crossed it, then it was the provincial boundary either to the left or to the right of his crossing point, and one would expect this fact to be recorded (but cf. paragraph 194 below).

137. There is a passage in the survey record which El Salvador interprets as showing that the survey party *did* cross the river: the passage immediately precedes the text concerning the river already quoted, and reads:

> *". . . hasta llegar a una quebradita que hasta alli hubo ocho cuerdas, la cual baja al encuentro del río Gualquire y Zazalapa . . ."*
>
> *[Translation]*
>
> ". . . so as to arrive at a small *quebrada*, up to which 8 cords were measured, which descends to meet the river Gualquire and Zazalapa . . ."

It is argued by El Salvador that the use of the word *"baja"*, "descends", indicates that the surveyor must have been to the north of the river, "that is to say above the line of that river"; and that this is confirmed by the use, in the passage quoted in paragraph 133 above, of the expression *"arriba de Zazalapa"*, "above Zazalapa". On this, the Chamber would repeat the observation already made in paragraph 109 above, that to interpret the word "above", in a document of this period, in the sense of "to the north of", on the basis of the convention of placing the north to the top of a map, is an argument of very doubtful weight.

138. The shape of the protrusion G-G'-H'-H to the north of the river Sazalapa, claimed by El Salvador, is such as to suggest, not a demarcation in unclaimed *tierras realengas* of a suitable area of land cultivated or to be cultivated by an Indian community, but rather a delimitation of an area already hemmed in by existing titles. It is however noteworthy that the part of the survey record which El Salvador interprets as signifying the protrusion across the river makes no mention of any need to respect existing titles, whereas it does do so in other parts of the survey, both preceding and following the passage under consideration.

139. Honduras contends that the land to the north of the river was surveyed some 20 years later, for the purpose of the grant in 1741 of the title of Hacienda de Sazalapa in the province of Gracias a Dios, and that this latter title confirms Honduras's interpretation of the Arcatao title; in particular that no protrusion of the Arcatao lands north of the river Sazalapa is compatible with the title of Hacienda de Sazalapa. El Salvador observes that this document is a "title to private proprietary interests in land", not a grant of an *ejido* to an Indian community; in its view the title of San Bartolomé Arcatao, which is such a "formal title-deed to commons", has "greater probative value" than deeds to private proprietary interests. The Chamber does not share this view, for the reasons already indicated (paragraphs 49-54 above); but the question at present is simply whether the record of the survey of Hacienda de Sazalapa can throw light on the interpretation of the title of San Bartolomé Arcatao.

140. Unfortunately the title document of Hacienda de Sazalapa is damaged, so that the transcription and translation which has been supplied to the Chamber by Honduras contain gaps and incoherences. Honduras produced a map purporting to indicate the extent of the lands comprised in the title, but the Chamber does not feel able to interpret the incomplete text of the title with sufficient certainty to accept Honduras's map as necessarily reflecting the terms of the survey record. What is clearly to be found in the Sazalapa title is a record that the inhabitants of the village of Arcatao recognized that the *quebrada* of Sazalapa was ". . . the boundary and the division of the lands, of the jurisdiction of San Salvador . . ." (*". . . los naturales del Pueblo de Arcatao . . . dixeron ser la dicha quebrada raya y division de unas y otras tierras, . . . que son de la jurisdicción de San Salvador . . .*"). The reference is to the *quebrada* upstream of the confluence with the Gualsinga, but there is no indication that it was only a particular section of the *quebrada* which was the boundary (cf. also paragraph 133 above and paragraph 142 below).

141. It is thus established that at least some part of the river Sazalapa constituted the boundary between the provinces of San Salvador and Gracias a Dios, and that there is no specific indication that the survey party crossed the river. On this basis, the Chamber takes the view that, of the two possible interpretations of the title of San Bartolomé de Arcatao, each sustainable on the basis of matching the survey record to the terrain, that interpretation is to be preferred which does not involve any protrusion of the lands surveyed north of the Sazalapa. The Chamber therefore cannot uphold the claim of El Salvador to the area indicated by G-G′-H′-H on sketch-map No. C-1, so far as that claim is based on the title of San Bartolomé de Arcatao.

*

142. A further dispute between the Parties as to the area of the title of San Bartolomé de Arcatao concerns its extent to the north-east: in the view of Honduras, it is bounded by a straight line running south-east from the upper reaches of the Sazalapa river (the line X-W on sketch-map No. C-1), while in the view of El Salvador it includes an anvil-shaped area extending some way further to the north-east (defined by the points X-D′-D-E′-I-W on sketch-map No. C-1). The disputed passage in the title, which is the continuation of the passage already quoted in paragraph 133 above, reads as follows:

> *"Y siguiendo el mismo rumbo arriba de Zazalapa, lindando con la provincia de Gracias a Dios, que son tierras de la hacienda de Zazalapa, hasta llega y a la cumbre de unos cerros muy altos, donde esta un árbol de Guanacaste, donde se puso una cruz, y un mojón de piedras, y hasta allí hubo seis cuerdas. Y mudando de rumbo de norte a sur, se vino por la cumbre de un cerro que tiene un portezuelo donde va el camino que va para la ciudad de Gracias a Dios, el cual cerro se nombra Arcataguera, y hasta dicho cerro hubo veinticinco cuerdas . . ."*
>
> *[Translation]*
>
> "And following the same course above Zazalapa, bordering with the province of Gracias a Dios, which are lands of the Hacienda de Zazalapa, till getting to the top of some very high hills, where there is a Guanacaste tree, where a cross was placed and a landmark built of stones, and to this point the distance was 6 cords. And changing the course from north to south, we passed by the crest of a hill that has an opening *[portezuelo]* through which passes the road that leads to the town of Gracias a Dios, which hill is named Arcataguera, and to the said hill there were 25 cords . . ."

143. The Chamber does not consider that the localities here mentioned can be identified with any confidence on modern maps, simply on the basis of the text of the title taken in isolation. For the present two points can be noted. First, there has been some argument between the Parties as to whether the reference to a tree (a *"guanacaste"*) means that the place referred to is the same as that referred to in other, later, titles as the "place called El Guanacaste" where there was a boundary marker. The Chamber considers that it is, at the least, a reasonable presumption that the same landmark is meant (particularly since the place was called "El Guanacaste", not just "Guanacaste"), and such an identification seems to produce a reconciliation of the successive titles more easily and more convincingly than an interpretation which would suppose that there were two distinct boundary markers placed by a guanacaste tree. Secondly, the justification for El Salvador's identification of the Cerro El Fraile (point D′ on sketch-map No. C-1) with the most northerly point of the Arcatao title is that the surveyor was "proceeding up the river looking for its source

until he reached the summit of some very high hills". There is however nothing in the title to say that the surveyor was looking for the source of the river, and he must in fact have left the river at some point to reach the summit of a high hill; the reference to a distance of 6 cords appears to be the distance from the river bank to the summit of the hill. In the Chamber's view, it is equally likely that the surveyor left the river at some point further south, for example at the point proposed by Honduras, and called by it the Poza La Golondrina (point X on sketch-map No. C-1), the high hill being that nearby, marked on the Honduras map as Cerro El Flor and on the Salvadorian map as Loma Rancho Quemado.

144. It is however appropriate next to consider the other 18th century titles produced by Honduras, which relate to areas bordering on the lands of Arcatao, to see what light they throw on the interpretation of the Arcatao title. The Arcatao title itself records, some lines below the passage just quoted, that the survey was bordering lands of San Juan de la Catao (*" . . . va lindando con tierras de San Juan de la Catao . . . "*), and again that ". . . from El Guanacaste to this point we have come bordering on lands of San Juan de la Catao, which belongs to Captain Don Ramón Perdomo . . ." (*". . . desde el Guanacaste, hasta este paraje hemos venido lindando con tierras de San Juan de la Catao, que es del Capitán don Ramón Perdomo . . ."*).

145. Furthermore, Honduras has produced, *inter alia*, the titles of Colopele (1779) and San Juan Lacatao (1786), and the survey of Gualcimaca (1783), said to border on the Arcatao title on the north-east and east. As regards the Colopele title, El Salvador has objected that this cannot be relied on because while it was requested by an Indian community, it was never issued, and consequently it does not fulfil the requirements of Article 26 of the 1980 General Treaty of Peace. The Chamber has already disposed of that general point (paragraphs 49-54 and 62 above). The reason why the Colopele title was not issued was solely because the Indian community could not raise the money to pay the necessary *composición*, not because, for example, there was any question as to the reliability or accuracy of the survey. The Chamber considers that a record of a survey effected under the Spanish colonial régime which records what were then claimed to be the existing limits not only of the Colopele lands but also of the title of Arcatao itself falls within the terms of Article 26 of the 1980 Treaty, whether or not it ultimately led to the issue of the *título* of the lands surveyed.

146. The titles of San Juan de Lacatao, Colopele and Gualcimaca are indicated on sketch-map No. C-2 with the position and extent attributed to them by Honduras. Both the Arcatao title and the Colopele title refer to the boundary point called El Guanacaste, which was the tripoint where

Arcatao (to the west), Colopele (to the north-east), and San Juan de Lacatao (to the south-east), met. The relevant passage in the title of Colopele, recording a survey made in March 1779, reads as follows:

"Y andando rumbo al sudeste recto segun pinto la Bruxula, se tendio la cuerda por una loma de Sacate vajando por un camino que llaman de los Tierra Fria, y salimos a un ojo de agua que lo nombran el sesteadero y dejando dicho camino prociguio la Loma avajo asta dar en unos peñasquitos sobre la profundidad de una quebrada a la que se vajo con cinquenta y cuatro cuerdas y no pudiendose pasar Midiendose por lo eminente y aspero de un cerro que teniamos delante dando por raya una sanja que vaja de dicho cerro a la quebrada tantie a ojo seis querdas a un parage que nombran el Guanacaste donde esta un mojon del exido del Pueblo de Arcatao donde halle a los naturales del con su titulo. Y haviendo lindado, hasta la quebrada dicha a la derecha con las tierras de Sasalapa desde ella se vino lindando a la misma mano con las tierras de Arcatao hasta el citado mojon del Guanacaste. Y haviendo reconocido el dicho Título de Arcatao y dando por mojon el mismo que halle. Se mudo el rumbo, y se tomo por la Bruxula el Nord-este y sobre el se tendio la cuerda por un camino real que viene del dicho. Pueblo de Arcatao para el de Tambla y varias partes es que fuimos siguiendo lindando a la derecha con el citio de San Juan de Lacatao segun dijeron todos y se paso por una piedra que nombran la piedra del tigre o piedra pintada . . ."

[Translation]

"Changing to a south-easterly direction in a straight line and following the directions of the compass, the cord was stretched along some high pasture land down along a path called the Tierra Fria, and we emerged near a pool called Sesteadero; leaving that path, we continued to go down until we came to some small rocks above a deep *quebrada*, into which we descended, having counted 54 cords and, as we were blocked by a steep, high hill in front of us, we took as the boundary a ditch *[sanja]* which runs down the said hill to the *quebrada*, I made a visual measurement of 6 cords as far as a place called El Guanacaste where there is a marker of the *ejido* of the village of Arcatao where I found the inhabitants of this village with their title-deed. Having proceeded as far as this *quebrada* to the right of the lands of Sasalapa, we remained on the same side of the lands of Arcatao as far as the said marker of El Guanacaste; after recognizing the title-deed to Arcatao, and adopting the existing marker, we changed direction turning, in accordance with the compass, to the north-east, extending the cord along a *camino real* which runs from Arcatao village towards Tambla village. We continued for several cords keeping to the right of the property of San Juan de Lacatao, as everybody said, and we passed by a stone called Piedra del Tigre or Piedra Pintada . . ."

147. If the *quebrada* here referred to is the same as the upper reaches of the Sazalapa (cf. the reference to the Sazalapa as a *quebrada* in the title of Hacienda de Sazalapa, above, paragraph 140), this passage confirms the conclusion already reached that the Arcatao lands did not extend north of the river. It also shows, however, that from the river to the El Guanacaste marker the survey proceeded to the south-east, not to the east as shown on El Salvador's mapping (this marker being, according to El Salvador, at point D on sketch-map No. C-1). This easterly direction was justified by El Salvador on the grounds of the words *". . . siguiendo el mismo rumbo arriba de Zazalapa . . ."* (". . . following the same course above Zazalapa . . ."), the "same course" being that last mentioned, i.e., west to east. Yet, according to El Salvador's interpretation, the survey had already veered north to follow the course of the river upstream, so that the reference to a west-east movement must have ceased to apply.

148. Honduras identifies the El Guanacaste marker with a hill marked on its maps as Cerro La Cañada (point W on sketch-map No. C-1 annexed), close to a settlement indicated on the Salvadorian map also as La Cañada. In support of this it cites a survey carried out in 1837 for the purpose of the granting of the republican title of San Antonio de las Cuevas, which refers to arriving

> *". . . al lugar de la Cañada antiguamente llamada del Guanacaste en donde encontré dos mojones de piedras apariados, los cuales dijeron perteneser uno a las tierras del Pueblo de Arcatao de la jurisdicción del Estado del Salvador y el otro alas de la espresada hacienda de San Juan y alas del Ciudadano Clemente Navarro y hacienda de Sasalapa . . ."*
>
> *[Translation]*
>
> ". . . at the place of La Cañada, *called in former times El Guanacaste*, where two stone markers were found together, and I was informed that one of them belonged to the lands of the village of Arcatao of the jurisdiction of the State of El Salvador and the other to the lands of the said property of San Juan and to those of the citizen Clemente Navarro *and of the property of Sasalapa* . . ."

The difficulty however with this interpretation is, first, that both the Arcatao title and the Colopele title state that the distance from the Sazalapa river or *quebrada* to the El Guanacaste landmark was 6 cords (246 metres, approximately); whereas the Cerro La Cañada is approximately 2 kilometres from the nearest point on the Sazalapa. Secondly, if the place referred to is the Cerro La Cañada as indicated on the Honduran map, the reference to the boundary being also that of the property of Sazalapa is incomprehensible: neither the old property of Hacienda de Sazalapa, nor the 1844 title of San Francisco de Sazalapa extend, according to Hon-

duras, so far south as that *cerro*. This identification must therefore be regarded with some doubt.

149. The title of San Antonio de las Cuevas has to be read in conjunction with other republican titles granted by Honduras between 1836 and 1844, and it will be convenient to consider these before proceeding further. On 2 March 1836, a survey was effected of the lands of Colopele, and on 3 March 1837, the lands of San Antonio de las Cuevas, carved out of the old Hacienda de San Juan de Lacatao; on 20-22 November 1843 the lands of Sazalapa, to the west of these, were surveyed. These three titles were stated to contact the boundary with the lands of the village of Arcatao; it is described as follows in the successive surveys:

Colopele:

"... nos dirijimos al Serro de la Cañada, en donde ya encontramos al Alcalde y comun de Indígenas del Pueblo de Arcatao, y con vista (del) titulo de sus exidos, en el propio mojon que dividen las tierras de ambos Estados de Honduras y el Salvador ..."

[Translation]

"... we went to the Cerro de la Cañada, where me met the mayor and community of natives of the village of Arcatao, and on inspection of the title of their *ejidos*, at the very boundary marker which divides the lands of the two States of Honduras and El Salvador ..."

San Antonio de las Cuevas:

"... se varió de rumbo al Sud-Oeste y con diez y seis cordadas se llegó al lugar de la Cañada, antiguamente llamada del Guanacaste en donde encontré dos mojones de piedras apariadas, los cuales dijeron pertenecer uno a las tierras del Pueblo de Arcatao de la Jurisdicción del Estado del Salvador, y el otro alas de la espresada hacienda de San Juan y alas del ciudadano Clemente Navarro y hacienda de Sasalapa y teniendo presente [illegible] *... el título del dicho pueblo de Arcatao que manifestó su Alcalde y Comun en Este lugar de la Cañada con arreglo alas voses de el, se tomó el rumvo del Sur, y se dan por medidas las veinte y sinco cordadas que expresa haver havido de Este lugar al portillo del Cerro del tambor antes conocido por el nombre del Sapo ..."*

[Translation]

"... we changed direction to the south-west counting 16 cords, whereupon we arrived at the place of La Cañada, called in former times El Guanacaste, where two stone markers were found together and I was informed that one of them belonged to the lands of the village of Arcatao of the jurisdiction of the State of El Salvador and the other to the lands of the said property of San Juan [de Lacatao] and to those of the citizen Clemente Navarro [i.e., Colopele] and the property of Sasalapa and regard being had to *[illegible]* ... the title of the said

village of Arcatao that was exhibited by the Mayor and community in this place of La Cañada in accordance with its provisions, we headed south and took as measured the 25 cords that are said to have existed between this place and the breach in the Tambor hill, formerly called del Sapo hill . . ."

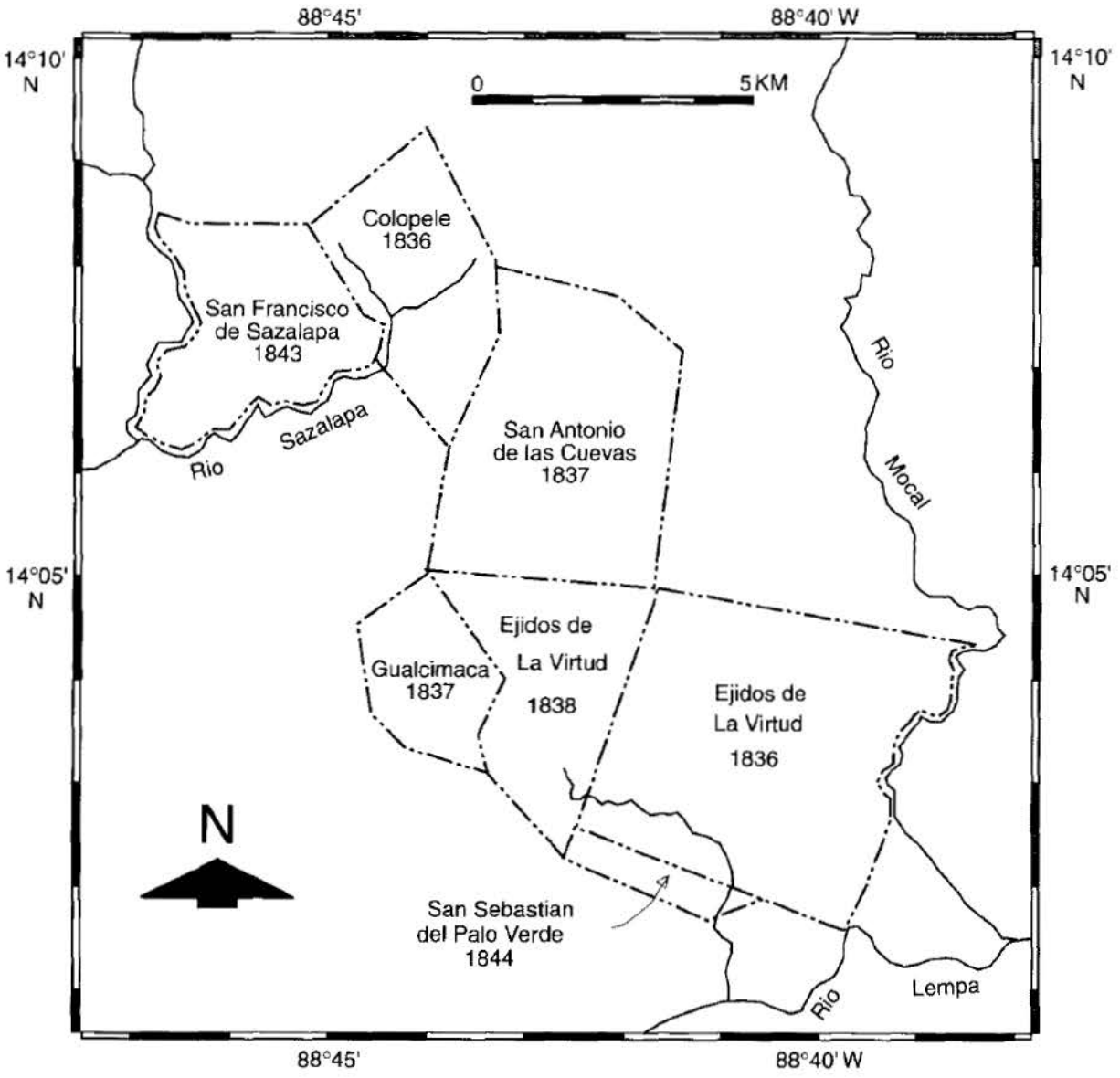
Sazalapa: [Note: the survey was proceeding along the river Sazalapa, upstream]

"Despues de haber pasado por las faldas fragosas de un cerro grande, llegamos con gran trabajo a un lugar peñascoso donde cae al río la quebrada que se llama de la Golondrina que separa las tierras del Señor Clemente Navarro de las del pueblo de Arcatao; hasta donde llegaron los Medidores, con ciento veinte y tres cordadas con las que se dió por mojón la propia peña que forman las dos zanjas del río y la quebrada, las cuales forman el ángulo de la medida que practicó el Señor Vicente Lopez de seis y tres cuartas caballerías, doce cordadas y setecientas una vara de tierra, en el año de 1836, del sitio del Colopel que linda con las que al presente practicamos en tiro siguiente que va en la dirección del río de Sasalapa por el Norte veinte y cuatro grados Oeste — al mojón del Liquidámbar."

[Translation]

"After traversing the rugged sides of a large hill, we arrived with great difficulty at a precipitous place where the *quebrada* called La Golondrina, which separates the lands of Clemente Navarro [i.e., Colopele] from those of the village of Arcatao, flows into the river; the surveyors reached this place after measuring 123 cords and they took as a marker the rock formed by the two banks of the river and the *quebrada*, which form the angle of the survey carried out by Vicente Lopez in 1836, of 6 *caballerías* and three-quarters, 12 cords and 701 varas of lands, which was for the piece of land called Colopel, which adjoins the lands we are now surveying, following the direction of the river Sasalapa, N 24° W, to the Liquidambar boundary marker."

150. It thus appears that the boundary of the lands of Sazalapa and Colopele was the river Sazalapa, the general direction upstream here being approximately N 24° W. A *quebrada* flowed into the river at the tripoint Sazalapa/Arcatao/Colopele; the general direction upstream of this *quebrada* is given in the Colopele survey as "NE 40° N". (The representation by Honduras in the maps in its pleadings of the south-east boundary of the 1837 Colopele title, and of the extent of the title of San Antonio de las Cuevas, reproduced in sketch-map No. C-3 annexed, does not correspond with any precision to the contemporary plans of these two titles.) At or near this point was the Cerro de la Cañada, which was the landmark of the Arcatao lands: when delimiting the Sazalapa lands, the junction of the river and the *quebrada* was taken as boundary, while the



SKETCH-MAP No. C-3

Third Sector — Honduran Republican Titles (as plotted by Honduras)

Extent of titles (from Honduras Reply, Map III.1)

San Antonio de las Cuevas survey used the El Guanacaste marker. The four titles therefore did not all meet: east of the tripoint Arcatao/Sazalapa/Colopele was the tripoint Colopele/Arcatao/San Antonio de las Cuevas.

151. However, before attempting to reach a definite decision on this sector of the boundary, it is necessary to read further on in the survey record of the Arcatao title, and to consider the identification of the subsequent boundary markers. The survey record continues as follows:

> *". . . y de allí fui atravesando una joya grande montaña a dar a la loma de Sapo donde se puso otro mojón de piedras, y hubo quince cuerdas, y de allí fuimos a dar a la loma de guampa, que es muy alta, y se puso otro mojón de piedras, y hasta aqui hubo diez cuerdas, y es a saber que va lindando con tierras de San Juan de la Catao, y siguiendo el mismo rumbo con veinticinco cuerdas llegamos a unos talpetates blancos, que están a vista de un obrajito de Juan de Lemus que está poblado en las tierras de la Hacienda de la Catao atravesando una quebradita seca que va de sur a norte, y es a saber que los Talpetates blancos sirven de mojón, y están en una joyita de sabana donde se pusieron dos mojones de piedras, y de allí se tiró para la punta del cerro del Caracol, y hasta dicho cerro hubo quince cuerdas. Y con el mismo rumbo de norte a sur, se llegó al Ocotal que está encima de un cerro, y con veinticinco cuerdas llegamos al dicho Ocotal, y mudando de rumbo de poniente a oriente llegamos con diez cuerdas a un cerro que hallamos encima de él, un mojón de piedra antiguo, y este cerro divide las dos jurisdicciones, la de San Salvador, con la de Gracias a Dios."*

> *[Translation]*

> ". . . and from there I went across a deep depression on a mountain to the Sapo hillock where another landmark of stones was placed, the distance being 15 cords, and from there we arrived at the Guampa hill, which is very high, and another landmark of stones was built, and the distance was 10 cords, and it is to be noted that it borders lands of San Juan de la Catao, and following the same course for 25 cords we reached some white *talpetates*, which are visible from a little indigo factory that belongs to Juan de Lemus and which is a settlement in the lands of the Hacienda de la Catao, across a little dry gorge that goes from south to north, and it is to be noted that the white *talpetates* are used as a landmark, and are in a depression of the plain where two landmarks of stones were erected, and from there we went to the summit of the Cerro del Caracol and to that hill the distance was 15 cords. And in the same direction from north to south, we arrived at the Ocotal, that is on top of a hill, and we did it with 25 cords, and changing the course from west to east with 10 cords we reached a hill on whose top we found an old stone landmark, and this

hill divides the two jurisdictions, the one of San Salvador from that of Gracias a Dios."

152. The two Parties have offered radically different placings of the Cerro de Caracol; on sketch-map No. C-1 it is identified by Honduras with point T (the Loma Redonda). The maps of both Parties indicate a "Cerro de Caracol" just to the south of point W on sketch-map No. C-1, and this corresponds to the interpretation of El Salvador. Furthermore, there is a reference to this landmark in the title of San Juan Lacatao, produced by Honduras. The survey of that title carried out in 1766, recorded that the judge and surveyor had reached a point called the Platanar:

". . . en donde estava el Alcalde y demas comun del Pueblo de San Bartholome Arcatao, y hisieron Manifestasion de su Titulo, y dize ser alli los linderos de sus tierras, en donde el medidor volvio a tender la cuerda, y fue caminando por sobre el filo del serro que le llaman el caracol llevando a la Vista a la parte del Poniente el dicho Pueblo de Arcatao, y lindando siempre con sus tierras de dichos Naturales, y se llego a otro serro picudo donde hase un portillo, donde atraviesa el camino que biene de dicho Pueblo a esta hacienda hasta donde dijo el medidor abia llegado con quarenta, y quatro cuerdas . . ."

[Translation]

". . . where, we found the Mayor and the inhabitants of the village of San Bartolomé Arcatao, who exhibited their title-deed and declared that that spot was the limit of their lands, where the surveyor took up the cord again, walking on the crest of the mountain known as El Caracol, *being able to see on the west side the said village of Arcatao* and, proceeding constantly along the boundaries of those inhabitants, we arrived at another sharp-pointed peak where there is a small mountain pass through which runs the road connecting the said village with that *hacienda*. The surveyor said he had measured 44 cords up to that point . . ." (Emphasis added.)

This reference, in the view of the Chamber, clearly identifies the *cerro* as that marked on the maps as the "Cerro El Caracol" to the east of the village of Arcatao. The *cerro* could not be at the point where Honduras's argument places it, since the village of Arcatao lies 3 kilometres to the north-west of it, and beyond the hill shown as the Cerro Las Ventanas.

153. The 1783 survey of Gualcimaca, produced by Honduras, also refers to a hill called Caracol, described as

". . . a high stony hill, arid and steep, where there is a factory, so that it

is called the hill of the factory, and on the title of the inhabitants of the village of Arcatao it is called the hill of El Caracol . . .".

No satisfactory map can however be made of the Gualcimaca title on the basis simply of this survey record: if the bearings and distances recorded there are plotted, they produce a line which not only fails to meet its starting point so as to produce a closed polygon, but cuts across itself. This was in fact noted at the time: the revising surveyor reported in October 1783 that

> *". . . habiendo el Revisor empezado a formar planillo para su regulacion y área, encuentra no estar conforme los rumbos y que el Subdelegado padeció notable equivocación en el tiempo de expresarlos, poniendo unos por otros . . ."*
>
> *[Translation]*
>
> ". . . having begun to construct a plan to regulate the area the revisor found that the directions are inconsistent, and that the sub-delegate [land judge] had made a substantial error, having mixed things up when indicating the directions . . .",

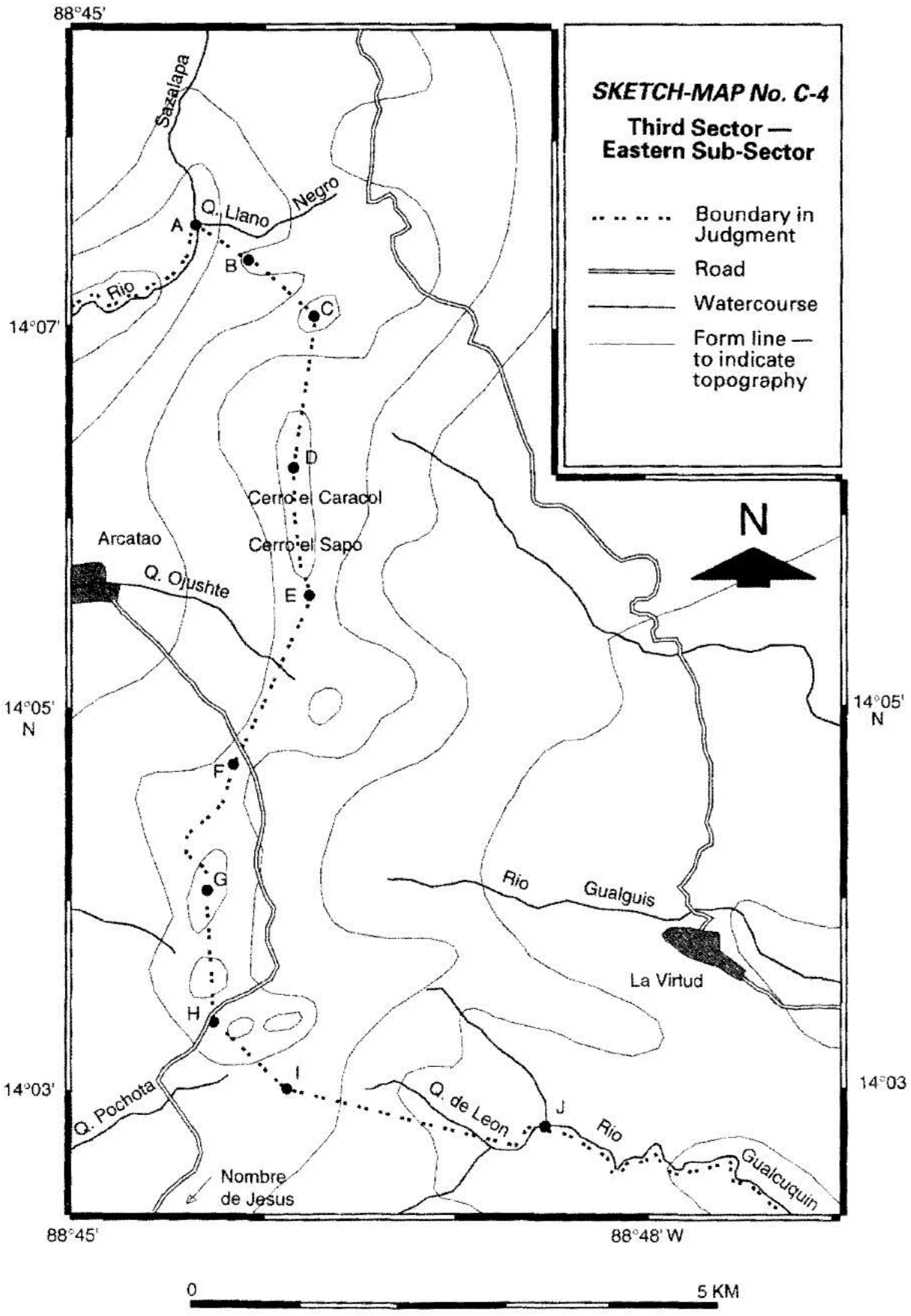
as appears from the revisor's attempted plan attached to the survey record; therefore no title was issued at that time for Gualcimaca. El Salvador has contended that for that reason the Gualcimaca survey should be disregarded; however the Chamber considers that that record can afford some corroborative evidence of the position of the boundary markers of the Arcatao title.

154. From the title of Arcatao itself it seems clear that there was in 1723, when that land was surveyed, no area of land allotted to Gualcimaca. Travelling southwards along the eastern boundary of the Arcatao lands, the judge noted that from the Guanacaste tree marker to a certain *portillo*, the survey had bordered the lands of "San Juan de la Catao", but that at that point he changed direction "from east to west bordering on lands of the Hacienda del Nombre de Jesús, jurisdiction of the town of San Salvador". From the record of the 1786 re-survey of San Juan de Lacatao, it is however clear that, in the meantime, and notwithstanding the frustration of the 1783 survey proceedings, a separate area of lands of Gualcimaca had come into existence, bordering on the lands of Arcatao, Nombre de Jesús and San Juan de Lacatao. It is stated that the Gualcimaca lands were under the jurisdiction of the judge carrying out the survey of San Juan de Lacatao, i.e., in the jurisdiction of Gracias a Dios, later Honduras, and it was the judge of that jurisdiction who effected the 1783 Gualcimaca survey. It therefore seems that the Gualcimaca lands were carved out of the lands of San Juan de Lacatao as they stood at the time of the 1724 survey of the Arcatao title, i.e., that the provincial boundary remained along the

eastern boundary of the 1724 Arcatao survey. Some confirmation of this is found in the fact that in the 1783 survey of Gualcimaca certain boundary markers are mentioned as being the limits of the Arcatao lands which have the same names as those in the 1726 Arcatao title. There is the hill called El Sapo, the Cerro El Caracol already mentioned, and the hill called Ocotillo. The same sequence appears in the 1837 republican title of Gualcimaca, with the additional consistent reference to a hill known as the Guapa (referred to in other contexts as the Guanpa). The Chamber therefore concludes that the Gualcimaca lands were some way further to the north than where Honduras places them on its map.

155. The Chamber considers that it is impossible to reconcile all the landmarks, distances and directions given in the various 18th century surveys in this region: the most that can be achieved is a line which harmonizes with such features as are identifiable with a high degree of probability, corresponds more or less to the recorded distances, and does not leave any major discrepancy unexplained. The features which the Chamber does consider to be identifiable with such a high degree of probability are only three in number: the Sazalapa river; the Cerro de Caracol as located by El Salvador to the east of the village of Arcatao; and the Portillo Las Lagunetas where the *camino real* passes over a col. With these three significant reference points, the Chamber considers that it is possible to reconstruct the boundary between the province of Gracias a Dios (or Comayagua) and that of San Salvador in the area now under consideration, and thus the *uti possidetis juris* line. This line will now be described.

156. According to the 1779 title of Colopele (quoted in paragraph 146 above), the survey party crossed a *quebrada*, to be identified with the river Sazalapa, and took as boundary a ditch *(sanja)* running down the hill into the *quebrada*, the hill ahead being steep and high. This point should, in the Chamber's view, be identified with the confluence with the *quebrada* marked on the Honduran map as the *quebrada* Llano Negro, shown on sketch-map No. C-4 annexed as point A. The judge surveying the boundary of the Arcatao title did however climb the hill, and the point known as the El Guanacaste marker is to be identified, in the Chamber's view, with the hill to the south-east of the *quebrada* Llano Negro, whose summit is about 6 cords (246 metres) from the river (indicated as point B on sketch-map No. C-4 annexed). The boundary thus runs from the confluence of that *quebrada* with the river Sazalapa (point A) to the hill shown on the maps with a spot height of 875 metres (point B), and then turns southwards to the landmark described as the "crest of a hill that has an opening *[portezuelo]* through which passes the road that leads to the town of Gra-


SKETCH-MAP No. C-4
Third Sector —
Eastern Sub-Sector
Boundary in Judgment
Road
Watercourse
Form line — to indicate topography
88°45'
14°07'
14°05' N
14°03'
88°48' W
Sazalapa
Q. Llano
Negro
Rio
A
B
C
D
Cerro el Caracol
Cerro el Sapo
E
Arcatao
Q. Ojushte
F
G
H
I
J
Rio Gualguis
La Virtud
Q. Pochota
Q. de Leon
Rio Gualcuquin
Nombre de Jesus
N
0
5 KM

cias a Dios". Of the several hills in the region, the most likely is, in the Chamber's view, the one which El Salvador's interpretation identifies with the Guampa hill (marked as point C on sketch-map No. C-4): it is shown on the maps as being an elevation of 1,017 metres, and the road from Arcatao to Los Patios, which El Salvador apparently identifies as that which leads to Gracias a Dios, passes just south of the crest. From there the line, inclining still more to the south, runs through the triangulation point marked as La Cañada (point D on sketch-map No. C-4) to the ridge joining the hills indicated on the El Salvador map as Cerro El Caracol and Cerro El Sapo and the hill indicated with a spot height of 947 metres (point E on sketch-map No. C-4). The survey of Arcatao (quoted in paragraph 151 above) refers to intervening markers of the Sapo and Guapa hills and the *"talpetates"*; in the view of the Chamber these cannot be identified with certainty on modern maps — indeed, as regards the *"talpetates"* trees, this is hardly to be expected after two hundred years. From the Caracol hill, the survey of San Juan de Lacatao ran to "a pointed hill, where there is a small col which forms the road from the village to this *hacienda*". This may, in the Chamber's view, reasonably be identified with the feature marked on the Salvadorian map as the Portillo El Chupa Miel (indicated as point F on sketch-map No. C-4). From there the San Juan de la Catao surveyor estimated 40 cords to the Portillo de Las Lagunetas, the tripoint of Arcatao, Nombre de Jesús and San Juan de Lacatao.

157. The same tripoint is described in the 1783 Gualcimaca survey as "a dry *quebrada* where there is a *portillo*" — that is to say something in the nature of a pass — "called Las Lagunetas". This corresponds to what in the Arcatao title is described as a *"portillo"* through which goes the *camino real*; this *portillo* "has on its east side a quite high hill". The Chamber considers that this can be identified with the point where the present-day road from Arcatao to Nombre de Jesús passes between the Cerro El Ocotillo and the Cerro Las Lagunetas (indicated as point H on sketch-map No. C-4 annexed). The identification of the *camino real* with the modern road over this col appears to the Chamber more likely than its identification with a mere track between remote settlements, like that proposed by El Salvador. The confluence of the nearby *quebrada* with the *quebrada de Junquillo* lies some 20 cords down the first *quebrada*, as indicated in the Arcatao title. The hill with a landmark on top, referred to in the Arcatao title, can be identified, in the Chamber's view, with the Cerro El Cajete (indicated as point G on sketch-map No. C-4); the conclusion that this hill was appropriate to be established as a landmark is strengthened by the fact that it bears a modern triangulation point. The hill of the "Ocotal", 10 cords north of the landmark, will then lie on the ridge which culminates in the Cerro El Cajete. The complete line in the middle sector as far as Las Lagunetas so defined is shown on sketch-map

No. C-4 annexed (which also shows the line in the next sub-sector, now to be discussed).

* *

158. Turning now to the third part of this third sector, in the region to the south-east of the Portillo de Las Lagunetas, the Arcatao title was here bounded on the south-east by the title of Nombre de Jesús, the lands of which, the Parties agree, were also in the jurisdiction of the province of San Salvador. The provincial boundary therefore left the Arcatao boundary and followed the dividing line between the Hacienda de Nombre de Jesús, to the south-west, and the Hacienda de San Juan de Lacatao, to the north-east. The title of Nombre de Jesús, granted in 1742, is no longer in existence, having apparently been destroyed in a fire. However, that title was referred to in the 1766 survey of the adjacent lands of San Juan de Lacatao; it was also still in existence in the mid-19th century when Honduras granted certain republican titles in this area, and was produced by the then owner of the Nombre de Jesús property, and referred to or quoted in the republican titles. One of these (La Virtud, 1837) purports to quote the terms of the 1742 title, and the Chamber will begin with this quotation, set out below.

159. In 1837, additional lands for the village of La Virtud (situate in the area which had formerly been the Hacienda de San Juan de Lacatao) were being surveyed, and the 1742 title of Nombre de Jesús was produced at the place — a "large hill known [in 1837] as La Volza" (otherwise "La Bolsa", see below) — which was said to be the boundary marker between that title and the former lands of San Juan de Lacatao. The adjoining owners had been summoned,

> *"... quienes me presentaron su título el cual leido en vos alta, espresa que el Agrimensor Pedro Dias del Castillo que midio dicha hacienda del Nombre de jesus alla en el año de setecientos quarenta y dos llegó a este cerro biniendo del oriente y de la propia junta que hase el río de los Amates o amatillo con una quebradita pequeña que ahora nombran de las lajas; que de alli se camino trallendo el citado rumvo de oriente a poniente por un cerro arriba y se llegó a un portesuelito que está en la cabacera de la quebradita, en el cual mando poner un mojon de piedras en el mismo paraje que atrabesava un camino real que prociguió por un cerro arriva, y se dio de ralla una loma muy alta acuchillada que esta sobre un paraje que le llaman el Pataste, desde la cual siguiendo la cumbre de cerros, se fue a dar a la punta de otro cerro muy alto que se le sigue puntiagudo, y hasta donde binieron tanteando sincuenta cordadas..."*

[Translation]

"... who showed me their title-deed which was read aloud and which stated that the surveyor, Pedro Diaz del Castillo, had measured this Hacienda of Nombre de Jesús in the year 1742 and had arrived at this hill from the east and from the junction of the river Los Amates or Amatillo with a small *quebrada* which is now known as Las Lajas; that from that spot the survey continued in that same direction from east to west, climbing a hill and arriving at a small breach *[portesuelito]* to be found at the head of the *quebradita* where he caused a stone boundary marker to be set up at the place where a *camino real* passes which continued going up a hill, and arriving at a very large and knife-shaped height to be found at a place known as El Pataste we took it as a boundary and continuing from there by the summit of the hills, we arrived at the top of another very high and sharp-pointed peak which follows, up to which place we estimated 50 cords ..."

160. It appears from this text that the boundary of the Nombre de Jesús title ran eastwards from La Bolsa to the junction of the river Los Amates or Amatillo with the *quebrada* de Las Lajas; but it is not clear whether the next passage in the text refers to the line between those two points (on the basis that *"de alli"* refers to the Amatillo/Las Lajas confluence) or the further course of the line westwards from La Bolsa. However the owners of Nombre de Jesús agreed on the La Bolsa hill as the boundary because there was no higher hill nearby and because it was consistent with the 50 cords referred to; and a survey made in 1843 for the grant of the title of San Sebastian del Palo Verde (see paragraph 172 below) recorded a distance of 50 cords, "in conformity with the title of Nombre de Jesús" from La Bolsa to the confluence of the river "del Amatío" with the *quebrada* de Las Lajas.

161. San Juan de Lacatao was the subject of a survey in 1618, a survey of the *"sitio"* in September 1764, a more thorough survey in March 1766 and a further survey in September 1786. The first survey contains a reference to a river "Gualguix" as a boundary between the jurisdictions of Gracias a Dios and San Salvador *("el dicho Rio Gualguix el qual parte terminos de la juridiccion de la ciudad de Gracias a Dios con la de Sant Salbador").* It will be recalled that the Poza del Cajón, the endpoint of the third disputed sector of the land boundary, is on the "river El Amatillo or Gualcuquín", according to the General Treaty of Peace. The 1764 survey is of no assistance for the area with which the Chamber is now concerned. It should be recalled that at the time of the 1766 survey the Gualcimaca lands had not yet been surveyed, so that the Portillo de Las Lagunetas was the tripoint of the then subsisting titles of Nombre de Jesús, Arcatao and San Juan de Lacatao. During that survey, the owner of the Nombre de Jesús lands, a priest named Simón de Amaya or Amalla, was present with the 1742 title, and "... it was possible to identify that *portillo* [Las Lagunetas] as the

boundary marker between the two *haciendas . . .*" (*". . . en donde estava el Br. Don Simon de Amalla con su título y cotejando uno y otro se reconosio dicho portillo por mojon de una, y otra hacienda . . .*"). The boundary from Las Lagunetas southwards is described as follows:

> "*. . . y queriendo tender la cuerda de dicho portillo de las lagunetas no se pudo por ofreserse una bajada aspera de muchos saltos, y tanteo el medidor a la cumbre de un serro que haze enfrente deste Mojon, sesenta cuerdas, y puestos en dicho serro minsionado se bolvio a reconoser otro Mojon de la hacienda del dicho B.r y siguiendo este rumbo que se esta reconosiendo deponiente a oriente, se tendio la cuerda en dicho Serron, se cojio una cuchilla, del mismo serro, y a poco andarse se bajo por una bajada predegosa y se llego al paso de una quebrada que llaman de los amtes con sinquenta cuerdas quedando dicha quebrada dentro esta remedida y de alli por no poderse tirar la cuerda por lo mui aspero de la orilla de dicha quebrada tanteo el medidor asta la Junta de Lempa, treinta, y una cuerda, y puestos en dicha Junta no se pudo pasar con la cuerda por las mismas asperidades que ay en la horilla del dicho río de Lempa y tanteo el medidor hasta el paraje del Salitre sesenta cuerdas, . . .*
>
> *. . . se bolvio quinto dia a proseguir del referido paraje del Salitre con la cuerda, siempre siguiendo la misma orilla del río de lempa, aguas abajo, y se llego a la Junta del río de Mocal donde se serro esta remedida y ubo hasta esta espresada Junta de lempa con mocal por este rumbo tres sientas quatro cuerdas . . .*"
>
> *[Translation]*
>
> ". . . an attempt was made to draw the cord starting from the said *portillo* of Las Lagunetas but this proved impossible because the terrain sloped down steeply and was very rugged. The surveyor calculated 60 cords as the distance between that marker and the summit of a hill opposite. At the hill mentioned, another boundary marker of the said bachelor's [i.e., Simón de Amalla's] *hacienda* was identified and, following that west to east direction, the cord was stretched on that same large hill following the crest of the same mountain; we then went down a rocky slope and arrived at the ford of a *quebrada* called Los Amates, making 50 cords; this *quebrada* forms part of this new survey. Not being able to draw the cord from there because of the rugged nature of the bank of the said *quebrada*, the surveyor calculated 31 cords to the junction with the river Lempa. Having reached the junction, we were unable to continue beyond it with the cord because of the rugged nature of the bank of the river Lempa and the surveyor estimated 60 cords to the place called Salitre . . .
>
> . . . I resumed the survey on the fifth day from the said place called Salitre and continuing to draw the cord alongside the bank of the

river Lempa downstream until the junction with the river Mocal, we concluded this re-survey, 304 cords being counted to the said junction of the rivers Lempa and Mocal . . ."

162. Before turning to the 1786 survey of San Juan de Lacatao, it will be useful to refer to the 1783 survey of Gualcimaca, despite its recognized imperfections. This survey reached

> *". . . una quebrada seca, honda que hace en un portillo que nombran de las Lagunetas en donde se encontró otro mojon que es el último del sitio de los Arcataos según su título y el primero perteneciente al sitio de Nombre de Jesús . . ."*
>
> *[Translation]*
>
> ". . . a deep dry *quebrada* where there is a *portillo* called Las Lagunetas and a further marker was found there which is the last of the *sitio* of Arcatao according to its title, and the first which appertains to the *sitio* of Nombre de Jesús . . ."

It is also recorded there that the next landmark, called Barranco Blanco,

> *". . . sirve de mojón y lindero a las tierras del referido sitio de Nombre de Jesús y las de la hacienda de San Juan de Lacatao dividiendo las dos jurisdicciones de este Provincia y la de San Salvador . . ."*
>
> *[Translation]*
>
> ". . . serves as boundary for the lands of the said *sitio* of Nombre de Jesús and those of the Hacienda of San Juan de Lacatao, dividing the two jurisdictions of this province and that of San Salvador . . ."

163. The 1786 survey of San Juan de Lacatao was carried out in the opposite direction to that of 1766, approaching from the junction of the Lempa and Mocal rivers. It was effected by one Manuel Castro or de Castro, who appears to have been the same land judge as had directed the survey of Gualcimaca, three years earlier. From the river junction, the survey record reads:

> *"Y mudando el rumbo al Oeste cuarta al Sud-oeste se tendió la cuerda por la orilla del río de Lempa tomándolo aguas arriba a la siniestra abrazando las tierras del sitio de Malpaiz hasta llegar a la junta o encuentro de un riachuelo o quebrada grande que dijeron llamarse de los Amates, por otro nombre Gualcuquín que también sirve de raya y lindero al sitio de Nombre de Jesús que posee el Bachiller don Simón de Amaya, presbítero domiciliario del Arzobispado de Guatemala cuya hacienda está en términos de la jurisdicción de la Provincia de San Salvador . . ."*
>
> *[Translation]*
>
> "Changing direction, heading west one quarter south-west, we stretched the rope along the bank of the river Lempa, following the

river upstream with the lands of the property of Malpaiz on the left up to its junction or meeting with a small river or large *quebrada* said to be called Los Amates, or alternatively Gualcuquín, also serving as a boundary to the property of Nombre de Jesús owned by Bachelor Simón de Amaya, a priest resident in the bishopric of Guatemala, whose property is within the boundaries of the jurisdiction of the province of San Salvador . . ."

164. The Chamber notes that the frontier already agreed between the Parties includes the confluence of the rivers Lempa and Mocal, and continues upstream along the Lempa to a point where a river or stream, marked on the Honduran map as the "río El Amatillo", and on the El Salvador map as the "río Guayquiquín or Amatillo", flows into the Lempa; the agreed frontier then follows that stream for a distance of nearly 2 kilometres (about 48 cords). The 1786 survey continues:

". . . y dicho riachuelo [Gualcuquín] y junta dicen parte las jurisdicciones de dicha Provincia y la de Comayagua a que es anexa la jurisdicción de Gracias, hasta donde se le junta una quebrada que nombran Tuquín o de los Amatillos o del Palo Verde que todos estos nombres le dan, cuya quebrada es guardaraya de jurisdicciones y división de Provincias: en fin a dicha junta llegó el medidor con ciento veinte cuerdas medidas. Y mudando el rumbo se tendió cuarta vez la cuerda al Norueste cuarta al Norte siguiendo aguas arriba el dicho riachuelo de Gualcuquín llevándolo a la siniestra hasta donde se la junta la dicha quebrada de el Amatillo o Palo Verde que va dicho, en cuya junta se pasó este riachuelo de Gualcuquín para seguir la quebrada y rumbo."

[Translation]

". . . and it is said that this small river [Gualcuquín] and the confluence separate the jurisdictions of that province [i.e., San Salvador] and of Comayagua to which the jurisdiction of Gracias is annexed, as far as the junction with a small *quebrada* called Tuquin or Los Amatillos or Palo Verde — all those names being used — this *quebrada* forming the boundary of jurisdictions and the division of the provinces; the surveyor reached this junction after counting 120 cords. And changing direction, we stretched the rope a fourth time to the north-west quarter north, following the small river Gualcuquín upstream on the left bank to the point where the said *quebrada* of El Amatillo or Palo Verde flows into this river, and at this place, we crossed the small river Gualcuquín in order to follow the direction of the *quebrada*."

165. At this point in the survey record, the matter becomes complicated by the appearance of Simón Amaya, owner of the Hacienda de Nombre de Jesús (paragraph 161 above), and a disagreement with him as to the course of the boundary. El Salvador has drawn attention to the fact that Simón Amaya "had nothing whatever to do with the authorities of the

community of Arcatao", which is true; but as owner of the Nombre de Jesús property, he had an interest in respect for its boundaries. It is at first unclear whether the survey followed the line which the judge thought correct, over the protests of the neighbouring owner, or whether in deference to those protests, though without conceding their validity, the survey followed the line claimed by the owner of the Hacienda de Nombre de Jesús. However, after completion of the survey, Simón Amaya wrote a letter of complaint, and the judge acted upon it as follows:

> *"Sin embargo de hallarme accidentado pasé al lugar donde el padre supone el agravio e introducción en sus tierras y aunque sin el título suyo se reconoció no estarlo y solo haber creídose de un falso informe que le sirvió de bastante apoyo para desahogar su pasión y enojo y puesto en dicho lugar señalaron dichos viejos donde se hallaban los antiguos mojones de Nombre de Jesús que es la misma línea que el medidor siguió y citando a todos los dichos para que de todo fuesen testigos en cualquier ocasión y evento . . ."*
>
> *[Translation]*
>
> "Although I had suffered an injury, I went to the place where the Father maintained that his rights had been infringed and an incursion made into his lands and although he did not have his title-deed, it was recognized that such was not the case and that he had based his views on incorrect information which had sufficed to infuriate and irritate him; and after arriving at this place, the elderly persons in question pointed out where the ancient boundaries of Nombre de Jesús were located, which was on the very line followed by the surveyor, and citing those persons to appear as witnesses should that prove necessary . . ."

The Chamber therefore considers that the 1786 survey of San Juan de Lacatao may be treated as correctly defining the boundaries of the two *haciendas* notwithstanding the attitude of the owner of the Nombre de Jesús property.

166. The survey record continues after the passage quoted in paragraph 164 above:

> *"Y el medidor siguiendo el rumbo que trajo del Norueste cuarta al Norte tomó la quebrada del Amatillo lindando a la izquierda con las tierras de nombre de Jesús hasta salir a un llano que está a media ladera del cerro donde se encontró un mojón antiguo de nombre de Jesús que nombran de los Macuylisguas y siguió tirando hasta la cumbre de un cerro alto picudo que nombran el Cerro Grande que enfrenta con la montaña de Quepure del que se fue bajando por montaña hasta el asiento de ella donde está un derrumbe colorado y siguió sobre el mismo rumbo recto a buscar un portillo que nombran de las Lagunetas donde se encontró otro mojón del sitio de Nombre de Jesús que también sirve a las*

tierras de Gualcimaca sitio que es de esta mi jurisdicción . . . salió ultimamente a dicho Portillo llegó a el con ciento treinta cuerdas medidas línea recta deduciendo algunas por las vueltas que se dieron con la cuerda a buscar como andar en aquellas fragosidades . . ."

[Translation]

"And the surveyor continued to walk in the same north-west quarter-northerly direction, following the *quebrada* del Amatillo, leaving on the left the lands of Nombre de Jesús until he arrived at a plateau which is half-way up the hill where an ancient marker of Nombre de Jesús was found called the Macuylisquas marker, and he continued stretching the rope as far as the summit of a high, sharp-pointed hill called Cerro Grande which is opposite the Quepure mountain. He continued down as far as the base of the latter where there is a red fall of rocks and proceeded in the same direction in a straight line, searching for a *portillo* called Las Lagunetas where another marker of the Nombre de Jesús property was found, which also delimits the lands of Gualcimaca, falling under my jurisdiction . . . and the surveyor finally arrived at this *portillo,* counting 130 cords measured in a straight line and subtracting several of them to compensate for the bends made with the rope in searching for the way in these rugged lands . . ."

The marker at Las Lagunetas is referred to as the tripoint of Nombre de Jesús, Gualcimaca and San Juan de Lacatao, but it appears from the 1783 Gualcimaca survey cited above that in fact it was a quadripoint where the Arcatao lands also terminated. (The Lacatao 1786 survey refers later to a Gualcima/Arcatao/San Juan de Lacatao tripoint, but this is the tripoint to the north of Gualcimaca, already discussed.)

167. After completing the 1786 survey, the judge concerned invited the surveyor to summarize his results, which were to be the foundation of a plan; if such plan were prepared, it does not seem to have been attached to the survey record. The distances and bearings recorded do not in fact appear to produce a result consistent with a return to the starting point of the survey; the matter was at the time referred to a revising surveyor, but no revision seems ever to have taken place.

168. On the basis, therefore, of the reconstructed 1742 title of Nombre de Jesús and the 1766 and 1786 surveys of San Juan de Lacatao, the Chamber considers that it is established that the line of the 1821 *uti possidetis juris* in this sub-sector corresponded to the boundary between the Nombre de Jesús and San Juan de Lacatao properties; and that this boundary ran from the Las Lagunetas tripoint (point H on sketch-map No. C-3 annexed) in a generally south-eastward direction to a point on the river Amatillo or Gualcuquín. That point, which has still to be identified, coincided with the confluence with the river of a small *quebrada,* flowing

into the river from its right (south-western) bank, and the boundary coincided generally with the course of the *quebrada* for the last part of its course down to the river. The boundary then followed the river Amatillo or Gualcuquín downstream to the Poza del Cajón, the point where the next agreed sector of boundary begins.

169. In order to define more precisely the line described in the preceding paragraph, it is legitimate to have regard to the post-independence (republican) titles granted by Honduras in the region, which, in the contention of Honduras, extend as far as, and support, the line which it claims, and which, as plotted by Honduras, are indicated on sketch-map No. C-3 annexed. These titles have already been referred to inasmuch as some of them make it possible to reconstitute part of the lost title of Nombre de Jesús; they still fall to be considered from two points of view: first, to see what further light they may throw on the *uti possidetis juris* line; and secondly, in connection with a claim by Honduras of El Salvador's acquiescence in or recognition of the frontier line claimed by Honduras.

170. The first of the two La Virtud titles (1836) defined a square area, 50 cords each way, carved out of the lands of the former Hacienda de San Juan de Lacatao, and not purporting to be aligned with the existing boundaries of other titles. Its starting point was the place called Salitre on the river Lempa; a place of that name was mentioned in the 1766 survey of San Juan de Lacatao, and was then said to be an estimated 60 cords from the confluence of the *quebrada* called Los Amates with the river Lempa (see paragraph 161 above). This first La Virtud title does not, in the Chamber's view, throw light on the *uti possidetis juris* boundary.

171. The second La Virtud title (1838) has already been quoted above (paragraph 159). It was apparently intended to fill the gap between the first title of La Virtud (1836) and the lands of Gualcimaca; Gualcimaca was surveyed on 23 February 1837 and the second La Virtud title on 4-5 March 1837, the same official carrying out both surveys. It will be recalled (paragraph 157 above) that the Gualcimaca title records that the Portillo de Las Lagunetas was the tripoint of Arcatao, Nombre de Jesús and San Juan de Lacatao. The survey of the lands of La Virtud — which, it should be recalled, were carved out of the lands of San Juan de Lacatao — did not begin from the old tripoint of Las Lagunetas, but apparently from a point 30 cords (1,204 metres) away called La Bolsa, which was stated to have been a landmark marking the boundary of Nombre de Jesús and San Juan de Lacatao. There is no mention of a hill of that name in the surveys of San Juan de Lacatao, but it will be recalled (paragraph 159 above) that the 1742 title of Nombre de Jesús was produced in 1837 at La Bolsa and quoted as referring to *"este cerro"* — "this hill". The description of the initial survey operations for La Virtud in

1837 is somewhat confused, but read in the light of the plan attached to the title, it indicates that the surveyor proceeded for 30 cords north-west, and reached the tripoint of Gualcimaca/Nombre de Jesús/La Virtud; he then followed the Gualcimaca boundary, without repeating the measurements made when that property had been surveyed.

172. The title of San Sebastián del Palo Verde was surveyed in August 1843, and purported to lie south-west of, and be coterminous with, the first La Virtud title (though the common boundary according to the plan on the 1843 title ran "N 74° W" rather than directly west-east as recorded in the earlier title). The Nombre de Jesús title was again produced by the Mayor of that village, and the survey was effected to take account of it. According to the record, the course followed from the starting point of the 1837 La Virtud survey (i.e., La Bolsa), was "S 79° E"; at 50 cords (2,075 metres) distance, the survey reached "the junction of a small *quebrada* called Lajas with the river Amatío, a junction which is also known as Posa del Cajón".

> *"De aquí se tomó el rumbo del Sud setenta y nueve grados al Este y bajando de este cerro se pasó por un portezuelito que menciona la referida medida del Nombre de Jesus, cuyas tierras quedan á la derecha y las que se miden á la izquierda; por último llegamos á la junta de una quebradita que llaman de Lajas con el río del Amatío, á cuya junta llaman tambien la posa del Cajon . . . Hasta este lugar se cuentan cincuenta cuerdas que espresa el título del Nombre de Jesus."*
>
> *[Translation]*
>
> "As from that spot, we proceeded due S 79° E and going down that hill, we went by a small pass which is mentioned in the said survey of Nombre de Jesus, the lands of which are to be found to the right and the ones being measured to the left; lastly, we arrived at the junction of a small *quebrada* called Lajas with the river del Amatío, a junction which is also known as Posa del Cajon . . . up to that spot, 50 cords were counted, as stated in the title-deed of Nombre de Jesus."

173. The picture which emerges from these various titles is that the boundary of the Nombre de Jesús title ran from Las Lagunetas to La Bolsa (a distance variously estimated at 30 cords or 60 cords), from La Bolsa to a *quebrada*, then called Lajas, which flowed, from the right (southern) side, into the river Gualcuquín or Amatillo, and followed the last part of that *quebrada* to the river, the distance from La Bolsa being some 50 cords. The boundary then followed the river downstream to its confluence with the Lempa. There is however some discrepancy of distance as regards this part of the boundary: according to the 1766 survey of San Juan de Lacatao, the distance from the "ford of the *quebrada* called Los Amates" to the

confluence with the river Lempa was estimated at 31 cords (1,286 metres), and from there to the confluence of the Lempa and Mocal rivers 304 cords (12,616 metres). The 1786 survey arrived at Las Lagunetas after 130 cords, but it is not entirely clear where the measurement started; if it was from the Gualcuquín/Lempa confluence, then deducting the 100 cords between Las Lagunetas and the river, this leaves only 20 cords (820 metres) for the distance between that confluence and the point where the survey left the river. What is clear is that the 1786 survey records 120 cords from the confluence of the Lempa and the Mocal to the confluence with the *quebrada*, far less than the 304 cords for this distance in the 1766 survey. The distance between Las Lagunetas and the confluence of the Gualcuquín and Lempa rivers is, according to modern maps, some 7,000 metres over a straight line; and, as seen above, the position of Las Lagunetas is derived from, *inter alia*, distances from the Cerro El Caracol above the village of Arcatao, one of the places referred to in the various ancient titles which, in the view of the Chamber, are clearly identifiable (see paragraph 155 above).

174. The republican titles of La Virtud and San Sebastián del Palo Verde are only of assistance for the boundary between Las Lagunetas and the river Gualcuquín; they give no indication of how much of the river Gualcuquín formed the Nombre de Jesús boundary further downstream. Honduras has drawn attention to the reference to the "Posa del Cajón" as the south-eastern limit of the title of San Sebastián del Palo Verde, and has pointed out that the eastern limit of the present disputed sector, i.e., the starting point of the next agreed sector to the east, is called the Poza del Cajón (1980 General Treaty of Peace, Article 16, Fourth Section). However if it is assumed that this latter point (which does not, incidentally, appear from the maps to be the junction of any stream or ravine with the river Gualcuquín-Amatillo) is the same place as that referred to in the title of San Sebastián del Palo Verde, the result is further cartographical inconsistencies. If the — fairly precise — distances and bearings in the republican titles of San Sebastián del Palo Verde, La Virtud, and Gualcimaca are used to plot these titles on the map, beginning from the terminal point of the disputed sector described as the Poza del Cajón, the result is to place Gualcimaca at such a considerable distance to the south of the Cerro El Caracol above the village of Arcatao as to be quite inconsistent with the various other relevant titles, even in Honduras's interpretation of them. The Chamber therefore considers that the more reasonable conclusion is that the Poza del Cajón referred to in the 1843 title of San Sebastián del Palo Verde is not the point identified by that name in 1980 as the terminal point of the present disputed sector; and that there appears to be no reasonable explanation for the discrepancies in distances travelled along the river Gualcuquín-Amatillo so that the point cannot be taken into consideration.

175. The direction from Las Lagunetas to La Bolsa, according to the 1838 La Virtud title, is generally south-east (the reciprocal of the north-west direction taken on the first leg of the survey). Both the La Virtud title and the title of San Sebastián del Palo Verde have contemporary sketch-plans attached, and by comparing these it is possible to deduce from the precise bearings of the San Sebastián title that the line Las Lagunetas-La Bolsa lay on a bearing of approximately 132°. Taking into account the magnetic variation in the region at the time of some 7° E (cf. paragraph 117 above), this is equal to 139° true. On that approximate bearing from Las Lagunetas (point H on sketch-map No. C-4 annexed), and at a distance of 900 metres (21.5 cords), there is a hill marked on the maps as some 848 metres high (point I on sketch-map No. C-4). If from this hill the bearing of the south-western boundary of San Sebastián del Palo Verde (S 79° E, i.e., 101° magnetic; 108° true) is then followed for 2,490 metres (60 cords), the line arrives at a *quebrada* marked on both Parties' maps as the combination of the *quebrada* La Montañita and the *quebrada* de León which merges with the upper waters of the Río Gualcuquín or Amatillo at point J on sketch-map No. C-4. On this basis, the Chamber considers it a reasonable conclusion that the hill in question is the one called La Bolsa in the 1837 survey, and that the *quebrada* in question is that of Lajas, and that the line just indicated is the course of the 1821 boundary between Nombre de Jesús and San Juan de Lacatao, and thus the *uti possidetis juris* line, which then continues to follow the course of the Río Gualcuquín-Amatillo downstream to the endpoint of the disputed sector.

*

176. The Chamber has found that the boundary of the *uti possidetis juris* in this part of the third sector can be determined by reference to, *inter alia*, the republican titles of La Virtud and San Sebastián del Palo Verde, and the line found by the Chamber is thus consistent with what the Chamber regards as the correct geographical location of those titles. Since the Honduran claim that a boundary line following the limits of those titles had been recognized, or acquiesced in, by El Salvador in 1884, would lead to exactly the same result, there is no need for the Chamber to examine that contention.

* *

177. Having completed its survey of the 1821 *uti possidetis juris* position based on the various titles produced, the Chamber has now to examine the claims made in the whole of this third sector of the land boundary on the basis of *effectivités*. In its Memorial, El Salvador asserted that its jurisdiction in this sector of the frontier

> "is confirmed by the exercise therein of civil jurisdiction, such as the registration of titles to land in the Property Registry, the grant of Municipal Titles to persons in possession, and the registration of the Births, Deaths and Marriages of the Inhabitants, as well as the registration of the Municipal and Presidential Elections carried out in this area".

Included in the Memorial is a map showing the "Human Settlements in the Non-Delimited Zones", relating to this sector; and annexed to that pleading is a number of birth and death certificates. The major claim of this kind is El Salvador's assertion of the exercise of effective jurisdiction over the area to the north and west of the Arcatao title, as far north as the point 14° 09′ 49″ N, 88° 47′ 55″ W (point C on sketch-map No. C-1 annexed). In this area, indeed, the *effectivités* asserted are the sole basis of El Salvador's claim, since it did not dispute that the colonial land-titles produced by Honduras were issued following surveys by the authorities of the province of Gracias a Dios. The only evidence adduced by El Salvador which relates to an alleged settlement in this north-western area consists of five birth certificates and one death certificate, registered in the Salvadorian settlement of Arcatao, concerning births and a death occurring in the "canton Zazalapa". The dates of the certificates range from 30 January 1977 to 7 February 1985; these are insufficient to support a claim to "long-term exercise of effective jurisdiction". The Chamber has noted the observations made on behalf of El Salvador as to the difficulties, in this area in particular, in collecting evidence of *effectivités*, but as indicated above (paragraphs 64-65), does not consider that they affect the conclusions to be drawn.

178. As regards the area to the east of the Arcatao title, a number of similar certificates has been produced referring to a birth and a number of deaths in the valley or canton of Los Filos, to be identified, according to the map in the Salvadorian Memorial, with the settlement in the valley to the south of the Cerro El Caracol and the Cerro El Sapo. These range in date from 25 October 1910 to 20 June 1919. No explanation is given of the absence of any records of registration prior to 1910 or since 1919. Further certificates have been produced of four births in the canton of Gualcimaca on dates ranging from 3 January 1977 to 25 June 1985. The Chamber is unable to regard these two sets of certificates as amounting to sufficient evidence of the exercise of effective jurisdiction in the area in question.

179. Mention should also be made of further evidence of *effectivités* offered by El Salvador in its Counter-Memorial. It is there claimed that El Salvador has during a considerable period of time exercised military

jurisdiction over *(inter alia)* the sector now being examined. Reference is made to the Rural Military Posts assigned to each canton, each of which "has, amongst its other duties and powers, that of controlling, defending and patrolling the canton in question". The evidence offered in this respect is the formal records of the personnel of the Rural Military Posts and Field Patrols, covering the period from 1922 to 1964; in the sector now in question, these relate to the cantons of Los Filos, Gualcimaca, Quipura, Hacienda Vieja, and Plazuelas. However, there is nothing to indicate where precisely those Posts were established in relation to the disputed boundary, nor what effective form the military jurisdiction took. Accordingly, the Chamber cannot regard this material as sufficient to displace the conclusion it has arrived at above as to the position of the boundary.

180. Turning now to the evidence of *effectivités* submitted by Honduras, there is first some evidence of diplomatic correspondence, and in particular a formal request by El Salvador for extradition of alleged malefactors residing in a place called "La Vecina, jurisdiction of the town of La Virtud, Department of Gracias" in Honduras. La Vecina is shown on the maps of both Parties as a village near the headwaters of the river Gualcuquín or Amatillo. Secondly, considerable material was presented as an annex to the Honduran Reply to show that Honduras also can rely on arguments of a human kind, that there are "human settlements" of Honduran nationals in the disputed areas in all six sectors, and that various judicial and other authorities of Honduras have exercised and are exercising their functions in those areas. So far as the present sector is concerned, Honduras has presented material under ten headings: (i) criminal proceedings; (ii) police or security; (iii) appointment of Deputy Mayors; (iv) public education; (v) payment of salaries of employees and remuneration to public officials; (vi) land concessions; (vii) transfer or sale of immovable property; (viii) birth certificates; (ix) death certificates; (x) miscellaneous. These relate to between 30 and 40 localities, identified simply by the name of the village or place. No map has been supplied to show the geographical position of these places; comparison of Honduran and Salvadorian maps shows inconsistency in the naming and placing of villages; and in some cases there appear to be two villages of the same name in different parts of the area. A few do not appear to be marked on any map.

181. So far as can be established on the information available to the Chamber, only one of the villages to which the Honduran evidence relates lies wholly on the El Salvador side of the boundary line defined by the Chamber in this sector: the village of El Palmito, which is situated south of the river Gualcuquín or Amatillo, which here forms the boundary, as indi-

cated in paragraph 175 above. Part of the village of El Amatillo may also lie south of the river; the maps are not clear on this, but the Honduran map places the name and the buildings to which it refers north of the river. According to the Honduran map, the village or settlement of El Palmito lies to the south of the river, and just to the south-east of the confluence with a *quebrada* which the Chamber regards as marking the point where the boundary begins to follow the river. The El Salvador map shows some scattered buildings on this site, but does not give the name El Palmito (or any other name) to a settlement there. The evidence produced by Honduras consists of 12 birth registrations, with dates between May 1909 and August 1946; curiously enough, none of the numerous death registrations produced by Honduras gives El Palmito as place of death. No explanation has been given for the limitation of the records to the period 1909-1946. Since the last record is from some 45 years ago, it appears likely that the settlement of El Palmito either has ceased to exist, or has become part of an administrative division with a different name. All in all, the Chamber does not in any event see here sufficient evidence of *effectivités* by Honduras in an area clearly shown to be on the El Salvador side of the boundary line to justify the Chamber in doubting the validity of that boundary as representing the *uti possidetis juris* line.

* *

182. In view of the Chamber's rejection of the claim of El Salvador to the area to the north-west of this sector based on *effectivités*, it becomes necessary to revert to the question of the precise position of the *uti possidetis juris* line in this region. The Chamber has accepted (paragraph 131 above) that the boundary here follows the southern boundary of the titles of San Juan El Chapulín and Concepción de las Cuevas; however, it sees no justification for the interpretation of these titles as producing a straight line from the Pacacio boundary marker to the confluence of the Gualsinga and the Sazalapa. An element to be taken into consideration is the following passage in the 1766 survey record of San Juan El Chapulín. The surveyor was travelling generally eastwards, and had established a boundary marker with the lands of Guarita to the north.

> *"... y encontramos con un serro grande que no pudiendose pasar con la cuerda por lo fragoso se tanteo a ojo treinta cuerdas asta la cumbre de dicho serro y alli allamos a Bisente Lopes con su titulo el que declara llegar asta dicha cumbre las tierras del sitio de las cuevas y quedo por mojon de unas y otras tierras y mudando de rumbo para el sur por la cuchilla de dicho serro cuia cuchilla es ralla de esta jurisdicción y de la San Salvador se tendio la querda asta llegar a un serrito picudo donde*

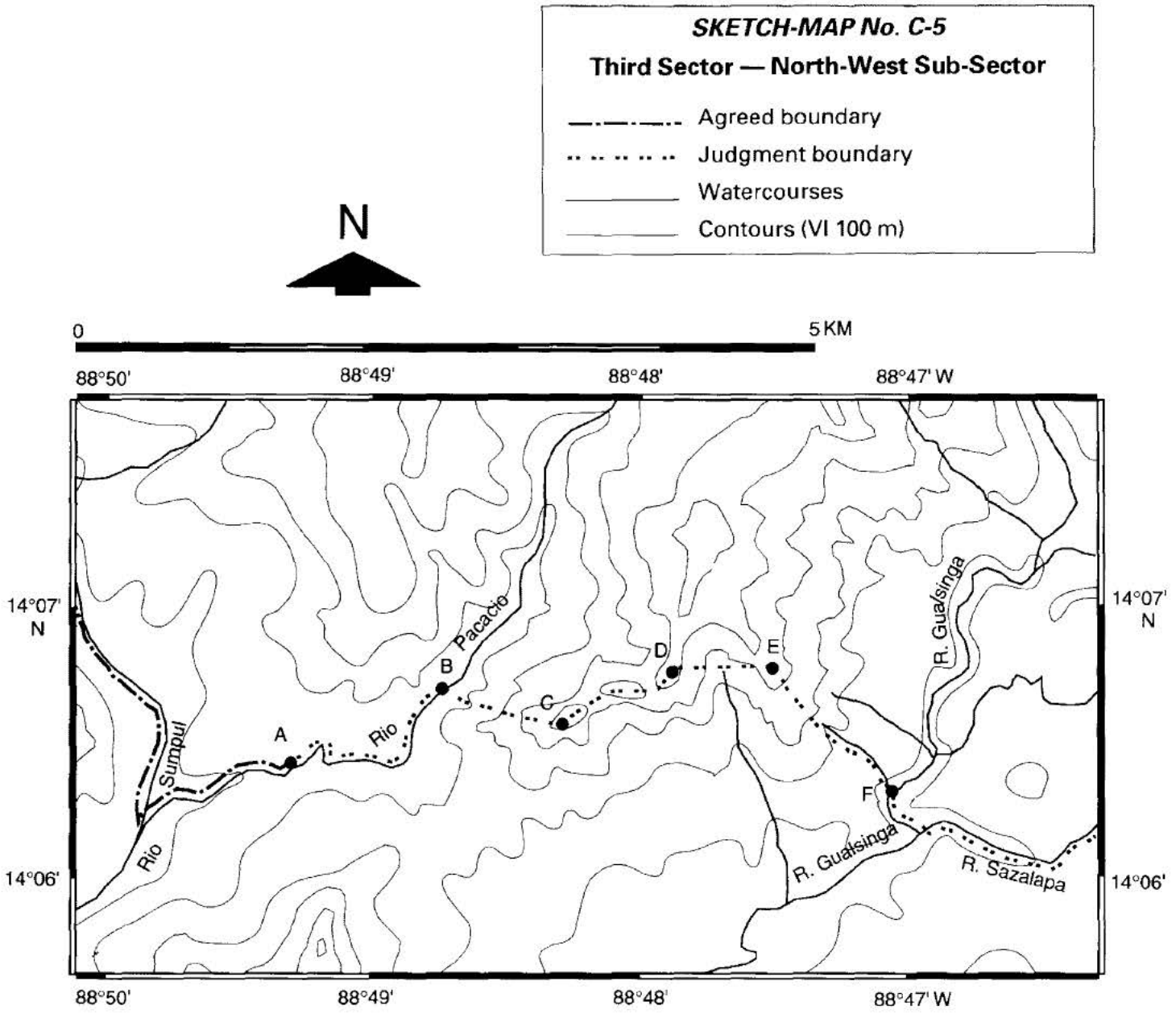
allamos a Ylario Cordova con su título el que [illegible] *asta dicho serito y asta alli ubo sinquenta cinco cuerdas, y mudando de rumbo para el poniente por una quebrada de monte se llego al rrichuelo de Capasio y caminando aguas abajo asta la junta con el río grande de Sumpul cuia junta se dio por mojón y ubo asta alli quarenta cuerdas . . ."*

[Translation]

". . . and we encountered a large hill which was so rugged that we could not pass through it with the cord and a visual estimate of 30 cords was made up to the top of the hill and there we met Bisente Lopez with his title-deed and he stated that the lands of the place called Las Cuevas went up to the summit and it remained as a boundary-marker for the two lands, and changing to a southerly direction via the crest of the said hill, which crest is the boundary between this jurisdiction and that of San Salvador, we took cord measurements until we arrived at a sharp-pointed hill where we met Ylario Cordova with his title-deed, which *[illegible]* up to a small hill, making 55 cords and changing to a westerly direction we arrived by a *quebrada de monte* at the Capasio stream which we followed down to the junction with the large river Sumpul, which junction was taken as a boundary-mark and up to there there were 40 cords . . ."

183. The 1719 survey of Concepción de las Cuevas refers to a *quebrada* called La Puerta, which marked the boundary with a place called Santa Lucía *(". . . dicha quebrada de la puerta Sirue de mojon á este Citio, y al Sitio llamado Santa Lucia . . .")*. Honduras attaches importance to this since the lands of Santa Lucía were within the jurisdiction of San Salvador. On a map annexed to the Honduras Memorial, the position of this *quebrada* is indicated, its confluence with the river Gualsinga (point Z on sketch-map No. C-1 annexed) being, according to Honduras, a common point with the 1741 title of Hacienda de Sazalapa.

184. It is not easy to identify the features mentioned in the titles of San Juan de Chapulín and Concepción de las Cuevas. Nor, it may be remarked in passing, do such republican titles as have been produced throw light on the matter. However, the reference in the San Juan de Chapulín title to the "crest of the said hill" *("cuchilla de dicho serro")* at this point in the survey as the boundary with the province of San Salvador indicates, in the Chamber's view, that the latter province must have extended further north than the straight line west to east advanced by Honduras. Taking the titles produced into account, the Chamber considers that the most likely course of the boundary was as follows (illustrated on sketch-map No. C-5 annexed). From the Pacacio boundary marker, indicated as point A on sketch-map No. C-1 and sketch-map No. C-5 annexed, along the Río Pacacio upstream to the point (point B on sketch-map No. C-5), west of the Cerro Tecolate or Los Tecolates, where a *que-*


SKETCH-MAP No. C-5
Third Sector — North-West Sub-Sector
Agreed boundary
Judgment boundary
Watercourses
Contours (VI 100 m)
N
0
5 KM
88°50'
88°49'
88°48'
88°47' W
14°07' N
14°06'
A
B
C
D
E
F
Rio Sumpul
Rio Pacacio
R. Guatsinga
R. Guatsinga
R. Sazalapa

brada is shown on Honduras's map as flowing into it from the east (this is some 40 cords — 1,640 metres — from the confluence with the Sumpul, as indicated in the passage quoted above). From there up the *quebrada* to the crest of the Cerro Tecolate or Los Tecolates (point C on sketch-map No. C-5), and along the watershed of this hill as far as a ridge about 1 kilometre to the north-east (point D on sketch-map No. C-5); from there in an easterly direction to the neighbouring hill above the source (on Honduran maps) of the Torrente La Puerta (point E on sketch-map No. C-5) and down that stream to where it meets the river Gualsinga (point F on sketch-map No. C-5; point Z on sketch-map No. C-1). From there the boundary runs down the Gualsinga to its confluence with the Sazalapa (point Y on sketch-map No. C-1), and then upstream along the Sazalapa.

185. To sum up, the finding of the Chamber as to the whole course of the boundary line in this third sector is as follows: the line is indicated on Map No. III[1] annexed, which is taken from the following sheets of the United States of America Defense Mapping Agency 1:50,000 maps:

Series E752	Sheet 2458 III	Edition 2-DMA
Series E753	Sheet 2458 II	Edition 1-DMA,

and the lettered points refer to the letters on that map. From the Pacacio boundary marker (point A) along the Río Pacacio upstream to a point (point B) west of the Cerro Tecolate or Los Tecolates; from there up the *quebrada* to the crest of the Cerro Tecolate or Los Tecolates (point C), and along the watershed of this hill as far as a ridge approximately 1 kilometre to the north-east (point D); from there in an easterly direction to the neighbouring hill above the source of the Torrente La Puerta (point E) and down that stream to where it meets the river Gualsinga (point F); from there the boundary runs along the middle of the river Gualsinga downstream to its confluence with the Sazalapa (point G), and thence upstream along the middle of the river Sazalapa to the confluence with the river Sazalapa of the *quebrada* Llano Negro (point H); from there southeastwards to the hill indicated as point I, and thence to the crest of the hill marked on maps as being an elevation of 1,017 metres (point J); from there the boundary, inclining still more to the south, runs through the triangulation point known as La Cañada (point K) to the ridge joining the hills indicated on the El Salvador map as Cerro El Caracol and Cerro El Sapo (through point L), and from there to the feature marked on the maps as the Portillo El Chupa Miel (point M); from there following the ridge to the Cerro El Cajete (point N), and thence to the point where the present-day

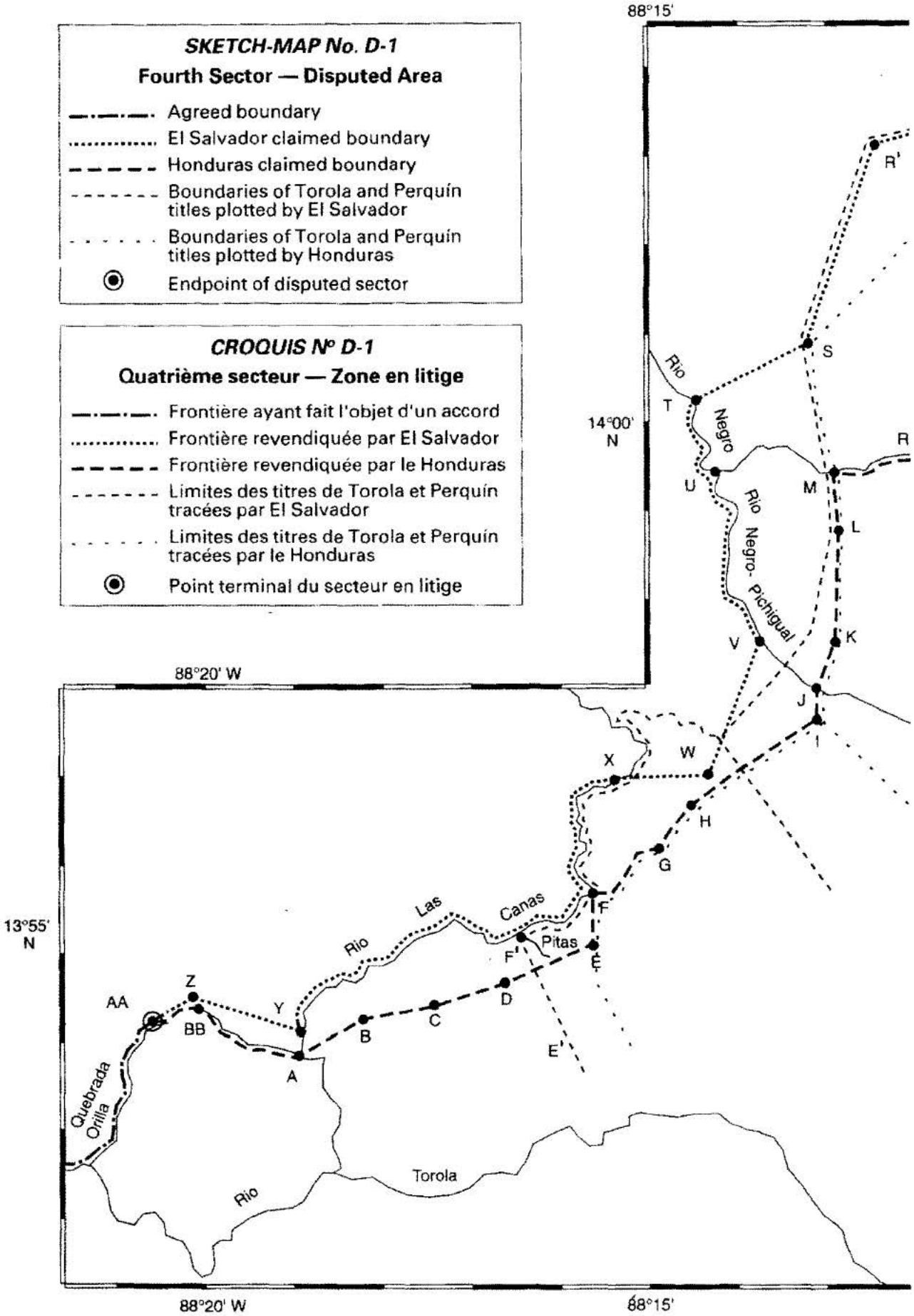
[1] A copy of the maps annexed to the Judgment will be found in a pocket at the end of this fascicle or inside the back cover of the volume of *I.C.J. Reports 1992. [Note by the Registry.]*

road from Arcatao to Nombre de Jesús passes between the Cerro El Ocotillo and the Cerro Lagunetas (point O); from there south-eastwards, to the top of the hill (point P) marked on the maps with a spot height of 848 metres; from there slightly south of east to a small *quebrada*; eastwards down the bed of the *quebrada* to its junction with the river Amatillo or Gualcuquín (point Q); the boundary then follows the middle of the Gualcuquín river downstream to the Poza del Cajón (point R), the point where the next agreed section of boundary begins.

* * *

FOURTH SECTOR OF THE LAND BOUNDARY

186. The fourth, and longest, disputed sector of the land boundary, also involving the largest area in dispute, is that between the source of the Orilla stream and the boundary marker known as Malpaso de Similatón; it is illustrated on sketch-map No. D-1 annexed, which also shows the current respective claims of the two Parties as to the boundary in this sector. The boundary line now claimed by Honduras is as follows (the reference letters are to the points so marked on sketch-map No. D-1, and the names given to the various boundary points are those given by Honduras). From the source of the Orilla stream (point AA) to the pass of El Jobo, at the foot of the mountain known as El Volcancillo; from there to the southernmost source of the Cueva Hedionda stream (point BB). Following its course downstream along the middle of the river bed to the Champate boundary marker (point A) as far as its confluence with the river Las Cañas or Santa Ana, thence following the *camino real*, passing by the boundary markers of Portillo Blanco (point B), Obrajito (point C), Laguna Seca (point D), Amatillo or Las Tijeretas (point E), and from there, in a northerly direction, as far as the point at which the river Las Cañas joins the stream known as Masire or Las Tijeretas (point F); thence, taking a northeasterly direction, it follows its course upstream as far as the road from Torola to Colomoncagua (point G) and continues in the same direction as far as the Cerro La Cruz, Quecruz or El Picacho (point H); thence to the Monte Redondo, Esquinero or Sirin boundary marker (point I) and from there to the El Carrisal or Soropay boundary marker (point K); from there it runs in a northerly direction to the hill of Guiriri (point L), and thence, in the same direction, to the marker of El Rincón, on the river Negro-Quiagara (point M); thence following the river Negro upstream, as far as the Las Pilas boundary marker "at the source of that same river" (point N), and from that place to the point identified by Honduras as the Malpaso de Similatón (point P). The Honduran maps also show the line passing through a point J (reproduced on sketch-map No. D-1), described in the Honduran Reply as the "Camino Real", but this point is not mentioned in the final submissions of Honduras.


SKETCH-MAP No. D-1
Fourth Sector — Disputed Area
Agreed boundary
El Salvador claimed boundary
Honduras claimed boundary
Boundaries of Torola and Perquín titles plotted by El Salvador
Boundaries of Torola and Perquín titles plotted by Honduras
Endpoint of disputed sector
CROQUIS Nº D-1
Quatrième secteur — Zone en litige
Frontière ayant fait l'objet d'un accord
Frontière revendiquée par El Salvador
Frontière revendiquée par le Honduras
Limites des titres de Torola et Perquín tracées par El Salvador
Limites des titres de Torola et Perquín tracées par le Honduras
Point terminal du secteur en litige
88°15'
14°00' N
13°55' N
88°20' W
88°15'
88°20' W
Rio Negro
Rio Negro- Pichigual
Las Canas
Rio Pitas
Quebrada Orilla
Rio Torola
R'
S
T
R
U
M
L
V
K
J
I
W
X
H
G
F
F'
E
E'
D
C
B
A
Y
Z
AA
BB

187. El Salvador has indicated the course of the boundary line in the opposite direction, from the Malpaso de Similatón (which it places at a different point) in the east to the Orilla stream in the west. By reference to the lettered points on sketch-map No. D-1 annexed, and referring to the boundary points by the names given to them by El Salvador, its claimed line is as follows. Starting from the boundary marker known as the Mojón Mal Paso de Similatón (point P') the frontier runs in a straight line to the boundary marker known as the Antiguo Mojón de la Loma (point Q), and then in a straight line to the mountain known as the Montaña de la Isla (point Q'). From this mountain, the frontier runs in a straight line to the summit of the peak known as the Cerro La Ardilla (point R); from this peak, in a straight line to the summit of the peak known as the Cerro El Alumbrador (point R'), and from this peak, in a straight line to the summit of the peak known as the Cerro Chagualaca or Marquezote (point S). From this peak, the frontier runs in a straight line as far as an elbow of the river Negro-Quiagara (point T) and then follows the course of the river Negro-Quiagara upstream as far as the confluence with it of the river known as the river Negro-Pichigual (point U). From this confluence, the frontier follows the course of the Pichigual river upstream as far as a boundary marker situated at point V; from this boundary marker, the frontier continues in a straight line to the summit of the peak known as the Cerro El Alguacil (point W); from this peak, the frontier continues in a straight line to an elbow of the river known as the de Las Cañas or Yuquina situated at point X; from this elbow of this river, the frontier follows the course of the de Las Cañas or Yuquina river downstream as far as the place known as the Cajón de Champate (point Y), and then runs in a straight line to the summit of the peak known as the Cerro El Volcancillo (point Z) and thence in a straight line to the source of the stream known as La Orilla (point AA).

188. The grounds relied on by the Parties in support of their claims are such that it is appropriate to divide up the sector into a number of sub-sectors, as was done by the Parties themselves in the course of argument. However, the most important issue before the Chamber in this sector, at least as regards the size of the area of land affected, is whether the boundary should follow the line contended for by El Salvador to the north of the sector, or should follow the river Negro-Quiagara, some 8 kilometres further south, as claimed by Honduras. The Chamber considers that, rather than taking the sub-sectors in order from west to east, or vice versa, its approach should be to resolve this question first, and then deal with the remaining sub-sectors of the boundary in the light of that initial decision.

189. The principal issue in dispute between the Parties in this fourth sector is in fact whether or not the province of San Miguel, which became on independence part of El Salvador, extended in the region in question to the north of the river called Negro or Quiagara, or whether on the contrary that river was in 1821 the boundary between the province of San Miguel and the province of Comayagua, which became part of Hon-

duras. The Parties are in agreement as to the identification of the river Negro-Quiagara; it runs from east to west across the major disputed area, unites with another river (Pichigual) and turns north-west. This latter part of the river is also called the river Negro, but is referred to in certain documents as the river Pichigual; to avoid confusion, the Chamber will refer to the two rivers, or parts of the river, as the river Negro-Quiagara and the river Negro-Pichigual. The Chamber will first set out the relevant events which, according to the evidence before it, occurred in the 18th century, and in the 19th century prior to independence, before considering the legal consequences to be deduced from them.

190. In the year 1745 a title was issued by the Spanish colonial authorities to the Indian communities of Arambala and Perquín, two settlements established some 4 kilometres to the south of the river Negro-Quiagara, in the jurisdiction of the province of San Miguel. In 1760, the settlement was burned down and the title document perished in the fire. In 1769, the representatives of the community of Arambala-Perquín applied to the *Juez Privativo del Real Juzgado de Tierras* of the Kingdom of Guatemala for a survey of their lands and the issue of a substitute title. In their application they referred to the loss of the original title in the fire, and also to a claim by the Indians of Jocora or Jocoara in the province of Comayagua to 2 1/2 *caballerías* of land in the place called Naguaterique, which the Indians of Arambala-Perquín had always regarded as their own. The 2 1/2 *caballerías* had been surveyed by the sub-delegate judge of the province of Comayagua in 1766. On 26 May 1769 the *Juez Subdelegado de medidas de Tierra* in San Miguel, Antonio de Guzmán, delegated power, in view of his own illness, to Land Judge Antonio Ignacio Castro to carry out the survey requested by the community of Arambala-Perquín. After hearing various witnesses, Judge Castro carried out the survey requested on 12 June 1769.

191. On 8 May 1773 a judicial decision was taken by the President of the Real Audiencia and *Juez Privativo del Real Derecho de Tierras* in the dispute between the Indians of Jocoara and those of Arambala-Perquín, as follows[1]:

> *"Fallo: Que los del Pueblo de Arambala y Perquin no han probado su accion segun y como probarles combenia, y que lo han hecho suficientemente los de el Pueblo de Jocoara Jurisdiccion de Comayagua en la que se hallan las Tierras litigiosas, y en su consequencia declaro se deve amparar a los Naturales de el citado Pueblo de Jocoara en la posecion que han tenido de las dos Caballerias doscientas y una Cuerdas, segun esta resuelto por auto de veinte y dos de Diciembre de setecientos setenta . . . con la calidad de que las deven componer con Su Magestad a*

[1] The spelling follows the transcription by Honduras, which gives the composition as 80 *tostones*, while the El Salvador transcription gives 8.

rason de [ochenta] [ocho] Tostones cada una que es la mitad de su Verdadero Valor, y sobre que se ha de dar cuenta a la Real Audiencia oportunamente antes de librarse el Titulo, extrañandose como se extraña el injusto procedimiento especialmente del Comisionado Don Antonio Guzman, que entendio en varias diligencias . . ."

[Translation]

"*Judgment:* Considering that the inhabitants of Arambala and Perquin have not brought sufficient evidence, as they should have done, in support of their action and that, on the other hand, this has been done by the inhabitants of Jocoara, Jurisdiction of Comayagua, where the disputed lands are situated, I declare in consequence that the right of the inhabitants of the village of Jocoara must be upheld to the possession which they have had of 2 *caballerías* and 201 cords as stated in the decision of 22 December 1770 . . . on condition that they pay to His Majesty the value thereof at the rate of [80] [8] *tostones* each, representing one half their real value, to be paid into the Real Audiencia in good time before the issuance of the title-deed, exception being taken to the defects from which these proceedings suffer, particularly as regards Commissioner Don Antonio Guzman, who participated in several of the measures taken . . ."

No further indication was given of the actions of the Sub-delegate Judge Guzmán which had incurred censure.

192. An appeal was brought by the community of Arambala-Perquín to the Real Audiencia, but was dismissed on 20 May 1776, though whether on the merits or on procedural grounds is not entirely clear. The Indians of Jocoara were formally given possession of the disputed land on 20 August 1777; no further survey at that time is recorded, but the "boundary markers of the villages", which had been deliberately destroyed, were re-established, and the official documents were delivered to the community.

193. In November 1815, the community of Arambala-Perquín again requested the issue of a new title to replace that lost in the fire, and to record the allocation of the disputed 2½ *caballerías* to the community of Jocoara. On 16 November 1815, a decree was issued by the President of the Real Audiencia of Guatemala in the following terms:

". . . amparo y mando sean amparados en la antigua posecion de sus exidos á los Yndios del Pueblo de Arambala y Perquín vajo los limites y mojones que constan en la medida incerta de la que solo deberá excluirse el terreno asignado a los del Pueblo de Jocoara de que tambien queda hecha relacion; para que en ellos puedan hacer sus siembras y demas trabajos comunes que por bien tubieren y más de sus tierras aguas pastos y abrevaderos libremente como de cosa que les pertenece con justo legitimo titulo como este lo es. Y ordeno y mando á todos los

Jueces y Justicias de la Provincia de San Miguel y de la de Comayagua los amparen y defiendan en dicha posecion sin consentir que de el todo ni parte alguna de las tierras que comprenden dichos exidos sean despojados sin ser primero oidos y por fuero y derecho convencidos dándoseles si la pidieren por el Juez que sea requerido con este titulo nueva posecion de ellas, de que podrá la diligencia correspondiente á continuacion y se le debolvera para en guarda de su derecho."

[Translation]

"... I protect and command to be protected in the long-standing possession of their *ejidos* the Indians of the town of Arambala and Perquín in accordance with the limits and landmarks that are set out in the attached measurement, from which shall be excluded only the field ascribed to those of the town of Jocoara, of which a report has also been made; so that in such *ejidos* they may make their sowings and perform such other communal tasks as they may esteem convenient, besides using their lands, pastures and watering places freely, as something that belongs to them by virtue of a just and legitimate title as this is. And I command and order all the Judges and Justices of the province of San Miguel and of that of Comayagua to protect and defend them in the said possession, without permitting them to be despoiled in part or in the whole of the lands that comprehend the said *ejidos* without first being heard and by privilege and by right defeated, possession of the land being restored to them by the judge to whom they may apply therefor and who, after taking the necessary steps, is to record them on this title and return it to them, so that their rights may be safeguarded."

194. The measurement of the lands referred to must be taken to be that carried out in 1769 which was apparently attached to the 1815 document; no survey subsequent to 1769 has been produced to the Chamber. There is broad agreement between the Parties as to the geographical location and extent of the lands surveyed, though the precise line of the northerly boundaries is disputed. Both Parties interpret the survey as showing that the lands of the community of Arambala-Perquín extended both to the south and to the north of the river Negro-Quiagara, even though the survey nowhere specifically records a crossing of that river. The position of the 2½ *caballerías* of land adjudicated to the Indians of Jocoara is not agreed; it has been suggested by El Salvador that this piece of land was not within the Arambala-Perquín *ejidos* as surveyed in 1769, but this does not appear to be consistent with the request made in 1815 by the community of Arambala-Perquín for the issue of a title document containing *inter alia* a definition of the rights of the community of Jocoara.

195. The essential question in dispute between the Parties is however whether the lands of Arambala-Perquín lay wholly in the province of San Miguel, where the settlement of Arambala-Perquín was situated, or

whether the lands to the north of the river Negro-Quiagara were in the province of Comayagua, the river being the provincial boundary. In this respect, El Salvador argues that the fact that the survey of 1769, which was revived in 1815, was carried out by delegate and sub-delegate judges from San Miguel constitutes evidence that the area adjudicated to Arambala and Perquín was subject to the jurisdiction of San Miguel. It may be recalled that the 1769 survey was a re-measurement required because of the loss of the 1745 title in a fire, and that lost title may have been one carried out jointly by the judges of two provinces, like that of Jupula (above, paragraph 105), or with special notice to the judge of the adjoining jurisdiction, as in the case of the title of San Francisco Citalá (paragraph 71 above), but that this was unnecessary for a re-survey. At all events, the Chamber does not think the fact that the survey was effected solely by a judge of San Miguel is a point of sufficient weight on its own to determine the question.

196. El Salvador also advances the contention, already referred to above (paragraphs 51 and 71), and rejected by Honduras, that the effect of the grant to an Indian community, situate in one province, of an *ejido* over lands in another was that administrative control over the lands of the *ejido* was thereafter exercised from the province of the community, and that, for the purposes of the *uti possidetis juris*, this signified that the lands of the *ejido* would, on independence, come under the sovereignty of the State which succeeded to that province.

197. The question of the position of the provincial boundary was in fact one of the main issues in the litigation between the two communities in 1773. The Indians of Jocoara claimed, through their counsel, that the claims of those of Arambala-Perquín to the disputed lands of Naguaterique were baseless, because those lands "are not only at a considerable distance from those villages but are six or seven leagues from the province in which they are situate, namely San Miguel", on the basis that the provincial boundary was the river Quiagara. The Indians of Arambala-Perquín replied that that river was not the boundary, but that

> *". . . la raya que divide las dos Jurisdicciones es el richuelo que se halla acia la parte del Norte nombrado Salalamuya dentro de cuios limites se incluyen los Montes de Naguaterique, sirviendo de mojón principal el Serro nombrado la Ardilla . . ."*
>
> *[Translation]*
>
> ". . . the line which separates the two provinces is the stream situated in the northern region and called Salalamuya, within whose limits lie the mountains of Naguaterique, the main boundary marker being the peak called La Ardilla . . ."

There appear to have been witnesses to support both views as to the position of the boundary.

198. Honduras deduces from the judicial decision of 1773 in favour of

Jocoara that the contentions of that community as to the position of the provincial boundary were adjudged to be correct. El Salvador disputes this, pointing out that the decision did not pronounce on the issue of the actual provincial boundary, and consequently did not identify the Negro-Quiagara as the boundary. The decision, according to its terms, was based on the finding that the community of Arambala-Perquín had not proved its case, and that that of Jocoara had done so; El Salvador argues that the position of the boundary was not a matter of evidence to be supplied by the Parties, but one of administrative regulation known to the authorities. The Chamber does not find this contention convincing: it is clear from the records of the proceedings that there was room for controversy about the position of the boundary, and that witness statements on the point were regarded as relevant. On the other hand, the Chamber is not convinced that the basis of the judgment necessarily was, as Honduras contends, that the river Negro-Quiagara was the provincial boundary. The Chamber would be reluctant to base a conclusion, one way or the other, as to the position of the provincial boundary, on the 1773 judgment alone.

199. El Salvador argues further that even if the 1773 judgment is to be regarded as a finding by implication that the boundary was the river Negro-Quiagara, this was not the final word of the Spanish authorities on the matter: that what was decisive was the 1815 decision to confirm the Arambala-Perquín title. This was a decision by the highest authority on land boundaries in Guatemala, which was empowered, according to El Salvador, when awarding *ejidos* to Indian communities, to ignore the provincial boundaries. The 1815 decision, it is alleged, superseded and overrode any consequences of the 1773 decision as to the location of the provincial boundary.

200. In this respect, Honduras argues that the reason why the 1815 decision contains a directive to the authorities both of San Miguel and of Comayagua to protect the rights of the Indian communities was that this was appropriate because the Arambala-Perquín *ejidos* were situate in both provinces. El Salvador however suggests that this was done either because of the adjudication, recorded in the decision, of the 2½ *caballerías* of land in favour of the Indians of Jocoara, or because the Indians of Arambala-Perquín needed the protection of the authorities of Comayagua against the incursions of the Jocoara Indians, whose settlement was in Comayagua. On El Salvador's first point, the Chamber considers that the persons to be protected and defended by the "Judges and Justices" of San Miguel and Comayagua (see the passage quoted in paragraph 193 above) are not both communities, but solely the "Indians of the town of Arambala and Perquin". After providing for the protection of those Indians, and after a reference to "those of the town of Jocoara", the text reads that they are to ". . . protect and defend them in *the said* possession . . ." (*". . . los amparen y defiendan en dicha posecion . . .*"), a clear reference to the

"antigua posecion" of the Indians of Arambala and Perquín, so that the word *"los"* must be taken to refer to them only. Of the other two explanations put forward, the Chamber considers that advanced by Honduras, on balance, more likely; it considers that if what was contemplated was solely the risk of incursions by the inhabitants of the province of Comayagua, this would probably have been spelled out specifically in the document.

201. It is also of course conceivable that the doubt which surrounded the position of the provincial boundary in 1773 still persisted in 1815; and that the superior authority addressed his directions to the judges and justices of both provinces, not because he was satisfied that the Arambala-Perquín *ejidos* extended over both provinces, but in order to ensure protection of those *ejidos* in any event. It is for this reason in particular that the Chamber does not regard the 1815 decision as wholly conclusive on the question of the location of the provincial boundary.

202. A further consideration which the Chamber regards as relevant is the possible position of the provincial boundary on the assumption that it was *not* formed by the river Negro-Quiagara. The claim made by the community of Arambala-Perquín in 1773 was that it was formed by the "stream *[riachuelo]* called Salalamuya" (paragraph 197 above). El Salvador argues that, notwithstanding the 1773 judgment in favour of Jocoara, "the provincial boundary could have been the Salalamuya river"; but it is now claiming that the provincial boundary followed the boundary of the Arambala-Perquín *ejidos*, and the survey of those *ejidos* does not mention the Salalamuya river, whose position remains obscure. On the maps produced by the Parties, there is no stream or river in the region of the Ardilla hill on the northern boundary of the Arambala-Perquín lands marked as being the Salalamuya, nor one which would appear appropriate, in size and direction, to serve as a provincial boundary.

203. Honduras has also relied on what it regards as an admission by El Salvador that the Arambala-Perquín *ejidos* extended across the provincial boundary. In 1861, at the suggestion of El Salvador, negotiations were held with a view to settling a long-standing dispute between the inhabitants of the villages of Arambala and Perquín, on the one hand, and the village of Jocoara on the other. In the note, dated 14 May 1861, suggesting these negotiations, the Minister for Foreign Relations of El Salvador said:

> *"Esta cuestión solamente puede resolverse por medio de un deslinde, mas como una parte del terreno de los arambalas y perquines, se halla en territorio de Honduras, desearía S.E. el Presidente del Salvador, que dos agrimensores nombrados por los respectivos Gobiernos fueren á practicar el deslinde para poner en paz á aquellos pueblos, que como sucede siempre en asuntos de tierras entran en calores — que hacen temer un desastre."*

[Translation]

"This dispute can be settled only by deciding on a line of demarcation but, *as a part of the land belonging to the community of Arambala and Perquin is located on the territory of Honduras*, H.E. the President of El Salvador would be grateful if two surveyors, appointed by the respective Governments, could go to effect the necessary demarcation, in order to reconcile these villages, where — as always happens when land questions are involved — there is considerable unrest, giving cause to fear a disastrous development." (Emphasis added.)

204. El Salvador has in this respect invoked the rule that "proposals and statements made in the course of or at the commencement of unfruitful negotiations are not to be taken into account in defining the legal rights of the Parties". As the Chamber has already observed (paragraph 73 above), this rule should not be given too extended an interpretation, being primarily intended to ensure that legal rights are not prejudiced by offers of compromise designed to lead to a negotiated settlement, but which are not successful. The 1861 note here in question falls in quite a different category. It was a statement by the Government of El Salvador of its view of a question of fact (cf. *Minquiers and Ecrehos, I.C.J. Reports 1953*, p. 71), on the basis of which it considered a form of negotiation to be appropriate. The Chamber is entitled to attach some significance to such a piece of evidence of how the situation was viewed 40 years after independence, and before the dispute between the Indian communities had developed into, or given rise to, an international dispute.

205. The 1861 note, viewed in this light, is significant not only as, in effect, a recognition that the lands of the Arambala-Perquín community had, prior to independence, straddled the provincial boundary, but also a recognition that as a result those lands straddled the international frontier. The view taken in 1861 was thus not compatible with the theory espoused by El Salvador before the Chamber that the grant to a community in one province of *ejidos* situated in another necessarily entailed administrative control by the first province, so as to justify the lands following the first province on independence, in application of the *uti possidetis juris*.

206. The Chamber does not in fact have to determine whether the general rule of Spanish colonial law in this respect was or was not as El Salvador has contended. It is sufficient for the Chamber to note that in the specific case of the *ejidos* of Arambala-Perquín, the Government of El Salvador accepted that those *ejidos* had been divided by the international frontier which came into existence on the independence of the two States. Whether this was because at the time both States regarded this as a normal application of the principle of the *uti possidetis juris*, as now contended by Honduras, or because a reason was seen for making an exception to a

norm which, as now claimed by El Salvador, generally operated to the contrary effect, it is not necessary to determine for the purposes of the decision in this case.

207. The statement in the note of 14 May 1861 does not of course indicate the position of the frontier between the two territories; only that part of the Arambala-Perquín lands lay on the Honduran side. When however surveyors from each side were sent to resolve the inter-village dispute, after resolving the question of the limits of Jocoara vis-à-vis Arambala-Perquín they reported that

> *"... por el dicho jeneral y la lectura de los espedientes que hemos tenido á la vista, así como por la presencia del terreno, la antigua línea divisoria de las provincias del Salvador y Honduras la forma por este lado el río Negro que en lengua indijena se llama Quiagara ..."*
>
> *[Translation]*
>
> "... according to general opinions and from the information contained in the documents now filed with us, as well as from the nature of the terrain, the former boundary between the provinces of El Salvador and Honduras is formed, in this section, by the river Negro which, in the native language is called the Quiagara ...";

and this report was counter-signed by the representatives of Arambala and Perquín.

208. Taking all these aspects into consideration, the Chamber endorses the conclusion of the surveyors in 1861, and finds that in this area the line of the *uti possidetis juris* of 1821 was the river Negro-Quiagara. The sector of the river on which this conclusion can at this stage be reached is that between the Mojón del Rincón (point M on sketch-map No. D-1) in the west and a point, yet to be determined, in the east. The boundary line has to leave the river at some point in order to reach the agreed terminal point of the sector, the Malpaso de Similatón; there are problems as to the identifications of this terminal point, to be examined below (paragraphs 258 ff.), but for the present the Chamber may assume that the boundary line leaves the river, as claimed by Honduras, at the Mojón Las Pilas (point N on sketch-map No. D-1). As a result of a modification of Honduras's submissions, the Parties now agree that the Mojón del Rincón is the point at which the river intersects the western boundary of the Arambala-Perquín *ejidos* as surveyed in 1769.

* *

209. The Chamber therefore now turns to the south-western part of the disputed boundary in this sector, that which has been referred to as the sub-sector of Colomoncagua. The Chamber notes that, at the stage of its Reply, Honduras modified its submissions so as to claim a boundary line in this sub-sector materially different from that asserted in its Memorial

and Counter-Memorial. As a result, it is sometimes difficult to be certain whether and to what extent an argument advanced in those earlier pleadings is still maintained. It appears, however, that where the original claim of Honduras, based on the 17th and 18th century documents to be enumerated in a moment, was irreconcilable with any acceptable interpretation of the titles of Arambala-Perquín and Torola, relied on by El Salvador, the line now asserted in the final submissions of Honduras, while still based on the same documents, is also regarded as a possible interpretation of the two Salvadorian titles.

210. The Chamber will first pursue the line of the survey of Arambala-Perquín on the west side, immediately south of the river Negro-Quiagara. The survey of 1769 does not record a crossing of that river, but as the surveyor travelled from north to south down the western boundary

> *". . . se tantearon veinte cuerdas hasta una loma que llaman Guiriri donde se halló un mojon antiguo que se mando avivar . . ."*
>
> *[Translation]*
>
> ". . . the estimated measurement was 20 cords to a hillock which they call Guiriri, where an old landmark was found, and instructions were given to renew it . . ."

211. The position of the Guiriri hillock is not disputed in these proceedings; it is the first boundary marker to the south of the river Negro-Quiagara, and is marked L on sketch-map No. D-1 annexed. Honduras claims that the boundary should pass through this point; El Salvador claims a line further to the west, on the grounds that *tierras realengas* of the jurisdiction of San Miguel extended in that direction, a claim to be examined later in this Judgment. The disagreement as to the boundaries of land other than *tierras realengas* begins at the next marker, that of the Roble Negro, and the Chamber will first outline the background to it.

212. The problem, here and throughout the south-western part of this sector of the disputed boundary, is, in broad terms, the determination of the extent of the lands of the Indians of Colomoncagua, province of Comayagua (Honduras), to the west, and those of the communities of Arambala-Perquín and Torola, province of San Miguel (El Salvador), to the east and south-east. Both Parties rely on titles issued and other documents drawn up during the colonial period, and El Salvador has submitted also a re-measurement and renewed title issued after independence in 1844. Apart from the difficulties of identifying landmarks referred to, and reconciling the various surveys, the matter is complicated by doubts cast by each Party on the regularity or relevance of titles invoked by the other. The Chamber will begin by setting out in chronological order the titles and documents claimed by the one side or the other to be relevant, reserving for the moment any assessment of their validity:

1662-1663-1665: Surveys of the *estancia* and the *sitio* of Santa Ana and of neighbouring lands, relied on by Honduras as establishing the position of landmarks at points A and B on sketch-map No. D-1 annexed.

1694: Survey of the lands of the Indians of Colomoncagua at Las Joyas and Los Jicoaguites, relied on by Honduras as establishing the position of landmarks at points D and H on sketch-map No. D-1.

1742-1743: Survey of the *ejidos* of Torola, relied on by El Salvador as establishing the position of landmarks at points E′, F′ and X on sketch-map No. D-1.

1766: Survey of the *ejidos* of Colomoncagua by Cristóbal de Pineda; relied on by Honduras as establishing the position of landmarks at points B and M on sketch-map No. D-1 (and relied on earlier in the proceedings to establish a landmark east of I on that sketch-map, a claim subsequently abandoned).

1766: Request by the Indians of Colomoncagua for the cancellation of the Pineda survey, and declaration of nullity; relied on by Honduras as establishing the position of landmarks at points A to E and H on sketch-map No. D-1.

1767: Reconnaissance of the boundary markers of Colomoncagua by Miguel García Jalón, relied on by Honduras as establishing the position of landmarks at points A to E and H on sketch-map No. D-1.

1769: Survey of the *ejidos* of Arambala-Perquín, already discussed above, relied on by El Salvador as establishing the position of landmarks at points M, L and W, on sketch-map No. D-1.

1790-1793: Re-survey of the *ejidos* of Colomoncagua by Andrés Pérez, relied on by Honduras as establishing the position of landmarks at points A, C and H on sketch-map No. D-1.

1811: Survey of the lands of Santo Domingo at the request of the inhabitants of Colomoncagua, relied on by Honduras as showing that the lands of Colomoncagua extended east of the river Negro-Pichigual.

1815: Title of Arambala-Perquín, already discussed above, adopting the 1769 survey, with the reservation of the rights of the inhabitants of Jocoara.

1843-1844: Republican title re-issuing title of Torola, submitted by El Salvador as confirming the 1743 survey mentioned above.

213. The document of 1743 concerning the *ejidos* of the community of Torola is relied on by El Salvador as a "formal title-deed to commons". Honduras however first questions its compliance with the then current Spanish colonial legislation, and points out, secondly, that the document produced does not include any *grant* of the lands surveyed. Following a survey and examination of witnesses, a report was presented to the Audiencia of Guatemala, but there is no record of what decision, if any, was taken by that body. It is however apparently not contended by Honduras that as a result the Indians of Torola had no right to their lands; or that the survey recorded did not take place. The Chamber considers that, in the absence of any evidence suggesting its rejection by the Audiencia, the survey record of 1743 can be referred to for such light as it may throw on the position of the provincial boundary at that time.

214. The 1766 title incorporating the survey of the *ejidos* of Colomoncagua by Cristóbal de Pineda should, it is contended by El Salvador, be excluded from consideration because it was annulled by the Audiencia of Guatemala. Honduras concedes that it was so annulled, but observes that the complaint of the inhabitants of Colomoncagua on the basis of which the title was annulled referred to lands which were not contiguous with the lands of Torola, and thus not relevant to the questions before the Chamber. Furthermore, according to the 1766 record, the mayor and inhabitants of Torola were cited and appeared to ensure that the survey did not infringe their community's rights. The Chamber observes however that one of the grievances of the inhabitants of Colomoncagua was that in 1766 the judge had carried out no more than a visual inspection "without a survey or a summons" of neighbouring owners. The Chamber considers that the 1766 survey should therefore be treated with caution as to its evidential value, but cannot be wholly disregarded.

215. Objection has been taken by El Salvador to the reference to the 1767 reconnaissance of Colomoncagua by Miguel García Jalón, on the ground that the inhabitants of Torola were not summoned to attend the land survey to object, for the protection of their rights, so that the survey was based exclusively on the claims of the inhabitants of Colomoncagua. The Chamber considers that, while this is undoubtedly a weakness, the document will still be of some assistance as supporting evidence, provided that this lack of opportunity of the people of Torola to object is taken into account.

216. The reliance by Honduras on the survey carried out in 1793 by Andrés Pérez is objected to by El Salvador on the grounds, first that it was based on excessive unilateral claims by the inhabitants of Colomoncagua to which the inhabitants of Torola were given no opportunity to object, and secondly that it was not a formal survey, but a mere "visual reconnaissance", and on that ground no account was taken of the objections of

the holders of titles to neighbouring lands. Finally, El Salvador claims that the 1793 document is not one which fulfils the requirements of Article 26 of the 1980 General Peace Treaty, since it was not issued by a competent authority. The Chamber considers that the 1793 document is not excluded from the category of documents "issued by the Spanish Crown" referred to in the 1980 Treaty, and may be relied on as evidence, provided it is borne in mind that, as Honduras concedes, it is not an official survey for the purpose of delimiting the lands of Colomoncagua, or granting land rights, but a mere verification of what were claimed to be the existing boundaries in support of the resistance by the community of Colomoncagua to alleged encroachments by their neighbours. These circumstances must be borne in mind by the Chamber when assessing its evidential value.

217. Honduras objects to the 1844 Torola document invoked by El Salvador, on the grounds not merely that it is a republican title, and thus in Honduras's view by definition incapable of defining the 1821 *uti possidetis juris*, but also that the circumstances of its issue were suspect. The survey was effected on the instructions of the Political and Military Governor of San Miguel, and the judge entrusted with the task, Cecilio Espinoza, would, it is suggested, have understood that the purpose in view was to arrive at a frontier delimitation favourable to Salvadorian interests. This, in the view of Honduras, is the explanation for a number of irregularities in the procedure, in particular the disregard by Judge Espinoza of claims and assertions by the people of Colomoncagua, which are nonetheless referred to in the title document. Furthermore, the survey of 1844 did not lead to the issue of a new formal title-deed, and according to a note from the Government of El Salvador to the Government of Honduras dated 1 May 1852 this was because of the opposition of the inhabitants of Colomoncagua. Counsel for El Salvador stated at the hearings that El Salvador is not "relying on or utilizing in any way" the 1844 deed, but relying exclusively on the title of Arambala-Perquín and the 1743 title of Torola. Whatever may have been the intentions of El Salvador in that respect, the Chamber considers that it can and should take the 1844 document wholly into consideration. It may in principle have weight as the corroboration of a document of the colonial period; Honduras concedes as much, but claims that it does not in fact afford such corroboration. The Chamber will examine in due course whether the 1844 Torola document is or is not of assistance in this respect.

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218. On the basis of these various titles, the Chamber will now proceed with its consideration of the position of the *uti possidetis juris* line to the south-west of the river Negro-Quiagara. The boundary of the *ejidos* of

Arambala-Perquín is agreed, as noted above, as far as the Guiriri hill; the earlier claim in the submissions in the Memorial and Counter-Memorial of Honduras, to a boundary further east has in fact been withdrawn. The next boundary marker referred to in the Arambala-Perquín survey, to the south of the hill of Guiriri, is that of Roble Negro or "black oak". The Arambala-Perquín survey record continues:

> *". . . y desde dicho Guiriri se tantearon treinta y seis cuerdas al Roble negro que al pié de el se halló un mojon antiguo de piedras y las justicias de Colomoncagua de la jurisdiccion de Gracias contradijeron ser mas adentro por lo que les pedí sus títulos los que dijeron no traian pero que dentro de dos dias me los llevarian, y los dichos practicos dijeron que el Roble negro donde haviamos llegado es el mojon del Pueblo de Arambala y Perquin por que desde dicho Roble al Río negro ó de Pichigual havia como un cuarto de legua y en dicho río termina esta jurisdiccion, por lo que la tierra que intermedia es realenga que es la misma que hemos traido á la derecha desde el mojon de Guiriri por lo que dejandoles su derecho á salvo á los Naturales del referido Pueblo de Colomoncagua mandé avivar dicho mojon y por no haver parecido con sus títulos como ofrecieron pongo esta razon . . ."*
>
> *[Translation]*
>
> ". . . and from the said Guiriri 36 cords were estimated to the Roble Negro (black oak) at the foot of which was found an old landmark of stones, and the Justices of Colomoncagua of the jurisdiction of Gracias objected to this being further in, in view of which I asked them for their titles which they said they did not have with them but would deliver to me in two days, and the said practitioners added that the Roble Negro where we had arrived was the boundary landmark of the township of Arambala and Perquin, because from the said Roble Negro to the Negro or Pichigual river there was something like a quarter of a league and this jurisdiction ends at the said river, so that the intermediate lands are *tierras realengas*, the same as we have had on our right from the landmark of Guiriri, in view of which arguments and reserving the right of the inhabitants of the said town of Colomoncagua, I ordered the renewal of the said landmark, and since they did not appear afterwards with their titles as they offered to do, I place this on record . . ."

219. Neither Party has claimed to identify the marker with an existing tree; and since it is defined by the Arambala-Perquín survey as being 36 cords (1,494 metres) from Guiriri in a generally southward direction, there is not a great deal of room for dispute as to its position, and no great distance separates the two Parties' respective identifications of its position. Honduras identifies it with the point where the *camino real* reaches a marker called El Carrisal or Soropay, a marker referred to in other documents, on the hill, where there is a modern triangulation point, indicated

on both Parties' maps as "Roble Negro", indicated as point K on sketch-map No. D-1. El Salvador places it some 500 metres north-east of the triangulation point.

220. After the Roble Negro, the next boundary marker reached in the Arambala-Perquín survey was the tripoint where the lands of Colomoncagua, Arambala-Perquín and Torola meet. To avoid confusion, the Chamber will take the references in the documents before it to this tripoint in chronological order. The survey of the lands of Torola, held in 1743, preceded that of Arambala-Perquín; as for Colomoncagua, reference may be made, subject to the considerations noted above (paragraphs 214-216), to the 1766 survey of Cristóbal de Pineda, the reconnaissance of boundaries in 1767 by Miguel García Jalón, and that effected in 1793 by Andrés Pérez.

221. The tripoint where the titles of Arambala-Perquín, Torola and Colomoncagua met was defined as follows in the 1743 survey of the Torola lands; the surveyor was approaching it from the south-west:

> *"... y por el mismo rumbo se llegó con veinticuatro cuerdas a la orilla de un río barrancoso que le llaman el río de las Cañas que andando para el oriente se pasó la cuerda por el río arriba y se midieron ochenta cuerdas al camino real que va de Torola al pueblo de Colomoncagua, cuya justicia y principales con su real título se hallaron presentes, y siguiendo el rumbo de poniente en oriente hasta un paraje que llaman la Cruz se tantearon ochenta y cinco cuerdas, y de aquí a otro paraje llamado el Monte Redondo, y en la cima de una loma se puso un mojón de piedra hasta donde se midieron treinta y ocho cuerdas y hasta donde también ha venido lindando con tierras de Colomoncagua y empieza a lindar con ejidos de Perquin y Arambala, cuyas justicias se hallaron allí presentes ..."*
>
> *[Translation]*
>
> "... and with 24 cords in the same direction we came to the bank of a precipitous river that they call the Las Cañas river, where, heading eastwards, the cord was extended upstream and 80 cords were measured to the *camino real* that goes from Torola to the town of Colomoncagua, whose *justicia* and *principales* were present with their royal title, and continuing from the west to the east to a place called La Cruz 85 cords were measured, and from there to another place called Monte Redondo and on the top of a hill a stone boundary marker was built, to which point 38 cords were measured, and up to here I had been bordering on lands of Colomoncagua and now began to border on *ejidos* of Perquin and Arambala, whose justices were present there ..."

Honduras has not produced any title which it identifies as the "royal title"

of Colomoncagua here referred to. The only title in the area cited by Honduras which already existed in 1743 was the 1694 title of Las Joyas and Los Jicoaguites, but apparently the Parties agree in situating this further to the south-west, not abutting on Arambala-Perquín but only on Torola. However, when the survey reached a point at a total of 118 cords (4,838 metres) from the meeting point of the Torola and Arambala-Perquín titles, a title was produced, presumably one which has since disappeared.

222. The relevant passage from the survey record of Arambala-Perquín is as follows:

> *". . . y desde dicho Roble negro por el mismo rumbo se tiro la cuerda partiendo un barranco y despues una quebradilla de agua de donde se subió y bajo una loma alta y topamos con el camino que sale de este Pueblo para Colomoncagua y se encuentra con las tierras del Pueblo de Torola cuyo pueblo es de esta jurisdiccion y hasta dicho camino llegamos con cuarenta cuerdas siendo advertencia que como diez cuerdas se vino lindando con tierra realenga y despues con Colomoncagua y en dicho paraje se halló un mojon antiguo de piedra que mandé avivar sin contradiccion del dicho Pueblo de Colomoncagua y el de Torola y mudando de rumbo del Oeste al Leste con abatimiento al Sudeste lindando con tierras del Pueblo de Torola . . ."*
>
> *[Translation]*
>
> ". . . and from the said Roble Negro in the same direction the cord was stretched across from a ravine as far as a *quebradilla* of water where we climbed and descended a high hillock and we met the road that runs from this town to Colomoncagua and arrives at the lands of the town of Torola, which belongs to this jurisdiction, and we reached this road with 40 cords, and it should be noted that for some 10 cords we walked bordering *tierra realenga* and thereafter Colomoncagua, and in the said spot an old stone landmark was found that I commanded to be rebuilt without objection being taken by the said town of Colomoncagua or the town of Torola and changing course from west to east with an inclination to the south-east the cord was stretched bordering the lands of the town of Torola . . ."

223. Taking the titles of Torola (1743) and Arambala-Perquín (1769) alone, the picture of the relevant boundary in 1769 which emerges is as follows: southward from Roble Negro for 10 cords there were *tierras realengas* of San Miguel to the right, lands of Arambala-Perquín to the left; for a further 30 cords there were lands of Colomoncagua to the right, lands of Arambala-Perquín to the left. Here the tripoint was reached, described variously as Monte Redondo or the road from Colomoncagua. Turning to the west, the boundary ran 38 cords to a place called La Cruz, with lands of Torola on the left and lands of Colomoncagua to the right; a similar division continued a further 80 cords to the *camino real*

from Torola to Colomoncagua, where a Colomoncagua title-deed was produced.

224. Turning now to the records produced by Honduras, the 1766 survey by Cristóbal de Pineda reads, in the relevant part, as follows; the cord had been extended from the village of Colomoncagua, in a direction not stated:

> *". . . se fue caminando por unos Planes, y sabanas, y en partes algunas Bajadas, y subidas pequeñas siempre siguiendo el camino Real que va deste Pueblo al de Perquin Jurisdiccion de San Miguel, y se llegó al serro que le llaman el carrisal, con siento y ochenta cuerdas de la dicha medida y dicho serro es dividision desta Jurisdiccion de Gracias y la de San Miguel en donde estava el Alcalde y Tribunos del Pueblo de Perquin quienes declaran y disen ser hasta alli los linderos de sus Tierras y las deste de colomoncagua, y no habiendo abido ninguna contradison para este Rumbo con Unos, y otros Naturales se volvio a dicho Pueblo . . ."*
>
> *[Translation]*
>
> ". . . we walked in the plains and savannahs and sometimes up and down small slopes at all times along the *camino real* which connects this village to that of Perquin in the jurisdiction of San Miguel, arriving at the peak called El Carrisal after 180 cords of the said measure; and this peak constitutes the dividing line between the jurisdiction of Gracias and that of San Miguel where we found the Mayor and officials of the village of Perquin who declared that the boundaries of their lands and those of the village of Colomoncagua extended to that spot and since there was no disagreement on that direction on the part of the one or the other group of inhabitants we returned to the said village . . ."

225. In view of the reference to the road from Colomoncagua to Perquín, it appears that El Carrisal is the tripoint Colomoncagua, Torola and Arambala-Perquín (cf. the description in the Arambala-Perquín survey, above). It is therefore noteworthy that there is here no mention of the lands of Torola, or any intervention by their representatives, who had, it seems, not been summoned (paragraph 204 above). However, it appears that at this time Cristóbal de Pineda was not making a tour round the boundaries of Colomoncagua, travelling from landmark to landmark as in the formal surveys of *ejidos*, but taking a succession of measurements outwards from the village to the limit of the lands in each direction. It was therefore sufficient to know that El Carrisal was on the boundary with the lands of at least one neighbouring community.

226. The reconnaissance by Miguel García Jalón in 1767 is of little assistance; it may however be noted that the claim presented by the community of Colomoncagua which gave rise to the inspection included, in its summary of the boundaries, the following:

"... desde Ay [Agua Sarca] sale a la Falda del serro llega Al camino Real que ba para pueblo de perquin el mesmo Camino sirbe de mojon hasta llegar A los dos encuentro de los dos caminos desde dicho pueblo con el Camino que biene de torola que ay la llamamos a la curus de la Jolla el mesmo camino sirbe de mojon asta llegar A las puntas de un llano que se llama Carrisal ..."

[Translation]

"... from there [Agua Sarca] to the slope of the hill, one arrives at the *camino real* to the village of Perquin; this same road serves as a boundary marker until one reaches the two points where the two roads from the said village meet the road from Torola, which we call La Cruz de la Jolla; the same road serves as a boundary marker until one arrives at the edge of a plain called Carrisal ..."

227. As for the 1793 inspection by Andrés Pérez, the Chamber considers that, apart from the circumstances throwing doubt on its evidential value referred to in paragraph 216 above, internal evidence also weakens its authority in this context as a record of recognized boundaries. In illustration, the case may be taken of the Salvadorian village of San Fernando; Honduras's first interpretation of the Pérez survey found expression in a boundary line which passed through the middle of that village. Honduras has since modified its line so as not to touch the village of San Fernando, and contended that the Andrés Pérez survey involved a complaint by Colomoncagua of encroachments by the community of San Fernando, which was not included in the survey but merely described as "bordering on the lands of this village [Colomoncagua]". Yet when Andrés Pérez spent the night in the hamlet of San Fernando, he recorded that it "... was within the lands of San Pedro Colomoncagua ..." (*"... a la Aldea de San Fernando, cual queda dentro de las tierras del pueblo de San Pedro Colomoncagua ..."*). In the view of the Chamber it would be imprudent to base any conclusions on the claims of Colomoncagua as expressed in the Andrés Pérez survey.

228. The Arambala-Perquín title enables the Chamber to relate the tripoint of Torola, Colomoncagua and Arambala-Perquín to landmarks to the north, including the agreed point of Guiriri. Before trying to reach a decision on its location today, it is advisable to consider it from the south, that is to say from the standpoint of the title of Torola, and thus to seek a reference point among the boundary markers listed in the 1743 Torola survey that can, taken in isolation, be identified with reasonable confidence today. This is in fact supplied, in the Chamber's view, by the reference in the title of Torola to the river Las Cañas. The Parties agree in general that the river now known by that name, and marked as such on modern maps, was so known also at the time of the surveys with which the Chamber is dealing; it has been suggested that this river is the same as a river Yuquina,

mentioned in some of the documentation, and in particular in the 1844 Torola document (paragraph 239 below), and there is some dispute whether a reference to the Las Cañas in the 1743 Torola title should not rather be read as referring to one of the tributaries, known as the Masire (paragraph 235 below). Those questions can however for the present be reserved.

229. At this stage, a word should be said as to the relative weight of the Torola title of 1743 and the various Colomoncagua titles produced by Honduras. The Torola survey was effected after summons to the community of Colomoncagua, and representatives of the community appeared during the survey. If it were a question of conflict, the Chamber would place reliance on this title, rather than on those of 1766, 1767 and 1793 appertaining to Colomoncagua. Accordingly for the Chamber, the question is one of interpretation: do the Colomoncagua titles support the view that El Salvador's interpretation of the Torola title, which clashes with the Colomoncagua titles, is incorrect? Or is there an interpretation, at least as convincing as that of El Salvador, of the Torola title, which reconciles it with the Colomoncagua titles?

230. It is clear from the 1743 survey of the lands of Torola that these extended to a river called Las Cañas, even if only to a single point on the river. The relevant passage of the survey record reads:

> *"... y con cuarenta cuerdas se llegó a un paraje que le llaman las Tijeretas y por el mismo rumbo [*sc., *de sur a norte] se llegó con veinticuatro cuerdas a la orilla de un río barrancoso que le llaman el río de las Cañas que andando para el oriente se pasó la cuerda por el río arriba y se midieron ochenta cuerdas al camino real que va de Torola al pueblo de Colomoncagua ..."*
>
> *[Translation]*
>
> "... and with 40 cords we reached a place called Las Tijeretas and in the same direction [from south to north] with 24 cords we came to the bank of a precipitous river which they call the Las Cañas river where, heading eastwards, the cord was stretched upstream and 80 cords were measured to the *camino real* from Torola to the town of Colomoncagua ..."

Honduras identifies this point with the confluence of the river Las Cañas with another river which, according to Honduras, is called the Masire (though this name does not appear on any of the maps produced) at the point marked F on sketch-map No. D-1 annexed. El Salvador identifies it with a point further downstream, marked F′ on sketch-map No. D-1, which is the confluence with a river called by El Salvador the Pitas river. The 1743 survey, it will be observed, says nothing about a confluence with any other river or stream.

231. El Salvador reads the 1743 survey as meaning that 80 cords were measured upstream of the river Las Cañas, beginning in an approximately eastward direction. Honduras originally laid emphasis on the bearing, and read the 1743 survey as meaning that 80 cords were measured in a straight line eastwards, which was initially the direction upstream of the river. However, at point F on sketch-map No. D-1, that selected by Honduras, the modern Las Cañas is flowing virtually north to south; therefore, in the view of Honduras, the river referred to as "Las Cañas" in the 1743 survey must be the Masire, which flows from east to west to join the modern Las Cañas. What Honduras first regarded as an impossible interpretation of the record is that the initial direction, upstream of the river, was eastwards, but that the river was then followed as its course turned in a different direction, namely, to the north, as claimed by El Salvador.

232. The Chamber does not however find difficulty in accepting El Salvador's interpretation. If, on arriving from the south at the point on the river Las Cañas the survey had simply proceeded in a straight line eastwards, first the point of contact with the river would be unidentifiable, and the course of the survey inexplicable as neglecting the obvious boundary, and secondly the reference to the direction of flow of the river would have been superfluous. What mattered was that "the cord was extended", i.e., the survey proceeded, *upstream*: the reference to the easterly direction simply made it clear whether this involved turning left or right. Honduras's second interpretation of the course of the boundary seems to recognize this. Honduras first advanced the interpretation whereby the boundary of the Torola lands merely touched the river Las Cañas at one point, and did not follow any part of its course; subsequently however Honduras adopted an interpretation whereby a river — that identified as the Masire — did form the boundary for some 1,200 metres (point F to point G on sketch-map No. D-1 annexed). While the fact that El Salvador has continued to present a consistent interpretation of the 1743 title does not prove that it is a correct one, the Chamber notes that Honduras's change of approach emphasizes the difficulty in finding a convincing alternative interpretation. On balance, it concludes that the Torola title extended to the Yuquina or Las Cañas river, and was not bounded by the Masire. This view is supported by the re-survey of 1844, to be examined below.

233. What is obscure about this passage of the Torola survey record is that it is not stated at what point the survey left the river. Eighty cords from the first contact with the river the *camino real* was reached (see the passage quoted in paragraph 221 above). The 1743 survey record continues:

". . . y siguiendo el rumbo de poniente en oriente hasta un paraje que llaman le Cruz se tantearon ochenta y cinco cuerdas, y de aquí a otro paraje llamado el Monte Redondo, y en la cima de una loma se puso un mojón de piedra hasta donde se midieron treinta y ocho cuerdas . . ."

[Translation]

". . . and continuing from west to east to a place called La Cruz 85 cords were estimated, and from there to another place called Monte Redondo, and on the top of a hill a stone boundary marker was built, up to which point 38 cords were measured . . ."

234. El Salvador maintains that the boundary follows the river Las Cañas upstream all the way to its headwaters near a hill called the Alguacil Mayor (point W on sketch-map No. D-1), which it identifies with the Monte Redondo. This identification however apparently rests only on the view taken by the delegates of the two States in 1884 at the time of negotiation of the unratified Cruz-Letona Convention, Article 17 of which contemplated that the boundary should run "From the Monte Redondo, also called Alguacil Mayor, where the river Cañas has its source . . .". El Salvador's interpretation necessarily involves the assumption that the references in the Torola title both to the Torola-Colomoncagua road and to the place called La Cruz or Quecruz are to points on the river, and therefore superfluous for the purpose of identification of the boundary. This seems unlikely. A further difficulty with El Salvador's interpretation is that the tripoint Torola, Colomoncagua and Arambala-Perquín was, according to the survey of 1769, on or near the road from Colomoncagua to Perquín. Neither Party has been able to identify this road with any certainty; but El Salvador's interpretation requires that the road from the one village to the other should run rather south of a direct course, and climb the Cerro Alguacil Mayor, instead of following the valley of the river Negro-Pichigual, where, according to both Parties' maps, there is today such a road. This result too seems unlikely.

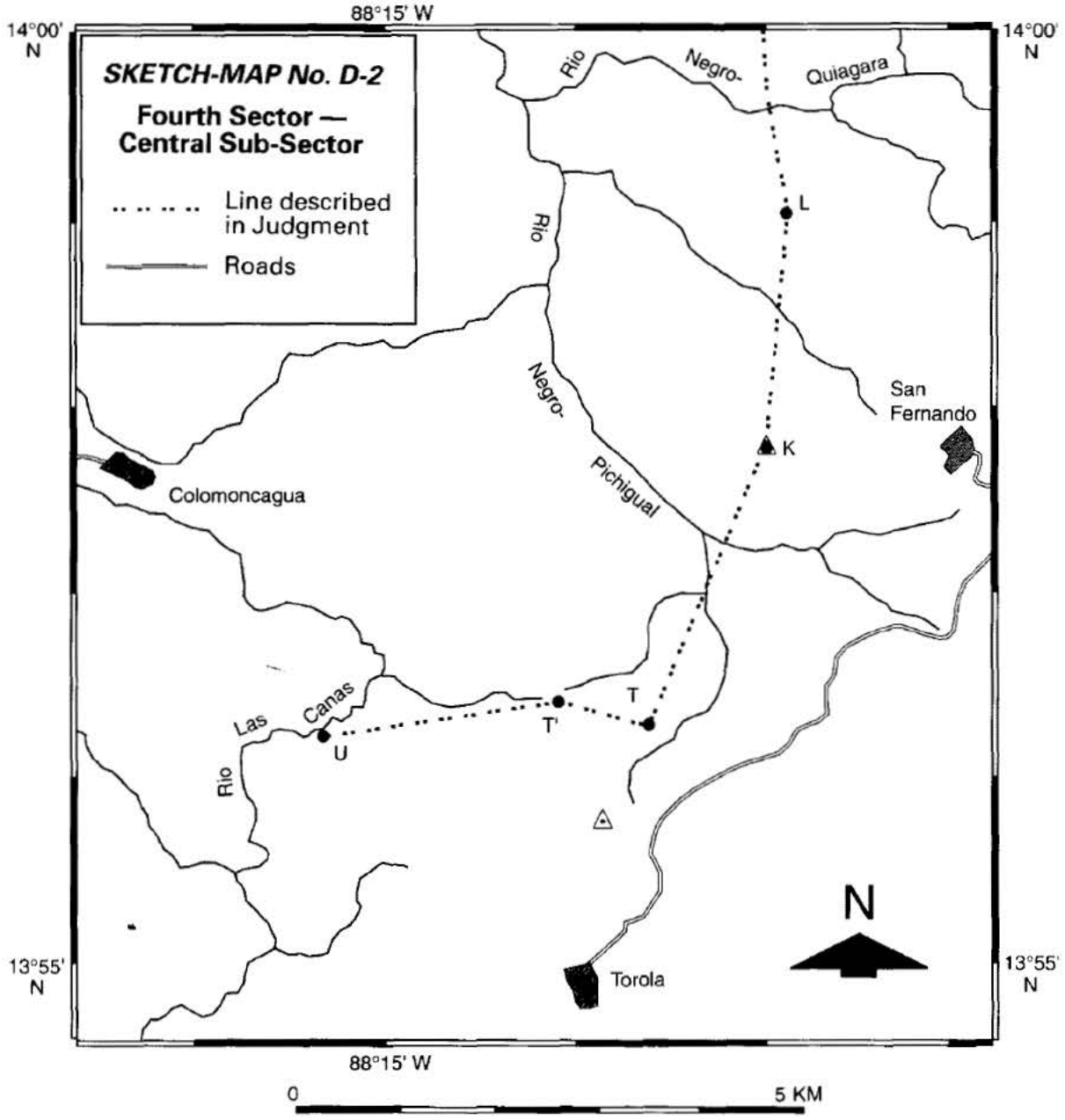
235. Honduras, on the other hand, now maintains that the boundary follows the river (between points F and G on sketch-map D-1) — though the river Masire, not the same river as in El Salvador's interpretation — until it meets the road (at point G), and from there, leaving the river, runs in a straight line to the point which Honduras identifies as La Cruz or Quecruz (point H). Against this is that the direction taken to the road, and from there to La Cruz or Quecruz is more to the north than the "eastwards" mentioned in the title; and that the distances are inconsistent. The title records 80 cords to the Torola-Colomoncagua road and 85 cords to La Cruz or Quecruz: Honduras's version of the boundary produces distances of about 1,500 metres (33 cords) and 1,000 metres (25 cords) respectively.

236. The Chamber considers that in this part of the fourth sector the boundary line which best harmonizes with the available evidence of the

uti possidetis juris is as follows. Southwards from the Guiriri marker (point L on sketch-map No. D-1 and sketch-map No. D-2 annexed) to the Roble Negro triangulation point (point K on sketch-maps No. D-1 and D-2); in the absence of any material pointing unequivocally to the one or the other of the two positions proposed by the Parties for the Roble Negro marker (paragraph 219 above), the Chamber considers that the choice of the triangulation point is justified by reasons of practical convenience. From there, south-westwards to a hill indicated as point T on sketch-map No. D-2, which the Chamber considers can be identified with Monte Redondo. From there, slightly south of west to meet the river Las Cañas near the settlement of Las Piletas (point U on sketch-map No. D-2). The place called La Cruz, which the Chamber regards as probably unidentifiable with complete accuracy, is somewhat on the high ground between these last two points; the selected position is shown as T′ on sketch-map No. D-2 annexed, a point which should be inter-visible with U and T. This boundary, while not corresponding precisely to the distances recorded in the surveys of 1743 and 1769, maintains so far as possible the proportions of the distances, and corresponds broadly to the directions indicated.

237. The distance between the point (point U on sketch-map No. D-2 annexed) near Las Piletas where this boundary leaves the river Las Cañas, and the point which El Salvador identifies as the meeting point of the river and the south-west boundary of the Torola title (point F′ on sketch-map No. D-1 annexed) is more than the 80 cords stated in the title. In view of the difficulty of measuring accurately with a cord along the course of a river, this does not disprove the Chamber's conclusions so far. Honduras however maintains that the Torola boundary met the river further north-east than El Salvador claims (point F on sketch-map No. D-1). In order to ascertain which contention in this respect is correct, it is necessary to consider further the 1743 Torola title, and the re-issued title of 1844. In the passage quoted in paragraph 221 above, the surveyor of 1743 records that, on arriving at Monte Redondo, "up to here I had been bordering on lands of Colomoncagua". The record does not however state at what point in the survey the surveyor began to border the lands of Colomoncagua, so that there is no indication whether or not the Colomoncagua lands extended across that river to an area south of the Torola lands. The measurement began from the Torola river, and the adjoining owners who appeared were, first, the owner of the Hacienda de San José, and secondly the owner of the Hacienda de San Diego, whose lands apparently marched with those of Torola at least as far as the Portillo de San Diego. From there on the survey record states that:

> *". . . con treinta cuerdas se llegó al dicho portillo de San Diego, y mudando el dicho rumbo se cogió de Sur a Norte . . . aparte mudé rumbo como dicho es, de sur a norte pasó la cuerda por entre unos peñascos*


88°15' W
14°00' N
14°00' N
SKETCH-MAP No. D-2
Fourth Sector —
Central Sub-Sector
Line described in Judgment
Roads
Rio Negro-Quiagara
Rio Negro-Pichigual
L
K
San Fernando
Colomoncagua
T
T'
U
Las Canas
Rio
Torola
N
13°55' N
13°55' N
88°15' W
0
5 KM

altos que están inmediatos a dicho portillo y con cuarenta cuerdas se llegó a un paraje que le llaman las Tijeretas y por el mismo rumbo se llegó con veinticuatro cuerdas a la orilla de un río barrancoso que le llaman el río de las Cañas que andando para el oriente se pasó la cuerda por el río arriba y se midieron ochenta cuerdas al camino real que va de Torola al pueblo de Colomoncagua, cuya justicia y principales con su real título se hallaron presentes . . ."

[Translation]

". . . with 30 cords we reached the said *portillo* of San Diego, and changing direction we turned from south to north . . . and I changed course, as already stated from south to north the cord was extended between some high rocks which are adjacent to the said *portillo* and with 40 cords we reached a place called Las Tijeretas and in the same direction with 24 cords we came to the bank of a precipitous river which they call the river Las Cañas where, heading eastwards, the cord was stretched upstream and 80 cords were measured to the *camino real* from Torola to the town of Colomancagua, whose *justicia* and *principales* were present with their royal title . . ."

It is to be noted that in 1743 the representatives of Colomoncagua are not mentioned until the survey reached the *camino real*, but there seems no doubt that the Colomoncagua lands extended along the river downstream from that point.

238. Some light on the matter is thrown by the 1844 re-survey of Torola carried out by the judge Cecilio Espinosa. The record shows that the judge called for the title of Torola from the mayor of that community, so that he could review the boundaries indicated in it, and directed that notifications to the adjoining owners be sent out according to the boundaries so indicated (*". . . y segun los [linderos] que en dicho título se expresen, ponganse las notas sitatorias a los colindantes . . ."*). The judge noted from the title document that ". . . the adjoining owners are those of the Hacienda de San José, San Diego and Colomoncagua . . ." (*". . . son colindantes los posedores de la hacienda de San José, San Diego y Colomoncagua . . ."*), and those adjoining owners were duly summoned to attend the survey, with their titles. The summons to the mayor of Colomoncagua was that *". . . salga el con su título al río de las Cañas por la bajada de las tijeretas . . ."* (". . . he should be present with his title at the Las Cañas river by the *bajada* of Las Tijeretas . . ."). Since, as already noted, the 1743 Torola title does not state the extent to which the lands of Colomoncagua were co-terminous with those of Torola, the judge must have based his choice of this point, not on the title, as he had himself directed, but on local information or tradition. The mayor of Colomoncagua first replied that he would be present at a place called Los Picachos, but in reply to a query by the judge confirmed that he would appear at Las Tijeretas.

239. The judge reached the place called Las Tijeretas some days before that appointed for the presence of the mayor of Colomoncagua, and met there the owner of the Hacienda de San Diego. The ancient landmark at that place was agreed by the owner of San Diego, and was renewed. On the date appointed with the mayor of Colomoncagua the judge went to Las Tijeretas and met both the owner of San Diego and the mayors of Colomoncagua and Torola. The representatives of Colomoncagua claimed that the Torola lands did not extend so far north-west as the river Las Cañas, but that the boundary from Las Tijeretas ran eastwards, south of the river, to a place called Los Picachos. They relied on a title called that of San Pedro Moncagua (which, they claimed, antedated that of Torola; such title cannot be identified with any of the titles submitted to the Chamber). However, when this title was produced, it provided, according to the 1844 record, that the boundary was the river Yuquina, and the representatives of Colomoncagua stated, in response to a question by the judge, that this was the river Las Cañas (*". . . se halló por documento, que reza por lindero el río de la Yuquina; y habiendoles preguntado por dicho río, dijeron ser el mismo de las Cañas . . ."*). The representatives of Colomoncagua however refused to give way; the judge recorded that:

> *"Despues de muchos alegatos, pidieron se pusiere la aguja para ver cual era la direcion que tomaba de las tigereteas de Sur a Norte, como dicen ambos títulos; y se vió que topaba a un río barrancoso que le llaman las pitas, y por el mismo rumbo a poca distancia se topa el río de Cañas, llamado Yuquina en el mencionado título de Colomoncagua."*
>
> *[Translation]*
>
> "After much argument, they asked that the compass needle be set to show where was the south-to-north direction from Las Tijeretas, as indicated in both titles; and it was seen to point to a precipitous river called las Pitas, and in the same direction after a short distance one arrives at the river Cañas, called Yuquina in the said Colomoncagua title."

240. On the basis of this information, the Chamber considers it possible to resolve the disagreement between the Parties as to the location referred to as Las Tijeretas (point E or point E′ on sketch-map No. D-1); in the view of the Chamber, the point identified by El Salvador (E′) corresponds better to the 1844 description. First, there is, according to the maps, the confluence with the Las Cañas of a stream, flowing from south to north, just north of that point; and secondly, according to the indications given by the contour lines on the map, the area between that point and the river might properly be described as a slope (*"bajada"* — see paragraph 238 above), while the point selected by Honduras lies to the south of a stretch of the river where it flows between steep banks.

241. The 1844 document further records that in response to a request by the judge for the title of the Hacienda de San Diego to be produced, the owner of that land said that he did not have it with him, but produced a certificate dated 11 March 1804, issued by a lands judge of Gracias a Dios, but prepared at the Hacienda de San Diego at the request of the then owners of that property, who had complained of incursions by the Indians of Colomoncagua. The judge in 1804, having inspected the title of Colomoncagua, upheld the complaint, and recorded that

> *"... segun los linderos que reza el mismo título, sirve de division de las tierras, el nombrado río de las Cañas, el mismo que tambien separa los terminos de mi jurisdiccion con la provincia de San Miguel ..."*
>
> *[Translation]*
>
> "... according to the boundaries mentioned in the said title, the said river Las Cañas serves to divide the lands, and also marks the limits of my jurisdiction and that of the province of San Miguel ..."

The value and authenticity of this document may be open to question: it has not itself been produced to the Chamber, but was merely copied into the record of the 1844 re-survey; there is no record that it was shown or read to the representatives of Colomancagua in 1844, to enable them to dispute it; and the judge who issued it in 1804 was avowedly acting at a place outside his own jurisdiction. What is significant, however, is that it relates to the boundary between San Diego and Colomoncagua, and therefore indicates the course of the boundary downstream of Las Tijeretas.

242. On balance, the Chamber accepts the contentions of El Salvador that the Colomoncagua lands did not at any point extend across the river Las Cañas. The 1743 title mentions Las Tijeretas, which was 24 cords from the river, as a boundary marker of Torola, but does not say what title or titles lay on the other side of it; and the statement in the record (paragraph 221 above) that when the surveyor reached Monte Redondo he had previously been bordering on the lands of Colomoncagua does not of itself justify any assumption that he had been doing so from Las Tijeretas onward. The summons in 1844 to the representatives of Colomoncagua refers not to Las Tijeretas itself, but to "the Las Cañas river by the *bajada* of Las Tijeretas", and while the representatives of Colomoncagua insisted that their lands extended across the river to Las Tijeretas and Los Picachos, the judge was apparently satisfied, on the titles produced, including the 1804 certificate relating to San Diego, that this was not so. The Chamber concludes that the 1821 *uti possidetis juris* line passed through the point marked F′ on sketch-map No. D-1, where the Torola lands come to an end, and then continued to follow the river downstream.

243. Having established that the boundary between the lands of Torola

and those of Colomoncagua in the 18th century, and by the same token the boundary of the jurisdictions of Comayagua and San Miguel, was the river Las Cañas downstream from the point marked U on sketch-map No. D-2 annexed, the Chamber has next to consider the course of the line of the *uti possidetis juris* south-westward to the source of the Orilla stream. El Salvador claims that the boundary continues to be formed by the river Las Cañas from the south-west corner of the Torola lands to a point called the Cajón de Champate (point Y on sketch-map No. D-1). Honduras claims that the boundary is formed by straight lines between points B-C-D-E-F on sketch-map No. D-1 annexed; between B and A it has shown a straight line on its maps, but the actual claim, according to the submissions, does not correspond exactly to that line. These points are stated to be the limits of 17th century titles granted by the authorities of Comayagua, two titles of Santa Ana of 1653, and that of Las Joyas and Los Jicoaguites of 1694. El Salvador has not produced any title document in support of its claims to the south-west of the Torola lands; from references in other documents, already referred to above (paragraphs 237 and 238), it appears that the adjoining property, in the jurisdiction of San Miguel, was the Hacienda de San Diego. The owner thereof came forward during the 1743 survey of Torola, but did not produce his title; the certificate of 1804 relating to this property produced by the owner of San Diego during the 1844 survey was described in paragraph 241 above, and in negotiations between the two States in 1869 some title document relating to it was available.

244. The Chamber considers that, particularly in the light of the material before it, it is entitled to start from a presumption that an inter-provincial boundary which follows a river is likely to continue to follow it so long as its course runs in the same general direction: that a projection of the Colomoncagua lands across the river calls for some explanation. Of course, if the titles produced by Honduras establish that the jurisdiction of Comayagua extended across the river, there is no more to be said; but if the titles are ambiguous or unclear, there should, at the least, be no presumption of such an extension. The Chamber has also found relevant the document dated 7 November 1804 recorded as a transcription made in 1844 by Judge Cecilio Espinoza, during the re-survey of Torola (see paragraph 238 above). This document, stated to have been issued by the Land Judge of Gracias a Dios, states categorically that

> *". . . sirve de division de las tierras, el nombrado río de las Cañas, el mismo que tambien separa los terminos de mi jurisdicción con la provincia de San Miguel . . ."*
>
> *[Translation]*
>
> ". . . the said river Las Cañas serves to divide the lands, and also marks the limits of my jurisdiction and that of the province of San Miguel . . .",

and related, not to the boundary with the lands of Torola, but to the Hacienda de San Diego, to the south-west of Torola.

245. The various titles of Santa Ana are imprecise as to directions, and the landmarks they refer to cannot, without further information or evidence, be identified with landscape features on the modern maps; no explanation has been given by Honduras as to how it arrives at the pattern of these titles plotted on the maps attached to its pleadings. It is also perhaps noteworthy that one of the areas in question is stated in the Memorial to be situate "between the Curuna (Santa Cruz) rivers and the river Cañas", while the maps show the Santa Ana lands straddling the river Cañas. El Salvador rejects the Santa Ana titles, apparently on the ground that "they identify only one boundary marker and thus obviously cannot be mapped". The Chamber agrees with the contentions of El Salvador, at least to the extent that it is not satisfied that the Santa Ana titles prove the presence of lands in the jurisdiction of Comayagua south of the river Las Cañas.

246. As for the title of Las Joyas and Jicoaguites of 1694, the survey starts from a river called "Yuquina" 45 cords (1,867 metres) to the west of a point called "Quecrus", and extends to the east to that point; Honduras identifies this river, according to its maps, with a stream marked as the *quebrada* de Rinconada, and "Quecrus" with the place called La Cruz in the Torola title. To do so, it has however to stretch the 45 cords (1,867 metres) to 3,000 metres, and to treat the directions "west" and "north" in the survey record as something much nearer north-west and north-east respectively. Furthermore, this title, as plotted by Honduras, extends into the area east of the Las Cañas which, in the Chamber's view, is clearly part of the title of Torola. On a map in its Counter-Memorial, El Salvador plots the title of Las Joyas and Jicoaguites, apparently on the basis that the "Yuquina" river is the Las Cañas, in such a way as to bring the "Quecrus" — marked as Cerro Quecruz — a kilometre further east than Honduras places it; no indication is given of how El Salvador explains this overlap, though counsel for El Salvador did emphasize that the sketch-maps included in the pleadings merely illustrate the Parties' contentions, and do not constitute an admission. The Chamber rejects the identification of Quecruz in the 1694 title with La Cruz in that of 1743; it does not consider that the 1694 title disproves the case for the river Las Cañas as the provincial boundary.

247. Honduras claims in its Memorial that the 1766 survey of the *ejidos* of Colomoncagua by Cristóbal de Pineda establishes "the river Masire as line dividing the provinces of San Miguel and Gracias a Dios", and refers in this respect to point B on sketch-map No. D-1 annexed. However in subsequent pleadings Honduras identifies the Masire river as the watercourse which flows from point G to point F on sketch-map No. D-1, so

that any references to it in the 1766 survey would appear not to be relevant to the region with which the Chamber is now concerned. Honduras refers also to the landmarks named by the Indians of Colomoncagua when requesting the cancellation of the de Pineda survey, which Honduras identifies with points A to F on sketch-map No. D-1. It appears to be the contention that by 1766 the lands of Colomoncagua included those of Santa Ana and of Joyas y Jicoaguites, but the de Pineda survey refers to the Santa Ana lands at least as distinct. Furthermore the Chamber has not been provided with any evidence justifying the attaching of the place-names mentioned in those ancient titles to the points indicated by Honduras on modern maps. The same difficulty arises in respect of the reconnaissance of the boundary markers by Miguel García Jalón in 1767, which however refers to the boundary at one point being formed by "... the river Champate, which joins with the *quebrada* de Cueva Hedionda ..." (*"... el río de Champate, que se encuentra con la quebrada de cueva hedionda ..."*). Similarly there is a reference in the re-survey by Andrés Pérez in 1793 to a stream which merges with the Champate. This re-survey is better furnished with bearings and distances than the earlier records; the Chamber has however already indicated (paragraphs 216 and 227 above) why it does not regard this re-survey as wholly reliable.

248. Accordingly the Chamber considers, on a balance of probabilities, there being no great abundance of evidence either way, that the river Las Cañas was the provincial boundary, and hence the *uti possidetis* line, downstream as far as the point where it turns southwards, to merge eventually with the river Torola. The point where the boundary leaves the river remains to be determined: for El Salvador it is the point marked Y on sketch-map No. D-1 annexed, while for Honduras it is the point marked A on that sketch-map.

*

249. The Chamber therefore turns to the final section of the boundary between the river Las Cañas and the agreed endpoint of the fourth disputed sector, the source of the Orilla stream. Here Honduras relies on the title to the *estancia* of Santa Ana of 1653; El Salvador has defined the line of the boundary which it claims, but offered nothing in support of it, save that it was the line adopted in the 1884 Cruz-Letona Convention; a claim of *effectivités* in this region appears to be unsupported by evidence. It is fair to mention also that the records of the 1884 negotiations show that the delegates did have before them the titles relating to lands in the region of the disputed boundary, but what these titles were is, and must apparently remain, unknown. Accordingly, while the Chamber, as already mentioned, is not fully informed as to how the landmarks mentioned in the

Santa Ana title relate to the mapping of it presented to the Chamber by Honduras, it has also to take account of the fact that El Salvador has not sought to demonstrate that Honduras's interpretation of the title is incorrect, or offered a rival interpretation. The Chamber therefore accepts the line claimed by Honduras from the source of the Orilla stream to the river Cañas. However, the Chamber, while accepting that the line should follow the "southernmost source of the Cueva Hedionda stream" referred to in the Honduran submissions, in the light of the reconnaissance of 1767 (paragraph 247), considers that this should be identified with the stream indicated on Map No. IV annexed; the confluence of that stream with the river Las Cañas is marked as point B on that map. The line which results from this diverges only slightly from that proposed by Honduras, but is topographically superior as a boundary line.

*

250. It will be convenient to deal next with the claim of El Salvador to an area to the west and south-west of the land comprised in the *ejidos* of Arambala-Perquín, i.e., the claim of El Salvador to areas on each side of the river Negro-Quiagara, bounded on the west by the river Negro-Pichigual, a claim based upon the *uti possidetis juris* in relation to the concept of *tierras realengas* (crown land). It is asserted by El Salvador and accepted in principle by Honduras, that each of the two States was on independence successor to such of the *tierras realengas* of the Spanish Crown as had been within the jurisdiction of the provinces which went to make up the relevant newly-independent State.

251. El Salvador relies here on a passage in the 1769 survey of the *ejidos* of Arambala-Perquín, part of which has been quoted above (paragraph 208); the survey party was moving from north to south down the western boundary of the lands surveyed, and

> *". . . se tantearon veinte cuerdas hasta una loma que llaman Guiriri donde se halló un mojon antiguo que se mandó avivar quedando por la parte del Oeste y Sudoeste tierra realenga la cual pertenece á esta jurisdiccion por estar mas hayá de dichas tierras el Rio Negro que tambien llaman Pichigual que dicho río divide esta jurisdiccion con la de Gracias á Dios que pertenece á Comayagua . . ."*
>
> *[Translation]*
>
> ". . . 20 cords were estimated to a hillock which they call Guiriri, where an old landmark was found, and instructions were given to renew it, leaving to the west and south-west some *tierra realenga* belonging to this jurisdiction because beyond the said land lies the

> Negro River which they also call Pichigual and which divides this jurisdiction from that of Gracias a Dios, which appertains to Comayagua . . ."

These *tierras realengas*, being stated to be of the jurisdiction of San Miguel, would form part of the Republic of El Salvador on independence.

252. As already observed, the position of the Guiriri hillock has not been in dispute in these proceedings (paragraph 211 above): it is the first marker to the south of the river Negro-Quiagara. This marker (point L), and the extent of the area of *tierras realengas* as contended for by El Salvador (bounded by the line S-T-U-V-W), is indicated on sketch-map No. D-1 annexed. The claim is of course related to El Salvador's main assertion, which the Chamber has been unable to accept (paragraph 208 above), that the province of San Miguel extended to the north of the river Negro-Quiagara. It is curious that the survey specifically states that the river Negro-Pichigual was the provincial boundary to the west, and does not mention that the river Negro-Quiagara was the provincial boundary to the north. However, it is only when the survey reached Guiriri that *tierras realengas* were mentioned, so that there is no evidence that the *tierras realengas* of the jurisdiction of San Miguel extended northwards beyond the river Negro-Quiagara. If the river was the provincial boundary up to the Mojón del Rincón, it is highly unlikely that there was such extension of the *tierras realengas* further to the north-west. That part of El Salvador's claim therefore requires no further consideration.

253. The relevant passage in the Arambala-Perquín survey record has already been quoted (paragraph 218 above): it refers specifically to lands up to the river Negro-Pichigual as "*. . . realenga que es la misma que hemos traido á la derecha desde el mojon de Guiriri . . .*" ("*. . . tierras realengas*, the same as we have had on our right from the landmark of Guiriri . . ."). Honduras has however disputed the validity of the finding in 1769 that there were *tierras realengas* at this point, on the ground of irregularities in the survey procedure, which, it suggests, were the object of the censure in the judicial decision of 1773 (above, paragraph 191). The only unusual aspect of the procedure identified is, however, an examination of witnesses, effected at the instance of the defender of the rights of the community of Arambala-Perquín, during the course of the survey. There is however no evidence that this was a substantial irregularity, or that the censure in the 1773 decision was directed to such an irregularity, and the Chamber sees no reason not to rely on the 1769 finding of the existence of *tierras realengas*.

254. The extent to the south of the river of the *tierras realengas* is indicated by a further reference to them in the survey record, which has given rise to a specific controversy between the Parties. Immediately following the passage quoted above, the record states, in a passage already quoted in paragraph 222 above:

". . . y desde dicho Roble negro por el mismo rumbo se tiro la cuerda partiendo un barranco y despues una quebradilla de agua de donde se subió y bajo una loma alta y topamos con el camino que sale de este Pueblo para Colomoncagua y se encuentra con las tierras del Pueblo de Torola cuyo pueblo es de esta jurisdiccion y hasta dicho camino llegamos con cuarenta cuerdas siendo advertencia que como diez cuerdas se vino lindando con tierra realenga y despues con Colomoncagua y en dicho paraje se halló un mojon antiguo de piedra que mandé avivar sin contradiccion del dicho Pueblo de Colomoncagua y el de Torola y mudando de rumbo del Oeste al Leste con abatimiento al Sudeste lindando con tierras del Pueblo de Torola . . ."

[Translation]

". . . and from the said Roble Negro in the same direction the cord was stretched across from a ravine as far as a *quebradilla* of water where we climbed and descended a high hillock and we met the road that runs from this town to Colomoncagua and arrives at the lands of the town of Torola, which belongs to this jurisdiction, and we reached this road with 40 cords, and it should be noted that for some 10 cords we walked bordering *tierra realenga* and thereafter Colomoncagua, and in the said spot an old stone landmark was found that I commanded to be rebuilt without objection being taken by the said town of Colomoncagua or the town of Torola and changing course from west to east with an inclination to the south-east the cord was stretched bordering the lands of the town of Torola . . ."

255. Honduras's interpretation of this passage is that the reference to the 10 cords' distance from which there were *tierras realengas* on the boundary, means that of the total distance from Guiriri, where the first reference is made to *tierras realengas*, to the tripoint with Torola and Colomoncagua (76 cords), only 10 cords were parallel to *tierras realengas*. Honduras therefore argues that the *tierras realengas* were limited to 10 cords south and west of Guiriri. The Chamber notes that the 1769 survey began with the required formal summonses to adjoining land-owners, including the community of Colomoncagua; and that when the survey reached the boundary marker of the Roble Negro, the representatives of Colomoncagua initially appeared to object to the position of that marker (see the passage from the survey record quoted in paragraph 253 above), which suggests that they considered that their land was contiguous with it. However, they did not press their objection; and on the face of the text of the survey, the Chamber finds Honduras's reading a strained interpretation. The natural meaning is surely rather that, of the 40 cords mentioned immediately previously in the survey, 10 were in parallel to *tierras realengas*. On this interpretation, these lands extended from Guiriri (or rather, from the river Negro-Quiagara) to the Roble Negro, and for 10 cords further. In fact the most likely analysis is that the river Negro-Pichigual

continued to be the boundary between Colomoncagua and the *tierras realengas* of San Miguel as far upstream as the point where its course crossed the boundary of the Arambala-Perquín lands, rather more than 10 cords south of the Roble Negro. This is in fact confirmed by the passage in the 1769 survey quoted (with the original Spanish) in paragraphs 218 and 253 above:

> "from the said Roble Negro to the Negro or Pichigual river there was something like a quarter of a league and this jurisdiction ends at the said river [i.e., westwards], so that the intermediate lands are *tierras realengas, the same as we have had on our right from the landmark of Guiriri*" (emphasis added).

The Chamber therefore takes the view that this must be taken to have been the position in 1769. The claim of El Salvador to a further triangle of land, extending south to the hill called Alguacil Mayor, must therefore be rejected.

256. Honduras also argues that, whatever may have been the position in 1769 when the lands of Arambala-Perquín were surveyed, by 1821 any *tierras realengas* in this region had been absorbed into the lands of Colomoncagua, to the east, in the jurisdiction of Gracias a Dios. El Salvador has relied on the decree of the Real Audiencia of 16 November 1815, set out in paragraph 193 above, as a confirmation, six years before the *uti possidetis juris* date, of the existence and the limits of the *tierras realengas* as described in 1769. In terms, however, that decree merely protects the Indians of Arambala-Perquín in the enjoyment of their own lands (*". . . las tierras que comprenden dichos exidos . . ."*), and the 1769 title gave those Indians no rights over the *tierras realengas* to the west, but merely recorded their existence and appurtenance to the jurisdiction of San Miguel. Thus the 1815 decision, in the Chamber's view, affords no evidence of the continued existence of the *tierras realengas.*

257. On the other hand, for these lands to have been granted to the community of Colomoncagua, in the adjoining province of Gracias a Dios, a formal title would have been necessary; and on Honduras's own argument, such a grant by the authorities of Gracias a Dios would not have modified the provincial boundary. In any event, no such grant between 1769 and 1821 has been shown: the 1793 re-survey by Andrés Pérez was not such a title, and, as has been observed, that document is no more than a record of what the community of Colomoncagua claimed to be their lands. The Chamber's conclusion is thus that in 1821 the provincial boundary continued to run from the junction of the river Negro-Quiagara with the river Negro-Pichigual, and upstream of that river to the boundary of the *ejidos* of Arambala-Perquín, the land so enclosed being *tierras realengas* of the province of San Miguel.

*

258. The Chamber has finally to deal with the eastern part of the boundary line in this sector, that between the river Negro-Quiagara and the Malpaso de Similatón. An initial problem which arises is that the Parties are not agreed as to the position of the Malpaso de Similatón, notwithstanding the fact that this point defines one of the agreed sectors of the boundary as recorded in Article 16 of the 1980 General Treaty of Peace, which refers to "the boundary marker known as the Malpaso de Similatón". The two locations contended for (co-ordinates in paragraph 259 below) are indicated on sketch-map No. D-3 annexed: the distance between them is of the order of 2,500 metres. The disagreement between the Parties apparently arose during the discussions of the Joint Frontier Commission in 1985, when Honduras put forward certain arguments in support of its placing of this marker, but El Salvador did not react before the Commission suspended its work. In its pleadings and oral argument before the Chamber, El Salvador has also refrained from any argument in support of its placing of the marker; it is not clear whether it is based upon El Salvador's interpretation of the title of Arambala-Perquín. Counsel for El Salvador eventually explained the silence by saying that

> "the question of the Paso de Similatón . . . is a question relating to demarcation and, as such, is not before the Chamber, whose task in relation to the disputed sectors of the land frontier is to proceed to a delimitation".

259. However, the final submissions of El Salvador presented at the hearing of 14 June 1991 are as follows:

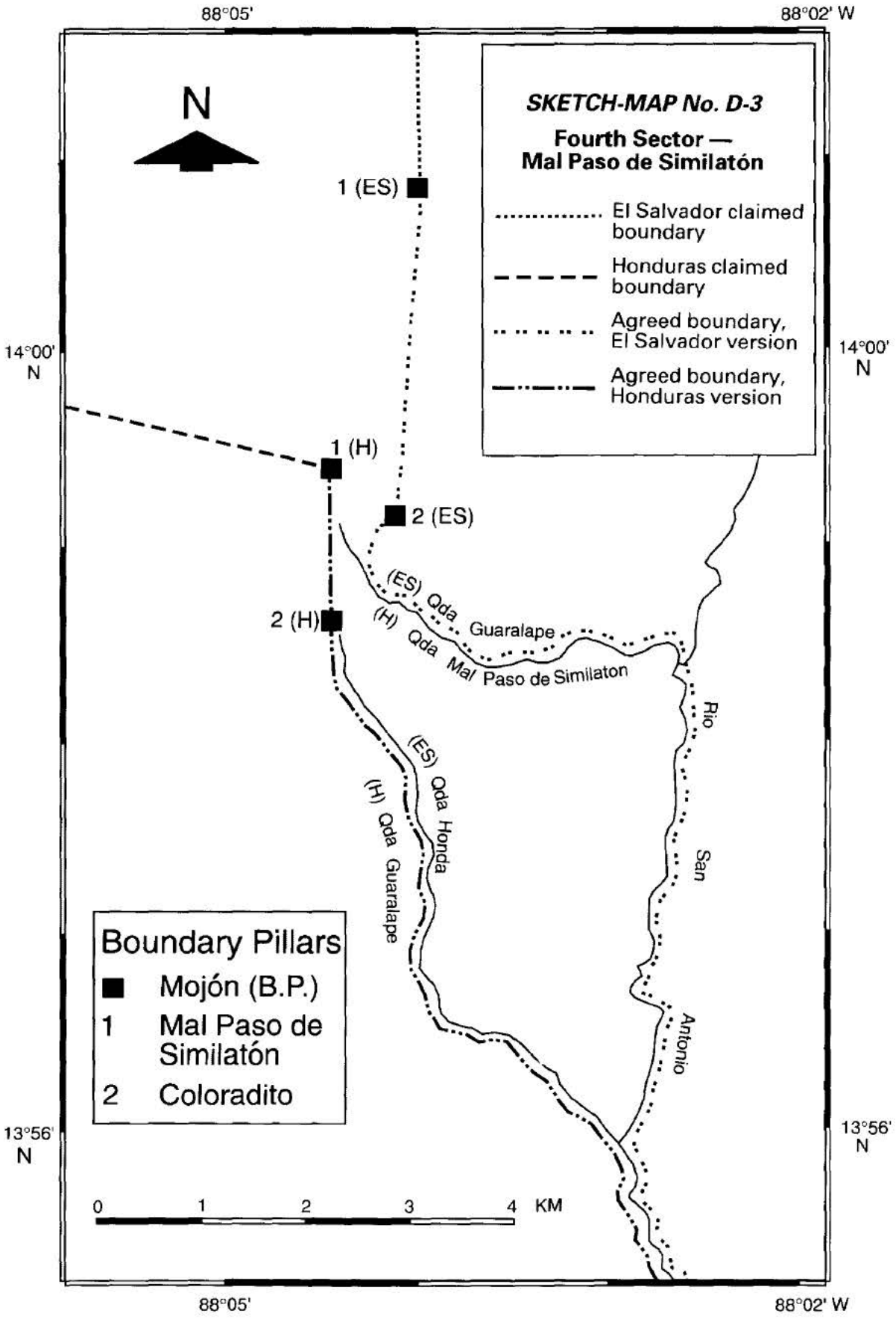
> "The line of the frontier in the zones or sectors not described in Article 16 of the 1980 General Treaty of Peace of 30 October 1980, is as follows . . .
>
> . . . in the disputed sector of Nahuaterique, in accordance with paragraph 6.72 and map 6.10 of the Memorial of El Salvador, as set forth in Annex IV to these submissions";

and Annex IV begins as follows:

> "Starting from the boundary marker known as the Mojón Mal Paso de Similatón situated at latitude 14° 00′ 53″ N and longitude 88° 03′ 54″ W, the frontier continues in a straight line . . ."

The final submissions of Honduras similarly ask the Chamber to decide that the frontier runs "to the Malpaso de Similatón (13° 59′ 28″ and 88° 04′ 21″)". The Chamber therefore concludes that there is a dispute between the Parties as to the location of the Malpaso de Similatón, which the Chamber has to resolve.

260. The dispute over the position of the Malpaso de Similatón is of course part of a disagreement as to the course of the boundary beyond it, in the sector which is deemed to have been agreed. Examination of the maps produced, and the records of the discussion of the Joint Frontier


88°05'
88°02' W
N
SKETCH-MAP No. D-3
Fourth Sector —
Mal Paso de Similatón
El Salvador claimed boundary
Honduras claimed boundary
Agreed boundary, El Salvador version
Agreed boundary, Honduras version
1 (ES)
1 (H)
2 (ES)
2 (H)
14°00' N
(ES) Qda Guaralape
(H) Qda Mal Paso de Similaton
(ES) Qda Honda
(H) Qda Guaralape
Rio San Antonio
Boundary Pillars
Mojón (B.P.)
1 Mal Paso de Similatón
2 Coloradito
13°56' N
0 1 2 3 4 KM

Commission, shows that the sixth section of the agreed boundary described in Article 16 of the 1980 General Treaty of Peace has, in practical or cartographical terms, only been agreed upon to a point south of both locations proposed for the Malpaso de Similatón, namely at the junction of the river San Antonio with a stream called either the *quebrada* Honda or the *quebrada* Guaralape. The General Treaty of Peace (Art. 16) records the agreement of the Parties that the boundary here should run

> *"Del Mojón del Malpaso de Similatón a la cumbre o mojón del Cerro Coloradito. De allí al pie del Cerro Coloradito donde nace la quebrada de Guaralape. De aquí, aguas abajo de dicha quebrada hasta su desembocadura en el río San Antonio o Similatón . . ."*
>
> *[Translation]*
>
> "From the boundary marker known as Malpaso de Similatón to the summit or boundary marker of the Cerro Coloradito. From here to the foot of the Cerro Coloradito where the Guaralape stream begins. From here down this stream to the point where it joins the river San Antonio or Similatón . . ."

but the Parties are not agreed as to the identification of the Cerro Coloradito and the Guaralape stream. The Chamber does not however consider that it is part of its task to settle these questions; it has been given jurisdiction to delimit the frontier in the sectors not settled by the General Treaty of Peace, which enumerates specifically, in Article 16, those which have been so settled. Nor however does it consider that the known existence of a disagreement within the "agreed" sector affects its jurisdiction to determine the boundary up to and including the Malpaso de Similatón.

261. In endeavouring to do so, however, it encounters a difficulty: neither side has offered any evidence whatever as to the line of the *uti possidetis juris* in this region. El Salvador does not, apparently, claim that the borders of the Arambala-Perquín title extend so far east as the point which it identifies as the Malpaso de Similatón; and a claim which it advanced in its Memorial to *tierras realengas* related to land east of the claimed Malpaso, and has in any case been withdrawn. Honduras for its part does contend that the Malpaso de Similatón was on the border of the Arambala-Perquín title, at a place called the Sapamani hill. There remains however the problem of the connection between this point and the river Negro-Quiagara: Honduras has claimed — as the Chamber has found, correctly — that the provincial boundary followed the river Negro-Quiagara, but it has not put forward any contention, backed by evidence, as to the course of the provincial boundary east of the Mojón Las Pilas. The claim of Honduras, according to its submissions, is simply that the boundary should run from this landmark to the Malpaso de Similatón, thus presumably in a straight line. It appears that during the negotiations between

the Parties at Antigua, Guatemala (paragraph 36 above), a proposal by Honduras was for a line between the two points with a kink in it, at the point marked "Mojón Pasamono" on Honduran maps. No legal arguments have been advanced in support of either a straight or a kinked line. The solution of a straight line between these points appears to derive from negotiation between representatives of the two States at Montaña de Naguaterique in 1869. The delegates, having concluded that the river Negro-Quiagara was the frontier, started their proposed delimitation from the Malpaso de Similatón, and pursued a route in (apparently) a straight line to a point called El Barrancón on the river Negro-Quiagara, which Honduras identifies with the Mojón Las Pilas. No international agreement was however concluded to give effect to that delimitation.

262. In these circumstances, being satisfied that the line of the *uti possidetis juris* in this area is impossible to determine, the Chamber considers it right to fall back on equity *infra legem*, in conjunction with the unratified delimitation of 1869. In the case concerning the *Frontier Dispute* between the Republic of Mali and Burkina Faso, the Chamber dealing with the case was faced with a similar problem. It said:

> "It should again be pointed out that the Chamber's task in this case is to indicate the line of the frontier inherited by both States from the colonizers on their accession to independence . . . If the competent authorities had endorsed the agreement of 15 January 1965, it would have been unnecessary for the purpose of the present case to ascertain whether that agreement was of a declaratory or modifying character in relation to the 1932 boundaries. But this did not happen, and the Chamber has received no mandate from the Parties to substitute its own free choice of an appropriate frontier for theirs. The Chamber must not lose sight either of the Court's function, which is to decide in accordance with international law such disputes as are submitted to it, nor of the fact that the Chamber was requested by the Parties in their Special Agreement not to give indications to guide them in determining their common frontier, but to draw a line, and a precise line.
>
> As it has explained, the Chamber can resort to . . . equity *infra legem* . . . Apart from the case of a decision *ex aequo et bono* reached with the assent of the Parties, 'it is not a matter of finding simply an equitable solution, but an equitable solution derived from the applicable law' (*Fisheries Jurisdiction, I.C.J. Reports 1974*, p. 33, para. 78). It is with a view to achieving a solution of this kind that the Chamber has to take account, not of the agreement of 15 January 1965, but of the circumstances in which that agreement was concluded." (*I.C.J. Reports 1986*, pp. 632-633, paras. 148-149.)

263. Similarly, the Chamber considers that it can in this case resort to the line proposed in the 1869 negotiations, Las Pilas — El Barrancón —

Mal Paso de Similatón, as a reasonable and fair solution in all the circumstances. There is nothing in the records of the 1861 and 1869 negotiations to suggest that there was any fundamental disagreement between the Parties on that line; acceptance of it however was linked to the different question whether the river Negro-Quiagara did or did not form the provincial boundary. That question is resolved by the present Judgment, and the Chamber has no doubt that it is equitable, as a corollary, to allow the 1869 agreement to take effect on this specific point. This entails, and is to some extent justified by, acceptance of the Honduran contention as to the position of the Malpaso de Similatón, the only one which has some support in evidence of the pre-independence situation. The Chamber therefore accepts the line of the 1869 agreement, which appears to be that contended for by Honduras, between the Mojón Las Pilas and the Malpaso de Similatón, as illustrated by the line N-P on sketch-map No. D-1 annexed.

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264. There remains the question of the *effectivités* claimed by El Salvador in the area north of the river Negro-Quiagara which was part of the lands of Arambala-Perquín, which the Chamber has found to fall on the Honduran side of the the line of the 1821 *uti possidetis juris*, as well as the areas outside the Arambala-Perquín lands. Annexed to the Memorial of El Salvador were the Spanish texts of 19 certificates issued by the Salvadorian Registry of Property and Hypothèques concerning private properties registered on behalf of private individuals in the Department of Morazán, El Salvador; and a map apparently showing an electric power transmission line supplying San Fernando and Perquín, and then continuing north-east across the line between Las Pilas and the Malpaso de Similatón (between points N and P on sketch-map No. D-1 annexed), and for some 6 kilometres further north into an area attributed by the Chamber to Honduras. According to counsel for El Salvador, of the 19 registered title-deeds annexed to the Memorial, seven relate to land in the strip of territory between the eastern boundary of the Arambala-Perquín lands and the line defining the eastward extent of El Salvador's claim. Documents annexed to the Reply of El Salvador relate to Salvadorian landholdings in the canton of Nahuaterique in 1916, alleged Honduran incursions in 1925 and 1926 at places called "Limón" and "Las Trojas", and public works (roads, schools) carried out by the municipalities of Arambala, Perquín and Torola, between 1951 and 1986. No map has been supplied to the Chamber with a precise indication of where the various places referred to in these documents are situated, other than a map in the Memorial to indicate the "Human Settlements in the Non-Delimited Zones" in this sector, showing a considerable number of *caseríos* situated in the area north of the river Negro-Quiagara and the line to the Malpaso de Similatón. No information has been given as to the effective administration of the *caseríos* marked on the map in the Memorial of El Salvador. To the extent that

the Chamber is able to relate various place-names to the disputed areas and to the *uti possidetis juris* boundary, it is unable to regard this material as sufficient evidence of any kind of *effectivités* which could be taken into account in determining the boundary.

265. Turning now to the evidence of *effectivités* submitted by Honduras, as already mentioned, considerable material was presented as an annex to the Honduran Reply to show that Honduras also can rely on arguments of a human kind, that there are "human settlements" of Honduran nationals in the disputed areas in all six sectors, and that various judicial and other authorities of Honduras have exercised and are exercising their functions in those areas. So far as the present sector is concerned, Honduras has presented material under ten headings: (i) criminal proceedings; (ii) police or security; (iii) military patrols; (iv) taxation; (v) appointment of deputy mayors; (vi) public education; (vii) land concessions; (viii) birth certificates; (ix) death certificates; (x) miscellaneous. These relate to a considerable number of localities, identified simply by the name of the village or place; no map has been supplied to show the geographical position of these places. The Chamber considers that, in view of its decision as to the boundary on the basis of the *uti possidetis juris*, it can confine its attention to such villages as appear on Honduran maps to lie between the boundary as found by the Chamber and the boundary claimed by Honduras.

266. The identifiable villages or settlements falling into this category are the following: Platanares, El Munigal, Las Piletas (on the boundary line), Mano de León, Junquillo, Sicahuite and La Laguna. In respect of these, the material submitted by Honduras includes the following: Platanares: 15 birth registrations, dating from between 1914 and 1988, and one death registration in 1930; El Munigal: one criminal prosecution in 1954, and one birth registration in 1974; Las Piletas: one land concession in 1901, six birth registrations, dating from between 1938 and 1987, and five death registrations, dating from between 1911 and 1935; Mano de León: four death registrations, dating from between 1901 and 1935; and La Laguna: one criminal prosecution in 1952, and three birth registrations, dating from between 1961 and 1986. All in all, as in sectors previously examined, the Chamber does not see here sufficient evidence of *effectivités* by Honduras in an area clearly shown to be on the El Salvador side of the boundary line to justify the Chamber in doubting the validity of that boundary as representing the *uti possidetis juris* line.

*

267. The boundary line between El Salvador and Honduras in the disputed fourth sector, as found by the Chamber, is indicated on Map No. IV[1] annexed, which is composed of the following sheets of the United States of America Defense Mapping Agency 1:50,000 maps:

Series E752	Sheet 2558 II	Edition 1-DMA
Series E753	Sheet 2557 I	Edition 1-DMA
Series E753	Sheet 2557 IV	Edition 1-DMA.

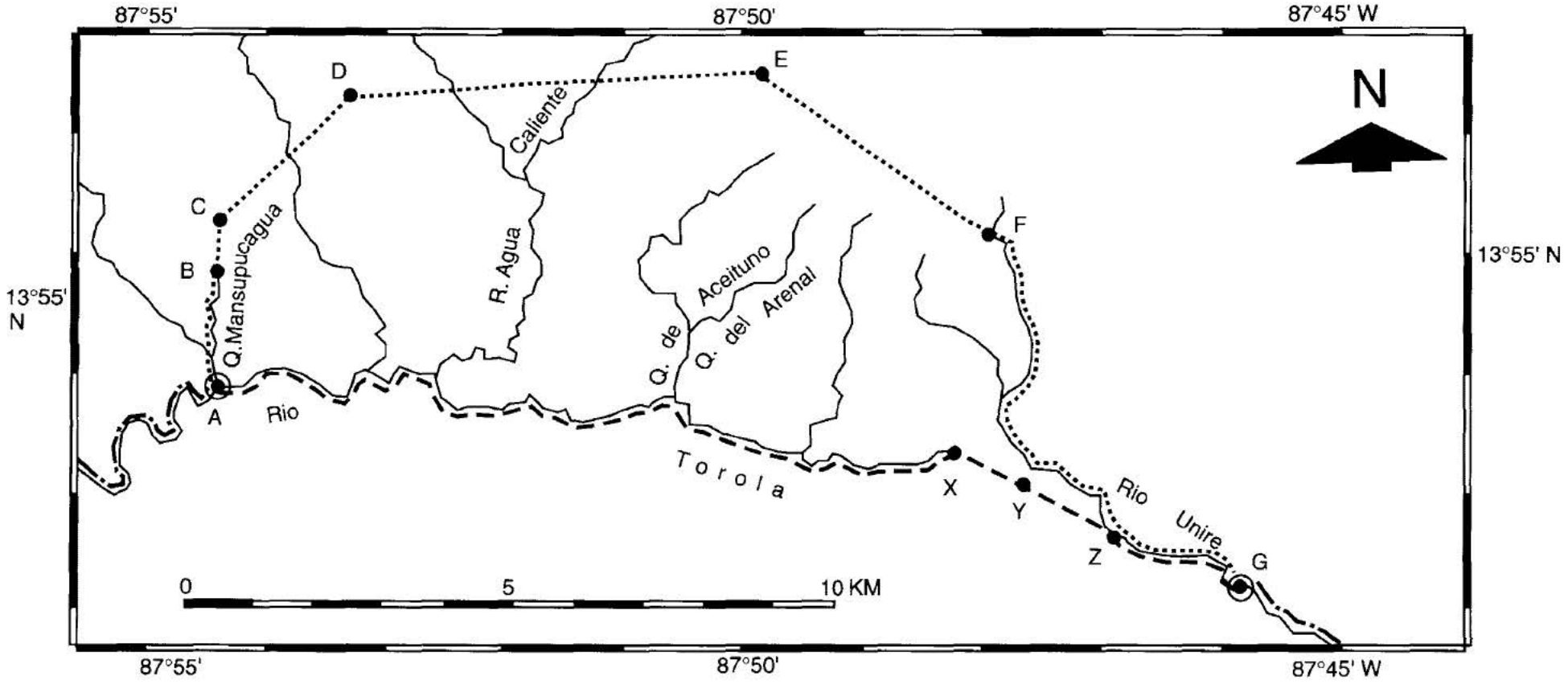
The complete course of that boundary is as follows: from the source of the Orilla stream (point A on Map No. IV annexed) the boundary runs through the pass of El Jobo to the source of the Cueva Hedionda stream (point B on Map No. IV annexed), and thence down the middle of that stream to its confluence with the river Las Cañas (point C on Map No. IV annexed), and thence following the middle of the river upstream as far as a point (point D on Map No. IV annexed) near the settlement of Las Piletas; from there eastwards over a col (point E on Map No. IV annexed) to a hill indicated as point F on Map No. IV annexed, and then north-eastwards to a point on the river Negro or Pichigual (marked G on Map No. IV annexed); downstream along the middle of the river Negro or Pichigual to its confluence with the river Negro-Quiagara (point H on Map No. IV annexed); then upstream along the middle of the river Negro-Quiagara as far as the Las Pilas boundary marker (point I on Map No. IV annexed), and from there in a straight line to the Malpaso de Similatón as identified by Honduras (point J on Map No. IV annexed).

* * *

FIFTH SECTOR OF THE LAND BOUNDARY

268. The fifth disputed sector of the land boundary is, like the first four sectors, defined by the endpoints of the adjacent agreed sections, referred to in Article 16 of the 1980 General Treaty of Peace: these endpoints are defined in that Article as follows: in the west, "the point on [the] north bank [of the Torola river] where it is joined by the Manzupucagua stream", and in the east "the Paso de Unire, in the Unire river". These points, and the situation of the boundary as claimed by each Party, are illustrated on sketch-map No. E-1 annexed, the lettered points on which will be referred to in describing the Parties' claims. El Salvador describes the line which it claims in the direction from east to west, as follows: Starting from the Paso de Unire (point G on sketch-map No. E-1), the frontier follows the course

[1] A copy of the maps annexed to the Judgment will be found in a pocket at the end of this fascicle or inside the back cover of the volume of *I.C.J. Reports 1992. [Note by the Registry.]*



SKETCH-MAP No. E-1

Fifth Sector — Disputed Area

Agreed boundary

El Salvador claimed boundary

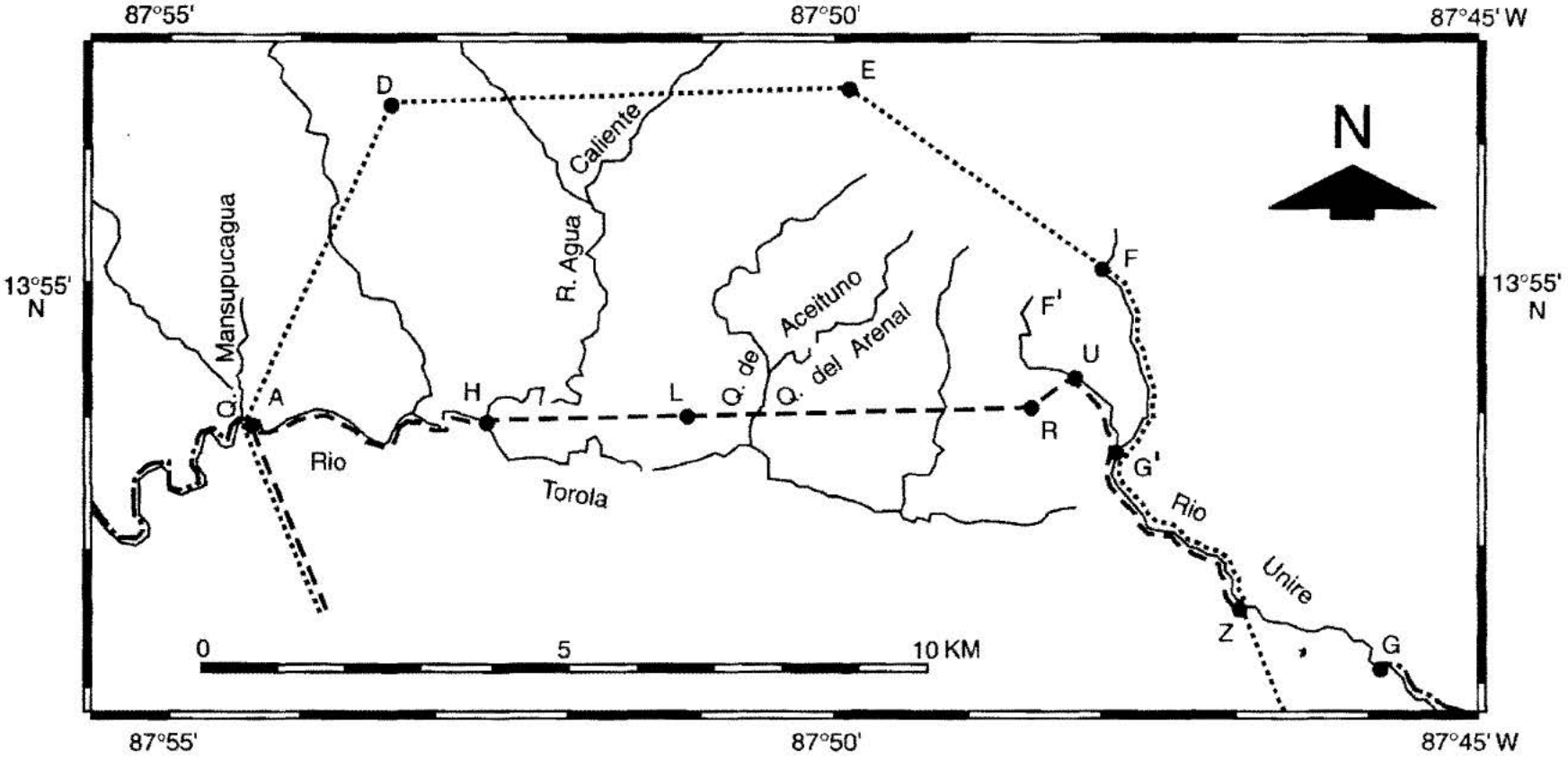
Honduras claimed boundary

Endpoint of disputed sector

of the Unire, Guajiniquil or Pescado River upstream to what El Salvador defines as its source, situated at point F; from this source, the frontier continues in a straight line to the peak identified by El Salvador as the Cerro Ribitá (point E), and then in a straight line to the peak identified by El Salvador as the Cerro López (point D). From this peak, the frontier runs in a straight line to a boundary marker known as the Mojón Alto de la Loza (point C), and from this boundary marker, the frontier runs in a straight line to the source of the stream known as the Mansupucagua (point B), and then follows the course of the Mansupucagua stream to its confluence with the Torola (point A). Honduras describes the line which it claims in the opposite direction, west to east, as follows: From the confluence of the Mansupucagua stream with the Torola river (point A), following the river Torola upstream along the middle of its bed to its source, the mountain stream known as La Guacamaya stream (point X); from this point, in a straight line, to the pass of La Guacamaya (point Y); thence in a straight line to a point on the river Unire (point Z), close to the place known as El Coyolar, and from there, following the Unire river downstream, as far as the Paso de Unire (point G).

269. The claim of El Salvador is based essentially on the *título ejidal* granted to the village of Polorós, province of San Miguel, issued in 1760, following a survey carried out in that year; the boundary line claimed by El Salvador is what it claims to be the northern boundary of the lands comprised in that title, save for a narrow strip of land on the western side (between the straight line A-D and the line A-B-C-D on sketch-map No. E-1) which El Salvador claims on the basis of "human arguments". The extent of the lands comprised in the 1760 Polorós title, according to the interpretation of each Party, is also indicated on sketch-map No. E-2 annexed. Honduras, while disputing El Salvador's geographical interpretation of the Polorós title, concedes that it extended across part of the river Torola; it nonetheless claims that the frontier today should follow that river.

270. The reasons advanced in support of this claim are, briefly, that the northern part of the *ejidos* granted to Polorós in 1760, including all the lands north of the river, had formerly been the lands of San Miguel de Sapigre, a village which disappeared as a result of an epidemic at some date after 1734 and that that village had been in the jurisdiction of Comayagua; that these lands, notwithstanding their being granted to Polorós, remained within the jurisdiction of Comayagua; and that the line of the 1821 *uti possidetis juris* was therefore represented by the boundary between these lands and the other Polorós lands; but that as a result of events in 1854 Honduras acquiesced in a boundary further north, constituted by the river Torola. That part of the disputed area to the north of the river which Honduras considers to have been part of the Polorós lands is thus claimed by Honduras as having formed part of the San Miguel de Sapigre lands; the western part, which Honduras considers fell outside the Polorós title, is claimed by it as part of the lands of Santiago de Cacao-



SKETCH-MAP No. E-2

Fifth Sector — Interpretation of Polorós Title

- Agreed boundary
- El Salvador version
- Honduras version

terique, a village in the jurisdiction of Comayagua. The Polorós lands north of the river are claimed by Honduras, in the alternative, on the basis that El Salvador also acquiesced, in the 19th century, in the river Torola as frontier. Since, if either of these claims is upheld by the Chamber, it will be unnecessary to ascertain the precise extent of the Polorós lands, and the interpretation of the title presents special difficulties, the Chamber will first examine the claims concerning San Miguel de Sapigre and the alleged consent of El Salvador.

271. The title of Polorós was granted by the *Juez Privativo de Tierras* of the Real Audiencia of Guatemala, by delegation to the Sub-delegate Judge of Measurements of San Miguel. The survey was not effected jointly by officials from two jurisdictions, as in the case of Jupula (paragraph 105 above), nor was there any reference to a special and exceptional authorization to the judge to operate outside his own jurisdiction, as in the case of Citalá (paragraph 71 above). The presumption must therefore be that the lands comprised in the survey were all comprised within the jurisdiction of San Miguel. This presumption is supported by the text: the judge states that he is instructed to measure the lands of the jurisdiction of San Miguel (*". . . para medir las [tierras] de la jurisdicción . . . de San Miguel"*). There is a reference at one point in the survey to the fact that the lands surveyed border "lands of the town of Indians of this jurisdiction", then at a later point a reference to lands owned by "the people of the village of Opatoro of the jurisdiction of Comayagua", and again at a further point a reference to the survey bordering "lands of San Antonio of the other jurisdiction", i.e., San Antonio de Padua, jurisdiction of Comayagua.

272. The evidence offered by Honduras as to the existence, location and extent of the *ejidos* of the village of San Miguel de Sapigre is as follows. In 1734 a survey was effected of the lands of Cojinicuil, situated to the south-east of the area now in dispute, south of the river Unire, in what is now territory of El Salvador; the authority for the survey was the Juzgado Privativo de Tierras by delegation to a sub-delegate judge; the lands were stated to be in the jurisdiction of the Real de Minas de Tegucigalpa. The survey began at a point called Coyolar

> *". . . donde hace lindero y Guarda Raya estta Jurisdicion con las tierras del citio de Gueripe por el lado que mira al Sur y por ottro lado con las tierras del Pueblo de Sapigre . . ."*
>
> *[Translation]*
>
> ". . . where this jurisdiction borders on and is delimited by the lands of the *sitio* of Gueripe on the side facing the south and on the other side by the lands of the village of Sapigre . . ."

The 1760 survey of Polorós does not mention a landmark called Coyolar; but there is a reference in 1760 to a dispute with the neighbouring land-

owner of "Guajinicuil" concerning a place called "Bolillo", and in the 1734 survey of Cojinicuil, the next landmark to Coyolar is El Volillo. No mention is made in the 1734 survey of the jurisdiction to which Sapigre belonged, and Honduras interprets this silence as signifying that that village was then also in the jurisdiction of Tegucigalpa.

273. In a document drawn up in 1789 by the Town Council of the village of Cacaoterique (situated to the north-west of the area now in dispute) there is a reference to a landmark, called the Brinco de Tigre, which was ". . . a landmark of the village of San Miguel de Sapigre, which has three and-a-half leagues in the direction of the southern sea . . ." *(". . . un mojon del pueblo San Miguel de sapigre, que por parte del mar del Sur tiene tres leguas, y media . . .").* This document does not purport itself to be a grant of land, though it quotes part of what was said to be an ancient title written in an unknown Indian language; it is a record of oral tradition as to the boundaries of the villages, made in connection with a dispute with the neighbouring village of Opatoro. In 1803, appeal was again made to oral tradition, this time as purporting to correspond to what was said in the old unintelligible title, and again El Brinco del Tigre was recorded as a landmark marking the division between the lands of Cacaoterique and those of San Miguel de Sapigre to the south. In that year, an enquiry into the boundaries of Cacaoterique was being carried out, and the surveyor, on arriving at Brinco de Tigre, recorded that there were two rocks,

> *". . . cuyas peñas tienen por su quinto lindero, y de los yndios de Poloros, porque en la antiguedad dicen era halli el Pueblo de San Miguel de Sapigre, que lla no hay ni fragmentos . . ."*
>
> *[Translation]*
>
> ". . . which rocks they consider to be their fifth boundary marker, and also of the Indians of Polorós, because in ancient times they say that this was the location of the village of San Miguel de Sapigre, of which not a trace remains . . ."

The Brinco de Tigre, according to Honduras, was on the boundary of the part of the Polorós *ejidos* which Honduras claims remained in the jurisdiction of Comayagua (because formerly lands of San Miguel de Sapigre). However, the survey record immediately continues:

> *"A virtud de que pase a los tres, o cuatro mojones que sigven a reconocerse Tocan con los Pueblos de Poloros, y Liclique de la jurisdicion, y provincia de San Miguel e Yntendencia de San Salvador . . ."*
>
> *[Translation]*
>
> "Inasmuch as the three or four boundary markers next to be examined border on the village of Poloros and Lislique, *of the*

jurisdiction and province of San Miguel and Intendencia of San Salvador . . ." (emphasis added).

274. According to Honduras, numerous references to the village of San Miguel de Sapigre in 17th century documents show that it belonged to the province of Comayagua; El Salvador contends that this point is not proved. By way of example, Honduras refers to a list of villages of that province drawn up for the recovery of certain payments in 1684-1685, which, it is said, assigns the village of San Miguel de Sapigre to the Alcaldía Mayor of Tegucigalpa. However the original Spanish text, of which a photocopy has been filed by Honduras as an annex to its Memorial, lists no village of that name under "Minas de Tegucigalpa", and lists a village of "Sapigre" under the heading of "Chuluteca". Administrative control and jurisdiction over that district, according to El Salvador, was exercised by the province of San Salvador; and while Honduras disputed this, it did so on the basis of a *Real Cédula* of 24 July 1791, whereas the list relied on dates from 1684. In any event, there must be some doubt whether the district of Choluteca extended so far west (see Honduran Reply, Map VII.1) and thus whether the Sapigre in the district of Choluteca is the same as the Sapigre with which the Chamber is here concerned. This also throws doubt on the relevance of any other mention of "Sapigre" in 17th century records. In 1713, according to a document produced by Honduras during the oral proceedings, the village of San Miguel de Sapigre received an official visitation by the *Alcalde Mayor* of the province; the name of the province is not stated in the copy supplied of the original Spanish, but according to the translation furnished by Honduras the document produced was extracted from the "Register of Visitations, province of Honduras, 1713".

275. Honduras also invokes the fact that when the boundaries of Cojiniquil were surveyed in 1734, the community of Sapigre was cited to appear; but the Chamber has noted other instances where adjacent communities or landowners coming under another jurisdiction have been so cited, so that the only question is whether it was significant that the record did not expressly refer to the village of San Miguel de Sapigre as being in another jurisdiction. Furthermore in the course of the same survey, the judge effecting it was accompanied by

> "the Indians of the village of Sapigres, to whom I put the question, what were the limits of this jurisdiction, and of that of San Miguel, and they replied that, beginning from a place where there is a cave, one crosses the stream or river Guajiniquil . . .".

The clear implication is that the Indians of Sapigre were consulted as to the boundaries of the province of San Miguel because their village was situated in that province. Not having seen any of the other documents of the 17th century referred to by Honduras as indicating that San Miguel de Sapigre was in the province of Comayagua, the Chamber cannot regard the jurisdiction of that province over the village as sufficiently well

established by evidence dating from before 1821 for it to be possible to base upon it the conclusions drawn by Honduras.

276. As for the later evidence, a witness interviewed in 1879 stated that, according to family tradition, the Monteca lands were Honduran, being the "property of San Miguel de Sapigre belonging to the department of Comayagua", and that the title-deed existed in Comayagua. Presumably at that date the title was not to be found, or it would have been produced to support Honduras's position in the dispute, then active, with El Salvador over the Dolores lands. Other references were made at the time to a village of San Juan Sapigre — which may be a mistake for San Miguel de Sapigre, or may have been a different village — and to Polorós having appropriated the lands of that village 30 years before "with no title", which is inconsistent with the theory now advanced that the 1760 title included the Sapigre lands. It was stated in the Town Council of Opatoro in 1896 by elderly witnesses that "the abandoned village of San Miguel de Sapigre belonged to Honduras, being situate on the southern boundary of the plain of Monteca . . .". The village of Sapigre was of course never Honduran in the strict sense, since it ceased to exist before independence of the two States; the meaning is therefore presumably that the village was situated in an area which, according to the witnesses, was traditionally regarded as Honduran. All in all, the Chamber does not consider that much weight can be attached to this sparse testimony.

277. The Chamber concludes that the claim of Honduras through the extinct village of San Miguel de Sapigre is not supported by sufficient evidence. It does not therefore have to go into the question of the effect of the inclusion in an *ejido* of one jurisdiction of *tierras realengas* of another jurisdiction, or that of the position of the boundary between San Miguel de Sapigre and the original lands of Polorós. It may however be noted that the evidence dating from before 1821 as to the situation of the southern boundary of San Miguel de Sapigre, which, according to Honduras, is the *uti possidetis juris* line, is quite inadequate, as Honduras in effect concedes. If the Chamber had had solely to place itself in the position of the Parties in 1821, it would be impossible to draw the boundary on that basis. It is only the fact of the grant by El Salvador in 1842 of the republican title of the Hacienda de Monteca, and the survey of that property in 1889 (see paragraphs 280 and 282 below), that enables any line to be identified, by assuming, as Honduras does, that the boundaries of the Monteca property corresponded to those of that part of the Sapigre lands which lay south of the river.

278. The Chamber therefore concludes that no convincing ground has been adduced for departing from the presumption that the *ejido* granted in 1760 to the village of Polorós, in the province of San Miguel, was wholly situated in that province, and that accordingly the provincial boundary

lay beyond the northern limit of that *ejido*, or coincided with it. Since there is equally no evidence of any change in the situation between 1760 and 1821, the line of the *uti possidetis juris* may be taken to have been in the same position. There is however of course disagreement between the Parties as to where the northern boundary of the Polorós title lay. However, the next question to be examined is the claim of Honduras that, whatever the 1821 position, El Salvador has subsequently acquiesced in the river Torola as boundary.

* *

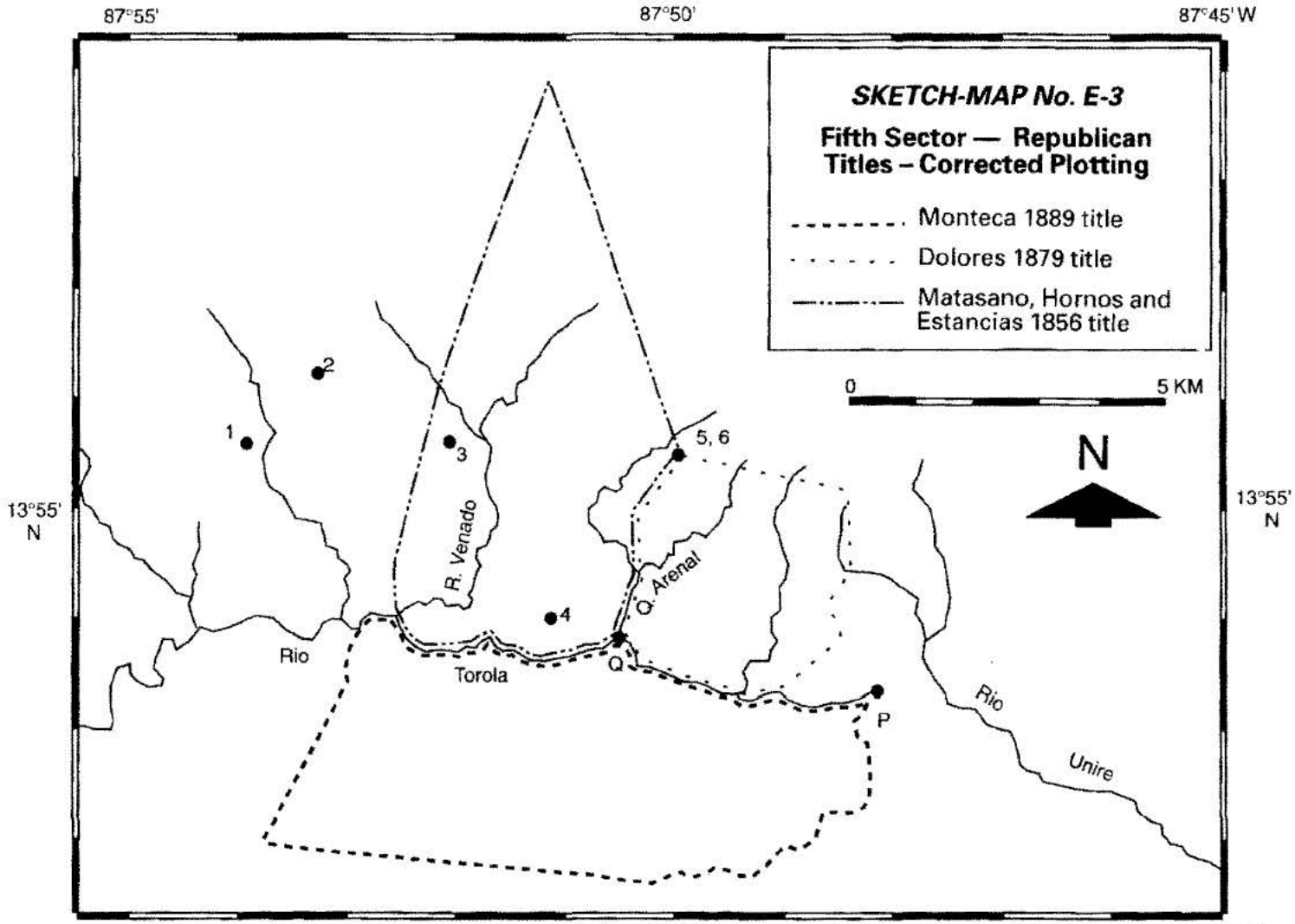
279. The events subsequent to 1821 on which Honduras relies to establish the position of the hypothetical line between the lands of San Miguel de Sapigre and the original lands of Polorós are, in view of the finding above, irrelevant; they are however material, not only to the further claim by Honduras, that El Salvador by its conduct between 1821 and 1897 acquiesced in a boundary along the river Torola, but also to the ascertainment of the *uti possidetis juris* position, and will therefore be dealt with in some detail. The evidence before the Chamber shows that in 1842 one José Villatoro applied to the Government of El Salvador for a title to the lands of Monteca, on the basis that these had been declared State property, offered for sale by auction, and purchased by him. A title was issued, which did not give any indication of the precise position or the extent of the Monteca property, and at the same time the landowner was recommended to have the land surveyed and measured. According to José Villatoro's application, an inspection of landmarks, in the presence of neighbouring owners, particularly those of Polorós, had been effected, but the record of it has not been produced before the Chamber. The application stated that the people of the village of Polorós "came in person to point out the boundaries and former markers *[los linderos y antiguos mojones]* delimiting the area of the land of Monteca".

280. From the start, there seems to have been friction between José Villatoro and the inhabitants of the Honduran village of San Juan de Opatoro; a letter has been produced dated 2 June 1843 from a Honduran official to José Villatoro, informing him that the inhabitants of Opatoro claimed rights over the *sitio de Monteca*, and calling upon him not to interfere with them until the rights of the two States had been delimited. In 1854, José Villatoro applied to the Government of Honduras with a complaint that the inhabitants of Opatoro were encroaching on the lands of Monteca, and the Honduran Government decided that the local political head should direct the people of Opatoro either to pay rent to José Villatoro or to vacate the land. It is this event which Honduras concedes to be an acquiescence by Honduras in, or recognition of, Salvadorian sovereignty over the Monteca lands, south of the river Torola.

281. In May 1889, application was made by the heirs of José Villatoro for a partition of the Monteca estate, which was described as "bordering on the east and north with the territory of the Republic of Honduras, on the west with the extinguished *ejidos* of the village of Lislique, and on the south those of Polorós and Nueva Esparta". For the purposes of the partition the estate was surveyed and measured; the surveyor held an existing title-deed of José Villatoro (not produced in the present proceedings) which referred to the boundary markers of the estate. When the "marker of La Guacamaya" was reached, this was said to be "recognized by the people of Opatoro"; the point which Honduras identifies as the marker of La Guacamaya is indicated as point P on sketch-map No. E-3 annexed. From that point, the surveyor went to "the source of the Guacamaya mountain stream", then downstream along it (passing the confluences with the Lajas and La Puerta streams) to the river Torola. There is no further reference in the survey to the strip of land said to be in dispute between the two States. The Chamber considers that the boundaries of the Hacienda de Monteca granted in 1842 can safely be assumed to be the same as those recorded in the survey of 1889.

282. Both Parties have based their arguments upon the assumption that the lands of the Hacienda de Monteca were carved out of the *ejidos* of Polorós granted in 1760; this is a necessary consequence of the interpretation by both Parties of the 1760 title as extending at least as far north as the river Torola. In this light, Honduras interprets the reference in 1842 to the ". . . boundaries and former markers . . ." of Monteca (*". . . los linderos y antiguos mojones . . .")* (paragraph 279 above), in conjunction with a reference in the 1760 Polorós title to an earlier survey of 1725, as referring to the boundary markers dividing the lands of San Miguel de Sapigre from the lands of Polorós, prior to the disappearance of the village of Sapigre and the presumed inclusion of its lands in the 1760 Polorós title. On the face of it, however, the reference in the 1842 document suggests rather that Monteca already existed, or had already existed at some former date, as a separate entity to the north of the village of Polorós, either inside or outside the *ejidos* granted in 1760. The passage quoted (paragraph 281 above) from the document of May 1889 shows that by that date the *ejidos* of Lislique were "extinguished"; but the reference in 1889 to Polorós and Nueva Esparta is ambiguous, and may refer to subsisting *ejidos*. The representatives of Nueva Esparta, at least, manifested opposition to the Monteca survey of 1889.

283. In the meantime, Honduras granted two republican titles over lands north of the river Torola, that of Matasano, Hornos, Estancias in 1856 and that of Los Dolores in 1879, the extent of which, according to Honduras, was indicated on Map No. V.1 to the Honduran Reply. The relevant surveys are fairly precise as to bearings and distances, they each record the boundary between Matasano (to the west) and Dolores (to the east) as arriving at the confluence with the river Torola of a stream called the *quebrada* del Arenal, and they each state that the river ". . . is recog-



Locations for Cerro López

1 According to 1884 survey
2 From El Salvador plot of Polorós title
3 From Honduras plot of Dolores title
4 From Honduras plot of Polorós title
5 From Matasano title
6 From Dolores title

nized as the boundary of those frontiers and those of El Salvador . . ." (*". . . es reconocido por limite de estas Fronteras y las del Salvador . . .*"). On maps incorporated in its pleadings, Honduras has given two alternative locations for the *quebrada* del Arenal; and its plotting of the Dolores title is inconsistent with the distances recorded in the relevant survey. The Matasano title, as plotted on the map by Honduras, extends along the river Torola on both sides of the tributary stream joining the river from the north identified by the Parties as the Mansupucagua stream, but does not mention any stream of that name. The Dolores title refers to a "Portillo de Guacamaya" as being "the place where the river Torola rises", at a distance of 67 cords (2,780 metres) upstream from the *quebrada* del Arenal; it will be recalled that the Monteca survey refers to La Guacamaya (paragraph 281 above). Neither title indicates whether there was any convocation of the adjoining owners or communities on the other side of the river.

284. The Government of El Salvador did not react to the granting in 1856 of the title of Matasano; it is not however established that it was aware of it. On 30 September 1879, the Government of El Salvador addressed a diplomatic Note to the Government of Honduras in which it protested at the grant of the Dolores title; but this Note has not been made available to the Chamber. According to the Honduran Note in reply, dated 6 November 1879, the village of Polorós had applied to the Government of El Salvador complaining that the land of Dolores granted by Honduras to the village of Opatoro was part of the *ejido* of Polorós, and that reliable information assembled by the Government of El Salvador supported this claim. Honduras in reply asserted that it had reliable information that the Dolores land had always been regarded as an integral part of Honduran territory. It was contemplated that a mixed commission should be established to look into the matter. In view of these circumstances, the Chamber does not find it possible to uphold Honduras's claim that El Salvador acquiesced in the river Torola as the boundary, at least in the neighbourhood of the Hacienda de Dolores.

*

285. The Chamber therefore reverts to the question of the interpretation of the extent of the Polorós *ejido* as surveyed in 1760, first on the face of the text, and then in the light of developments after 1821. The passage in the 1760 survey of the *ejido* of Polorós of which the meaning has been in dispute between the Parties is as follows; the surveyor was proceeding generally from south to north:

> *". . . y de alli siguiendo dicho rumbo se llegó a la quebrada de mansupucagua, en cuyo derecho tienen Hacienda los de el Pueblo de Opatoro de la Jurisdicion de Comayagua (aqui una roturita) de estos naturales, y*

queda dicha Hacienda dentro de esta Medida, se tantearon Sincuenta Cuerdas, y mudando de rumbo de oeste al Leste con abatimiento al Nordeste, se llego a una Loma y divide esta tierras con la de los Lopes en cuyo derecho está el Jato de los Lopes, y dicho Jato queda fuera, se tantearon Setenta Cuerdas, y Siguiendo el mismo rumbo se llego al cerro de Ribita linde con las Tierras de San Antonio de la otra Jurisdicción, y el Rio de Unire, Y se tantearon Setenta Cuerdas, y cogiendo, de oeste al leste, fija aguas abajo del río de Unire se llego al paraje, y orilla de dicho Río, donde comensó esta medida . . ."

[Translation]

". . . and from there continuing in the same direction we reached the *quebrada* de Mansupucagua, *en cuyo derecho* [the meaning of this phrase is disputed] the people of the village of Opatoro of the jurisdiction of Comayagua have a *hacienda*, (document torn) of those natives, and the said *hacienda* is within this survey, 50 cords were estimated, and changing direction from west to east with an inclination north-east, a hill *(loma)* was reached which divides those lands from those of the Lopes, *en cuyo derecho* [see note above] is the Estate of the Lopes and that Estate is outside, and 70 cords were estimated, and continuing in the same direction the Cerro de Ribita was reached, the boundary with the lands of San Antonio of the other jurisdiction, and the river Unire, and 70 cords were estimated, and moving from west to east, downstream of the river Unire the place and edge of the river were reached where this survey began . . ."

286. The Parties agree on the identification of a stream which today bears the name *quebrada* de Mansupucagua; indeed, its confluence with the river Torola is referred to in the 1980 General Treaty of Peace as the endpoint of one of the agreed sectors of the boundary. El Salvador argues its case from the premise that this stream is the *quebrada* de Mansupucagua mentioned in the 1760 Polorós title; it was identified as such during the survey for the purpose of the Cruz-Letona negotiations in 1884. El Salvador's version of the boundary of the Polorós *ejido* north of the Torola river is shown on sketch-map No. E-2 annexed (points A-D-E-F-G). Honduras, while questioning El Salvador's interpretation of the Polorós title on a number of points, has presented an interpretation of the title which agrees with El Salvador's version in identifying the most westerly point of the land surveyed with the confluence of the modern Mansupucagua with the Torola (point A on sketch-map No. E-2). At one point in its pleadings it cast doubt on this, suggesting, in the Reply, that the survey party of 1760 reached the Torola at a point on the lands of the people of Opatoro, "much further east than the Mansupucagua stream, opposite Upire". Nevertheless, the thesis of Honduras agrees with that of El Salvador in identifying the confluence of the modern Mansupucagua and the Torola river as the most westerly point

of the 1760 Polorós title; the line asserted by Honduras from that point on will be examined below.

287. It may be noted at the outset that, ignoring for the moment the various bearings or directions recorded in the Polorós survey, the total distance estimated by the surveyor between the Mansupucagua stream and the river Unire was 140 cords, or 5,810 metres. The Parties agree on the identification of the river Unire; but there are two distinct streams feeding it, either of which might be regarded as the part of the river referred to in the Polorós survey. Honduras favours the western stream, between the points indicated as F′ and G′ on sketch-map No. E-2 annexed, and El Salvador the eastern stream, between points F and G′. If however the distance between the Mansupucagua stream and the nearest "place on the river Unire", that is to say on the nearer (western) of the two streams, is scaled on the maps produced, it proves to be some 10,600 metres. It is possible — the survey is ambiguous on the point — that a certain distance was travelled up the Mansupucagua stream which is not included in the 140 cords recorded, but the distance between any point on that stream and the river Unire is still far more than 140 cords. Even allowing for the difficulty of estimating distances in mountainous country, and for comparatively primitive survey methods, there is ground here for grave doubt. Secondly, there is the curious fact, to which Honduras has drawn attention, that the survey nowhere mentions the river Torola, still less records crossing it. This is a problem which has arisen in previous sectors (see paragraphs 136, 137 and 194), but in the present instance what the Chamber finds difficult to accept is that the survey party in 1760, having arrived at the confluence of a stream and a river, should not have mentioned the fact, but merely recorded the presence of the smaller of the two watercourses.

288. It is apparently to meet these difficulties that Honduras has offered an interpretation of the Polorós title starting from a supposition — for it can be no more than that — that the watercourse referred to in the title was not the Mansupucagua stream at all, but the Torola river. The arguments in favour of this reading are not at present material; but its effect is that the surveyor would, in Honduras's contention, have followed the Torola river upstream for a distance of some 3 kilometres (though Honduras has presented a cartographic representation of its argument which shows the Polorós boundary as a straight line in the general direction of the course of the river). At a point (marked H on sketch-map No. E-2) identified by Honduras as Agua Caliente, one of the boundary markers in the 1803 Cacaoterique survey, the line would leave the river, in a direction slightly north of east, passing the location (according to Hon-

duras) of the Jato de los López (marked L on sketch-map No. E-2), and arriving at the hill identified by Honduras as the Cerro Ribitá (marked R on sketch-map No. E-2). Honduras concludes from this that the 1760 survey did not extend to any lands north of the river Torola between what Honduras regards as the land boundary marker of Sisicruz (see paragraph 290 below) — the modern Mansupucagua confluence — and El Carrizal, as indicated on Map No. 6.1 annexed to the Honduran Counter-Memorial. The interpretation whereby the survey is taken to have followed the river Torola eastwards for some 3 kilometres reduces the discrepancy in distances, the fundamental problem posed by the Polorós title, explained in paragraph 287, but that problem is far from being solved. While the "Hato de los Lopez" as mapped by Honduras is some 3,000 metres east of Honduras's El Carrizal, the distance to the Cerro Ribitá from the Loma López is 5,000 metres, not 2,905 metres (70 cords) as the title of Polorós records. Nor is there anything in the 1760 survey record to show that the survey followed any watercourse for 3,000 metres.

289. In these circumstances, the problem with which the Chamber is faced is as follows. If the identification by the Parties of the two endpoints referred to (Mansupucagua stream and river Unire) is taken to be correct, and even adopting the Honduran hypothesis of an unrecorded distance of 3,000 metres along the Torola having been traversed before the distance to the Loma López was estimated, the only possible conclusion is that the distances recorded in the 1760 survey are so inaccurate as to be useless for the determination of the position of the boundary. In these circumstances, for the Chamber to endeavour to determine the position of the landmarks in the 1760 survey, the Loma López and Cerro Ribitá, on the basis of the pre-1821 material would seem to be a wholly artificial exercise, if indeed it is possible at all. The alternative is to reconsider the identification of the endpoints. The identification of the river Unire seems to be indisputable; but according to the map, there are a number of streams flowing into the Torola from the north, any one of which might prima facie have an equal claim to be identified as the Mansupucagua stream of 1760, in the absence of any evidence unambiguously pointing to the stream now known by that name. It has been agreed between the Parties not merely in argument, but in the 1980 General Treaty of Peace, that there is a "Mansupucagua stream" at that point; but in the Treaty it serves as the title of the endpoint of the sector, not necessarily as the interpretation of the Polorós title.

290. In this connection, it is to be noted that in the course of the enquiry into the boundaries of the village of Cacaoterique (to the north-west of the disputed areas) (see paragraph 273 above), held in 1803, there is a refer-

ence to a tripoint between the lands of Cacaoterique, Polorós and Lislique (a village to the west of Polorós and to the south of Cacaoterique):

> *"... se llegó al mojon de Sisicruz que quiere decir el llano del Camaron, y en esta sabana hay tres acervos de piedra, perteneciente uno al Pueblo de Liclique; otro al de Poloros (que sus prales. se hallaron presentes, y son Pueblos de la Yntendencia de San Salvador) y el otro de este de cacauterique, que digeron todo ser su septimo lindero, y el parage donde tienen su milperia de Matainbre".*
>
> *[Translation]*
>
> "... we reached the boundary marker of Sisicruz, which means the plain of the Camaron, where there are three piles of stones, one belonging to the village of Lislique, another to that of Poloros (whose representatives were present, and they are villages of the Intendencia of San Salvador), and the other of this village of Cacauterique, which they all stated to be the seventh marker, and the place where there is the maize field of Matainbre".

Honduras identifies this point as that referred to in the Polorós title as the Mansupucagua stream; if this is correct, it appears that already by 1803 the stream was no longer called by the same name, or the name had been forgotten, or it was regarded as of less importance as an identifying landmark than the plain and the maizefield. At all events, the record, as interpreted by Honduras, throws doubt on any continuous oral tradition as to the name and location of the Mansupucagua stream. It is also noteworthy that the Cacaoterique document also makes no mention of the Torola river at a point where, according to Honduras, that river is the boundary of the *ejido*. The Chamber will therefore treat the location of the stream referred to as the Mansupucagua stream in the 1760 title as an open question, and will consider the interpretation of the Polorós title further on that basis, and in the light of, *inter alia*, events posterior to independence.

291. The inconsistency, referred to above (paragraph 287), between the distances recorded in the 1760 Polorós survey, and the points identified by the Parties as the Mansupucagua stream and the river Unire, crystallized in 1884, during the negotiations which led up to the adoption of the unratified Cruz-Letona Convention of that year. At the third meeting of delegates, held on 24 March 1884, it was recorded that

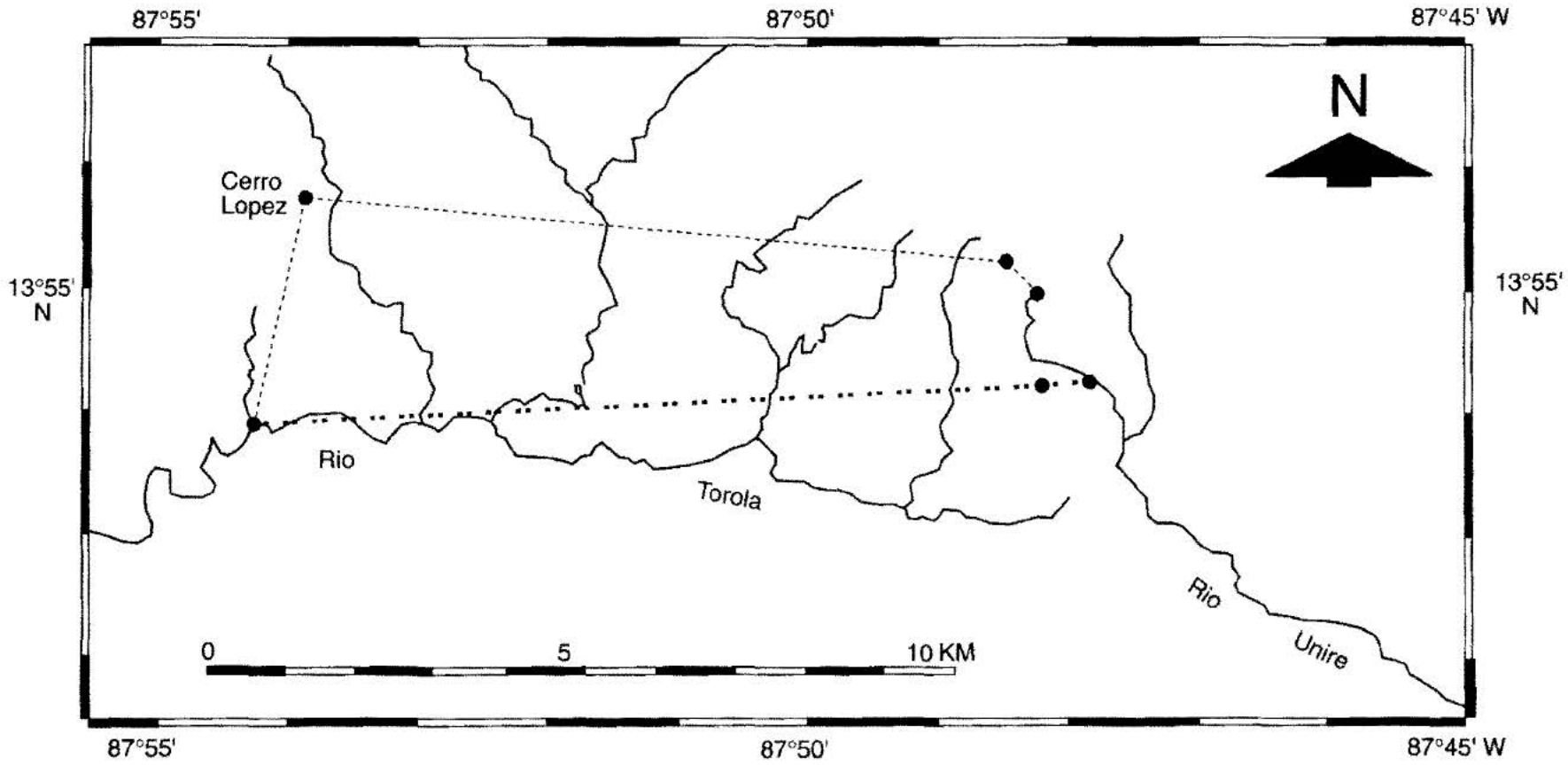
> *"... se adquirió el conocimiento de que la línea fronteriza de ambas Repúblicas deberá ser determinada según el título de los terrenos egidales del pueblo de Polorós, por ser mas antiguo y referirse a lugares mui conocidos ..."*
>
> *[Translation]*
>
> "... they are now certain that the frontier between the two Republics

must be determined in accordance with the title-deed of the *ejidos* of the village of Polorós, since it is the oldest one and since it refers to places that are very well known . . .".

They then went on to agree that the boundary should pass through ". . . the highest peak of the four making up the neighbourhood of Ribita . . ." (*". . . el pico mas elevado de las cuatro que forman las cercanias de Rivita . . .*"), and thence in direction N 80° W to the Loma López ". . . which is 12 kilometres away . . ." (*". . . que dista 12 kilómetros . . .*") (see sketch-map No. E-4 annexed); though, curiously, the distance between Ribitá and López as indicated on the scaled sketch-map annexed to the record of the 1884 negotiations is not 12 kilometres, but, according to the scale, approximately 9 kilometres. From the Loma López, the boundary was to run in the direction S 18° 30′ W ". . . to the place where the *quebrada* Mansupucagua meets the river Torola, *in accordance with the particulars appearing in the title-deed of Polorós . . .*" (*". . . hasta el encuentro de la quebrada Mansupucagua con el rio de Torola conforme con los datos del titulo de Polorós . . .*"), the distance from the Loma López to the confluence Mansupucagua/Torola being recorded as 3,461 metres. The Chamber is unable to understand how the surveyors employed could regard this line as in accordance with the *distances* recorded in the Polorós title. As is clear from the passage quoted in paragraph 278 above, the distance from the Mansupucagua stream to the Loma López was 70 cords (2,905 metres), so that a modern measurement of 3,461 metres is not so great a discrepancy; but the 1760 survey recorded a further 70 cords between the Loma López and the Cerro Ribitá, i.e., a further 2,905 metres, not 12 kilometres, nor 9 kilometres.

292. In this respect, the Chamber finds it a striking fact that the surveyors and delegates in 1884, when identifying the "Loma Lopez", took no account of a "hill called Lopez" in two republican titles granted by Honduras not long before — the second indeed only five years before. These are the titles of Matasano, Hornos, Estancias (1856) and Dolores (1879), referred to in paragraph 283 above. The 1856 survey of Matasano refers to a boundary marker of the lands of Opatoro "near the hill called Lopez", and continues from that point:

". . . y habiendo colocado en él la aguja se tomo el R S. 30° O, quedando desde aquí separadas estas tierras y las de Opatoro por un angulo obtuso de 115° que forman ambos cursos — Se tiró la cuerda por ocotales hasta llegar a la Quesera vieja de Tranquilino, con treinta cuerdas en donde se puso un mojon de piedras. — Colocada en este punto la aguja se tomo el R S. 10° E. y se llegó á la Piedra parada con treinta cuerdas, quedando por mojon la misma Piedra — De aquí se tomó el R S. 10° O; y pasando la quebrada del arenal, se llegó á los encuentros de la misma quebrada con el Río de Torola q. es reconocido por limite de estas Fronteras y las del Salvador; en cuyo punto se puso otro mojon y quedo esta medida para continuarla mañana . . . habiendo habido veinticinco cuerdas . . ."



SKETCH-MAP No. E-4

Fifth Sector — Previous Proposals

..... Cruz-Letona 1884

.. .. Saco Conference 1880

Derived from Honduras Counter-Memorial Map 6.4 with corrected position for Cerro López.

[Translation]

"... and after having set the compass at that place, we followed the direction S 30° W, these lands and those of Opatoro being separated from this point onwards by an obtuse angle of 115° formed by the two courses. We stretched the cord across pine forests *[ocotales]* up to the old cheesemongery of Tranquilino, at a distance of 30 cords, where we erected a stone marker. Setting the compass at this point, we followed the direction S 10° E and arrived at Piedra Parada after 30 cords, taking the said stone *[piedra]* as a marker. From there we followed the direction S 10° W and, crossing the *quebrada* del Arenal, reached the confluence of the said stream with the river Torola, which is recognized as the boundary of these frontiers and those of El Salvador, at which point we set up another marker and broke off the survey to continue it the following day... So far, we have counted 25 cords..."

The "hill called Lopez" was therefore close to a boundary marker of the Opatoro lands which was 85 cords to the north of the confluence of a *quebrada* with the river Torola. The Dolores survey of 1877 similarly refers to a boundary marker "at the foot of the Lopez hill", and records 30 cords from that hill to the cheesemongery of Tranquilino, 30 cords to the Piedra Parada, across the *quebrada* El Arenal, 25 cords to its confluence with the Torola.

293. If the position of the boundaries of the republican titles of Matasano and Dolores were as indicated on the map thereof supplied by Honduras, the position of the López Hill would be some 2,500 metres east-south-east of El Salvador's placing of the Loma López; it would, in that case, be 7½ kilometres from the river Unire — a distance quite inconsistent with the 70 cords recorded in the Polorós title. However, having examined the detailed bearings and distances in the two titles, the Chamber does not consider that the Honduran mapping of them is correct. The two titles refer to the *quebrada* del Arenal, and its confluence with the Torola, as a common boundary point; but the matter is complicated by the fact that, as already noted (paragraph 283 above), the maps submitted by Honduras in these proceedings indicate the *quebrada* del Arenal in more than one position. In the view of the Chamber, the contemporary plan attached to the survey record of Matasano, which shows the course of the boundary along the river Torola, supports the identification of the confluence with that river of the *quebrada* El Arenal as the point marked Q on sketch-map No. E-3 annexed, where a stream marked on the maps as the *quebrada* del Aceituno joins the Torola. Sketch-map No. E-3 also shows the interlocking of the various titles.

294. This is also confirmed by the Dolores survey, which records that 67 cords in an easterly direction from the confluence of the El Arenal brought the survey to the Portillo de Guacamaya (point P on sketch-map No. E-3 annexed), which the Dolores survey described as the "source of

the Torola". The placing indicated on sketch-map No. E-2 identifies this point with the confluence of the river Guacamaya and the river Lajas. The title of Dolores refers to a stream called the "*quebrada* del Aceituno" as flowing into the Torola further to the east than the *quebrada* del Arenal: it appears to the Chamber that this was probably the stream marked on the Honduran maps as the *quebrada* El Naranjo. In the light of this evidence the Chamber concludes that the stream identified in 1884, and still regarded today, as the *quebrada* de Mansupucagua, cannot be the one referred to in the 1760 survey, but that the 1760 Mansupucagua stream is to be identified with the 1879 *quebrada* del Arenal. If this is accepted, a more consistent interpretation of the relationship of the 1760 Polorós survey to the existing natural features and named landmarks becomes possible. This interpretation also goes some way toward explaining the absence of any mention of the Torola river in the 1760 Polorós survey. By the time the river reaches what is now called the Mansupucagua confluence, it has received the waters of three more tributary streams after the *quebrada* Arenal/Aceituno. It may therefore be supposed that at the confluence with the latter stream the Torola is much less of a substantial river than at the modern Mansupucagua confluence, and it is thus less surprising that it should not be specifically mentioned.

295. If the López hill referred to in the Polorós title is identified with that of the same name in the Dolores and Matasano titles, an interpretation of the Polorós title emerges which, if not perfectly in harmony with all relevant data, does, in the Chamber's view, produce a better fit than either of the interpretations advanced by the Parties in the present proceedings, or than the Cruz-Letona interpretation of 1884. On this basis, the López hill may be identified as that marked L on sketch-map No. E-3 annexed, and the Ribitá Hill that marked R on that map, close to the headwaters of the river Unire; sketch-map No. E-3 also reproduces points Q and P in the same position as on sketch-map No. E-2. The distances between points Q and L, and L and R, then correspond reasonably closely to the 1760 Polorós survey record. The direction followed is first, in effect that of the *quebrada* del Arenal (identified with the 1760 *quebrada* Mansupucagua), i.e., north-east, for a distance of some 1,500 metres, to the point, marked M on sketch-map No. E-3, when the stream divides; from there to the Loma López (point L), in a north-easterly direction, and thence to the Cerro Ribitá (point R), when the direction corresponds closely to that stated in the survey, "west to east with an inclination north-east". The survey mentions only the latter direction, but this understanding of it is, in the Chamber's view, well within the limits of reasonable interpretation. The height of the hill marked L appears from the contours on modern maps to be approximately 1,100 metres. Honduras has suggested that the word *"loma"* would not have been used for a hill of that height. The Chamber, while accepting that in principle a *"loma"* is smaller than a *"cerro"*, con-

siders that the choice of term would be dictated, not by the elevation of the hill in relation to sea-level, but in relation to the surrounding country. The hill marked L is, again according to the contours, situated on the end of a spur of a higher massif, above which spur it rises for no more than 100 metres or so.

296. The question next arises whether this interpretation of the title of Polorós is consistent or reconcilable with the records of the neighbouring titles, so far as these are available to the Chamber. The 1803 enquiry into the boundaries of Cacaoterique, quoted in paragraph 273 above, refers first to a boundary marker at the Brinco del Tigre which was a limit of Polorós, because this was the former site of San Miguel de Sapigre, and subsequently to a tripoint of the lands of Cacaoterique, Polorós and Lislique. Dealing first with the latter reference, the Chamber notes that no documentary evidence of the boundaries of the lands of Lislique has been produced (though its titles were available for the negotiations in 1897); the village itself is however known to have been to the south of the river Torola, and to the west of Polorós (as shown on a map of 1804 of the ecclesiastical parishes of the province of San Miguel). Honduras considers that the 1760 Polorós survey took in the lands of the former village of San Miguel de Sapigre to the south of the river, but did not touch on the part of those lands to the north of the river between the landmarks of Cacaoterique called Sisicruz and El Carrizal (points A and H on sketch-map No. E-2). As for the area east of El Carrizal, the interpretation by Honduras of the Polorós title is that it nowhere extended more than about 2,000 metres north of the river (see sketch-map No. E-2), and thus reached nowhere near the Brinco del Tigre. Thus, if Honduras's interpretation of the boundaries of the Cacaoterique lands is correct, there is no problem of overlap between these lands and the title of Polorós as the Chamber interprets it; what would then still be unexplained is why landmarks further west than the *quebrada* del Arenal and the Loma López, in particular the Brinco del Tigre, should have been mentioned in 1803 as common boundaries of Cacaoterique with *Polorós*, not with San Miguel de Sapigre. It is worth observing that the 1879 survey of Polorós identifies the north-east corner of the Polorós lands (see sketch-map No. E-2) with a hill called Brinca Tigre.

297. The Chamber, after careful consideration, takes the view that, on the material available, no totally consistent mapping of the title of Polorós and the survey of Cacaoterique can be achieved. That proposed by El Salvador, apart from its lack of harmony with the distances and directions in the Polorós survey, produces a large overlap with Cacaoterique. That of Honduras produces a limited consistency by the identification — which is not wholly convincing — of the Sisicruz and El Carrizal markers of 1803

with the landmarks of Mansupucagua and López of 1760, but breaks down when it comes to the 1806 reference to the Brinco del Tigre as a Polorós boundary. The Chamber's interpretation provides no overlap, but seems to leave some land between the two titles unallocated. It appears that, assuming that Cacaoterique and San Miguel de Sapigre were co-terminous, it is possible that, at least in the Brinco del Tigre region, the Polorós grant did not include all the Sapigre lands. In any event, however, the Chamber sees no reason to doubt the interpretation of the Polorós title set out above by reason of any inconsistency with the evidence relating to the lands of Cacaoterique.

298. This interpretation of the title of Polorós leaves unaffected the controversy between the Parties as to the boundary in the eastern part of the sector. Both Parties agree that the river Unire constitutes the boundary of their territories for some distance upstream of the "Paso de Unire", the endpoint of the disputed sector as defined in the General Treaty of Peace; but there is a disagreement as to which of two tributaries is to be regarded as the headwaters of the Unire (paragraph 296 above). Honduras claims that between the Unire and the headwaters of the Torola the boundary is a straight line corresponding to the south-western limit of the lands comprised in the 1738 title of San Antonio de Padua. There appears to be no doubt that the *ejido* of Polorós abutted to some extent on the east with the lands of San Antonio de Padua: the passage from the survey record quoted in paragraph 285 above records that the survey party "reached the Cerro Ribita, the boundary with the lands of San Antonio of the other jurisdiction, and the river Unire". No separate measurement or estimated distance is given between the Cerro Ribitá and the river, so the Cerro must have been quite close to the river. The Polorós title goes on to record that the survey continued down the bank of the river until the starting point of the survey was reached; the survey had begun:

> *". . . desde la orilla del río de unire, tomando en rumvo del Norte al Surueste dejando dicho Río a mano derecha, con las tierras de Manuel Ximenez, y aguas avajo de dicho Río se camino al runvo de el Surueste . . ."*
>
> *[Translation]*
>
> ". . . from the bank of the Unire river, taking the direction from north to south-east, with the river on the right hand, with the lands of Manuel Ximenez, and downstream of the said river we proceeded in a south-easterly direction . . ."

Taken on its own, the document thus indicates that the river was the boundary with San Antonio.

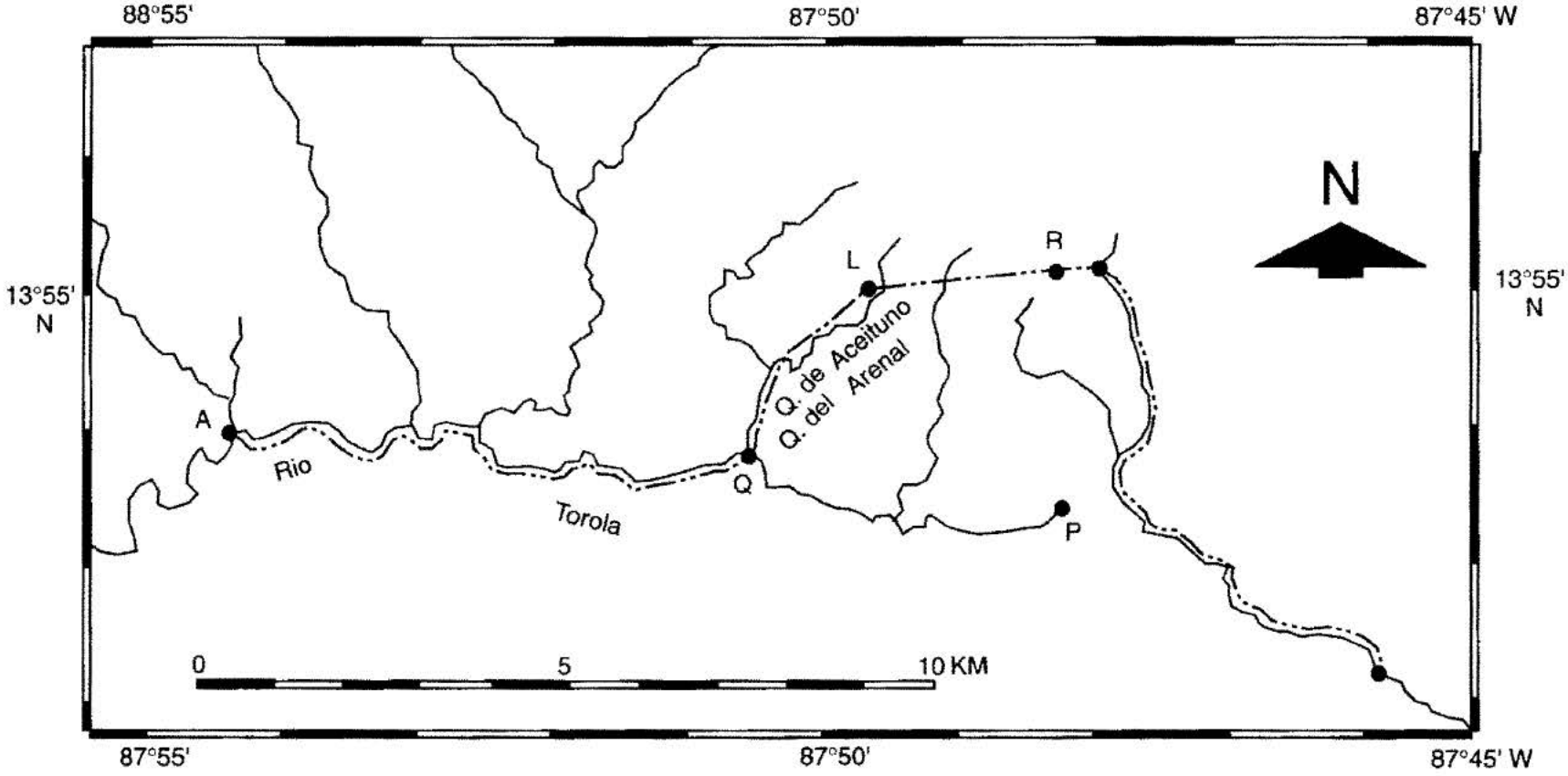
299. The cartographic representation of the Polorós title offered by Honduras agrees with that of El Salvador in showing the river Unire as eastern boundary, but selects a different tributary as constituting the headwaters of that river; but on the same map Honduras represents the lands of San Antonio de Padua as extending westwards across the river so as to overlap with those of Polorós. Such an overlap would imply that the 1760 survey of Polorós encroached on the lands of San Antonio surveyed little more than 20 years before; this appears to the Chamber to be prima facie unlikely, particularly since the Polorós title specifically mentions the fact that the boundary with San Antonio had been encountered. El Salvador has offered its own interpretation of the San Antonio title, involving no overlap, but a coincidence at one point, the "Orilla" on the Unire river, i.e., the point at which the Polorós survey started. This however cannot be correct, since it was not the "Orilla" that was mentioned as being the boundary with San Antonio, but the Cerro Ribitá.

300. The 1682 survey of San Antonio states that the cord was run from west to east starting from "the Unire hill"; this was presumably a hill near the Unire river, but whether it was on the western or eastern side of the river is not stated. In the 1738 survey of San Antonio, the most north-westerly point reached was the "hill of Robledal"; the survey then turned southwards, reached the river Unire after 60 cords (2,490 metres), and continued in the same direction for a further 210 cords (8,715 metres), mentioning various landmarks on the way. Honduras identifies the "Unire hill" with the Cerro Ribitá, and deduces that it lay on the western side of the river. It appears that the Honduran interpretation of the reference in the 1738 survey of San Antonio to the survey having continued "in the same direction", i.e., north to south, after encountering the river Unire, is that the survey continued in a strictly north-south direction, disregarding the river, and thus necessarily crossing it, since its general direction was somewhat east of south. This raises the problem, already encountered several times in this case, of the silence of a survey record on whether or not a particular river was crossed; in this instance the Chamber finds it somewhat unlikely that the survey would have abandoned so practical a natural boundary to follow a compass course just the other side of it. Honduras's own interpretation is that the boundary of the San Antonio lands followed the river Unire, but only from El Coyolar, near the Paso de Unire onward. If the boundary began at some point to follow the river, then in the absence of any other indication it would seem to have been at the first point when the river was mentioned.

301. The Chamber does not consider that the descriptions of land-

marks, distances and bearings in the survey record are sufficiently precise to make it possible to choose with certainty between the Parties' divergent interpretations, or to arrive at an independent interpretation of the 1738 title. It notes, however, that the bearings cannot be taken literally, but merely as indicating the approximate course followed; if they were to be taken literally in respect of the 1738 survey, they would not add up to a closed polygon. The northern boundary is 192 cords long, the southern only 90; thus (as is to be expected) the directions "north to south" and "west to east", and their opposites, have to be read as only general indications, and the actual direction followed might vary between the various landmarks. If however the reference to the river Unire is taken, as suggested above, as meaning that when after 60 cords the survey party reached the river, they then followed its course, which ran still in the approximate direction in which the survey was proceeding immediately before reaching it, the general shape of the area surveyed would be a very rough parallelogram with its southern side approximately parallel to the north side, but shorter. This accords reasonably well with the data recorded in the survey. This would also explain how the Polorós survey party, on reaching the boundary with San Antonio, felt able to follow down the right bank of the river, without — it is to be supposed — any intention or awareness of encroachment on the neighbouring title. Quite in what sense the Cerro de Ribitá was a "boundary" (*"linde"*: see paragraph 285 above) with the lands of San Antonio remains obscure; it is perhaps noteworthy that there is no reference to a *"mojón"*, a marker showing the precise position of the boundary, so that Cerro Ribitá may simply have been the reference point to show where on the river Unire the lands of Polorós and San Antonio met. It may also be that the lands of San Antonio extended further north than did those of Polorós, and extended westwards across the headwaters of the Unire so as to pass to the north of the Cerro Ribitá. At all events, the Chamber is not convinced by the Honduran argument that the San Antonio lands extended westwards across the river Unire, and holds that that river was the *uti possidetis juris* line of 1821 as claimed by El Salvador.

302. Since El Salvador's claim to land north of the river is based solely on the Polorós title (save for the strip claimed on the basis of "human arguments"), the consequence of this interpretation is that the river Torola forms the boundary from the starting-point of the sector (point A on sketch-map No. E-5, the "modern" Mansupucagua confluence) to point Q on that sketch-map (the presumed "ancient" Mansupucagua confluence). Thereafter the line runs up the *quebrada* del Arenal and from its headwaters to the López Hill (point L); from there in a straight line to the



SKETCH-MAP No. E-5

Fifth Sector — Judgment Boundary

Boundary in Judgment

Cerro Ribitá (point R); from there to the nearest point on the headwaters of the river Unire; and then downstream of the river to the endpoint of the sector.

*

303. There remains the claim of El Salvador to a strip of land on the west of the disputed area, between the line A-B-C-D and the straight line A-D on sketch-map No. E-1. It is claimed that the area is entirely populated by citizens of El Salvador; at the hearings, it was stated that this strip contains two farms called the Sitio de las Ventas and the Sitio de San Juan. However, on the sketch-map in the El Salvador Memorial showing, for this sector, "Human Settlements included in the Non-Delimited Zones", these *sitios* are marked in such a position as to fall within the lands of the Polorós title, as interpreted by El Salvador. In the absence of any other evidence as to the position and ownership of these properties, or any other evidence of any kind relating to this north-west strip, the Chamber considers that El Salvador's claim to it cannot be sustained.

304. Finally consideration must be given to the evidence of *effectivités* submitted by Honduras, namely the material presented as an annex to the Honduran Reply to show that Honduras also can rely on arguments of a human kind, that there are "human settlements" of Honduran nationals in the disputed areas in all six sectors, and that various judicial and other authorities of Honduras have exercised and are exercising their functions in those areas. So far as the present sector is concerned, Honduras has presented material under seven headings: (i) criminal proceedings; (ii) taxation; (iii) public education; (iv) land concessions; (v) birth registrations; (vi) death registrations; (vii) miscellaneous. No map has been supplied to show the geographical position of the places referred to. From Honduran maps it appears that, of the localities mentioned in these documents, only three lie between the line described in paragraph 302 above and that claimed by Honduras: El Retirito, Lajitas and La Guacamaya. (There are also references to "Unire" or "Río Unire", but these may be taken, in the absence of more precise indications, to refer to the Honduran side of the river.) "El Retirito" is shown twice on the Honduran maps but what appears to be the settlement of that name is on the left (east) bank of the river Unire, and outside the disputed area. It is of interest that a 1917 minute of the Honduran municipality of Opatoro refers to the village of El Retirito as being "situated on the dividing line between Mercedes de Oriente [another Honduran village] and El Salvador", which suggests some recognition that El Salvador's territory extended further up the right bank of the Unire than is now claimed by Honduras. In respect of La Guacamaya, all that has been presented is 14 registrations of death, dated between 1923 and 1969; for Lajitas, there

is a record of unsuccessful criminal proceedings against three people, "of Salvadorian origin", residing there, four birth registrations (1906 to 1965) and one death registration (1921). The Chamber concludes that there is here insufficient evidence of *effectivités* to justify re-examining its conclusion as to the boundary line.

* *

305. The complete course of the boundary line, illustrated on Map No. V[1] annexed, which is based on United States Defense Mapping Agency Series E752, Sheet 2657 IV, Edition 1-DMA, is as follows. From the confluence with the river Torola of the stream identified in the General Treaty of Peace as the *quebrada* de Mansupucagua (point A on Map No. V annexed) the boundary runs upstream along the middle of the river Torola as far as its confluence with a stream known as the *quebrada* del Arenal or *quebrada* de Aceituno (point B on Map No. V annexed); thence up the middle of the course of that stream as far as the point, at or near its source, marked as point C on Map No. V annexed, and thence in a straight line somewhat north of east to a hill some 1,100 metres high (point D on Map No. V annexed); thence in a straight line to a hill near the river Unire (point E on Map No. V annexed), and thence to the nearest point on the river Unire; downstream along that river to the point known as the Paso de Unire (point F on Map No. V annexed). (The relevant tributary of the river Unire is, in the Chamber's view, the more easterly of the two, not the tributary marked in the United States Defense Mapping Agency maps as the Unire.)

* * *

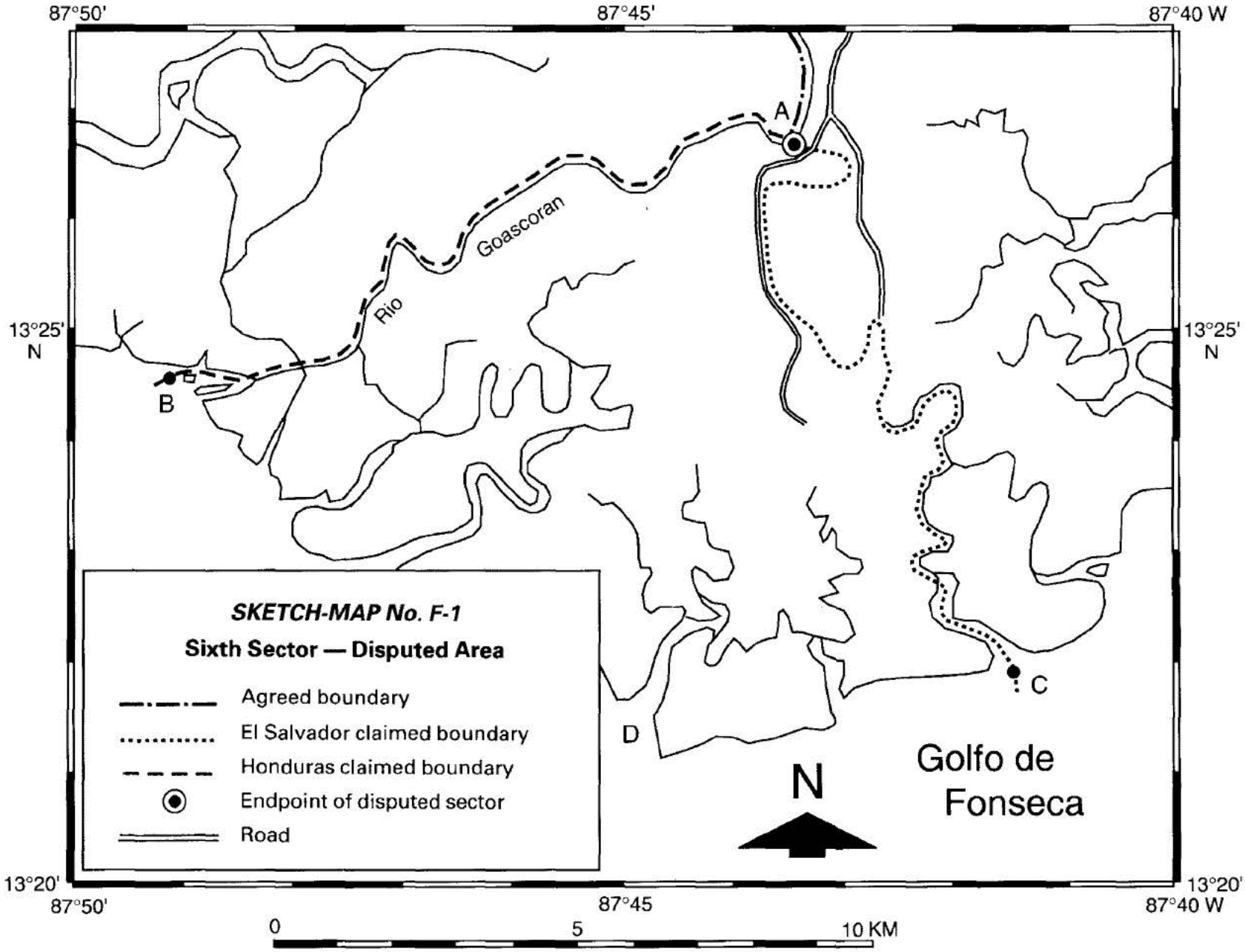
SIXTH SECTOR OF THE LAND BOUNDARY

306. The sixth and final disputed sector of the land boundary is that between the endpoint of the seventh and last of the agreed sections listed in Article 16 of the 1980 General Treaty of Peace, namely a point on the river Goascorán known as Los Amates, and the waters of the Gulf of

[1] A copy of the maps annexed to the Judgment will be found in a pocket at the end of this fascicle or inside the back cover of the volume of *I.C.J. Reports 1992. [Note by the Registry.]*

Fonseca. The dispute between the Parties in this sector is simple. Honduras contends that in 1821 the river Goascorán constituted the boundary between the colonial units to which the two States have succeeded, that there has been no material change in the course of the river since 1821, and that the boundary therefore follows the present stream, flowing into the Gulf north-west of the Islas Ramaditas in the Bay of La Unión. El Salvador however claims that it is a previous course followed by the river which defines the boundary, and that this course, since abandoned by the stream, can be traced, and it reaches the Gulf at Estero La Cutú. The present course of the river (line A-B), and what is claimed by El Salvador to be the old course (line A-C), are indicated on sketch-map No. F-1 annexed; point A is the point ("Los Amates") at which the last agreed section terminates.

307. There is one historical and political dimension to the argument of El Salvador which requires to be examined at the outset. It is agreed between the Parties that during the colonial period a river called the Goascorán constituted the boundary between two administrative divisions of the Captaincy-General of Guatemala: the province of San Miguel and the Alcaldía Mayor de Minas of Tegucigalpa. It is also agreed that El Salvador succeeded on independence to the territory of the province of San Miguel; but El Salvador denies that Honduras acquired any rights over the former territory of the Alcaldía Mayor of Tegucigalpa under the principle of the *uti possidetis juris*, on the ground that the Alcaldía Mayor of Tegucigalpa did not in 1821 belong to the province of Honduras, but was an independent entity, subject only to the jurisdiction of the Presiding Governor of Guatemala. This contention is based upon a Spanish *Real Cédula* of 24 January 1818 providing for the ". . . separation of the judicial district of Tegucigalpa from the Government and Intendency of Comayagua and the re-establishment of the Alcaldía Mayor in the former . . ." (*". . . separación del partido de Tegucigalpa del gobierno e intendencia de Comayagua, y restablecimiento de la Alcaldía Mayor en aquel . . ."*). The Chamber however observes that on the basis of the *uti possidetis juris* of 1821, El Salvador and Honduras succeeded to all the relevant colonial territories, leaving no *terra nullius*; and that the former Alcaldía Mayor was at no time after 1821 an independent State additional to them. Its territory had to pass either to El Salvador or to Honduras; and the Chamber understands it to have passed to Honduras. Accordingly, whatever the precise relationship, in terms of Spanish colonial law, between the Alcaldía Mayor of Tegucigalpa and the Intendencia of Comayagua and the province of Honduras, the *uti possidetis juris* attributed the Alcaldía Mayor to Honduras. El Salvador could logically, on the basis of the argument now presented by it, have made a claim to the Alcaldía Mayor of Tegucigalpa for itself in 1821, but, not having done so, it cannot now claim one small part of that territory on the grounds of its pre-1821 status. The position must, in the Chamber's view, be as it was found to be in the


87°50'
87°45'
87°40 W
13°25' N
13°20'
A
B
C
D
Rio Goascoran
SKETCH-MAP No. F-1
Sixth Sector — Disputed Area
Agreed boundary
El Salvador claimed boundary
Honduras claimed boundary
Endpoint of disputed sector
Road
N
Golfo de Fonseca
0
5
10 KM

UAL-58

Arbitral Award given by the King of Spain on 23 December 1906, that

> "the boundary fixed for the province or Intendency of Comayacagua or Honduras by the said Royal Warrant of 24 July 1791 did not change at the time when the provinces of Honduras and Nicaragua became independent, since, although by Royal Decree of 24 January 1818 the King approved the re-establishment of the Alcaldía Mayor of Tegucigalpa with a certain autonomy in the economic field, that Alcaldía Mayor continued to be a district of the province of Comayagua or Honduras . . ." (*Pleadings, Arbitral Award of the King of Spain*, Vol. I, p. 357 *(translation)*).

308. The contention of El Salvador that a former bed of the river Goascorán forms the *uti possidetis juris* boundary depends, as a question of fact, on the assertion that the Goascorán formerly was running in that bed, and that at some date it abruptly changed its course to its present position. On this basis El Salvador's argument of law is that where a boundary is formed by the course of a river, and the stream suddenly leaves its old bed and forms a new one, this process of "avulsion" does not bring about a change in the boundary, which continues to follow the old channel. No record of such an abrupt change of course having occurred has been brought to the Chamber's attention, but were the Chamber satisfied that the river's course was earlier so radically different from its present one, then an avulsion might reasonably be inferred. While the area is low and swampy, so that different channels might well receive different proportions of the total run-off at different times, there does not seem to be a possibility of the change having occurred slowly by erosion and accretion, to which, as El Salvador concedes, different legal rules may apply.

309. There is no scientific evidence that the previous course of the Goascorán was such that it debouched in the Estero La Cutú (point C), rather than in any of the other neighbouring inlets in the coastline, such as the Estero El Coyol. The only evidence in favour of this geographical choice appears to be a publication in 1933 of the Honduran Sociedad Pedagógica del Departamento de Valle under the direction of a Honduran historian, Bernardo Galindo y Galindo; this study, which has not been produced, is quoted as referring to an "original riverbed" of the Goascorán "which had its mouth in the Estero La Cutú opposite the Isle Zacate Grande".

310. It is apparently El Salvador's case that whether the change in the river's course occurred before or after 1821 does not affect the matter. Its contentions may be understood as covering two different hypotheses. If the river still followed the alleged "old" course (to the Estero La Cutú) in 1821, the river was the boundary which by the operation of the *uti possi-*

detis juris became transformed into the international frontier. That frontier would then, according to El Salvador, have been maintained as it was, notwithstanding a subsequent avulsion of the river, by virtue of a rule of international law to that effect. If however the change of the river's course occurred before 1821 (but after it had become identified as a provincial boundary), and no further change of course took place after 1821, then El Salvador's claim to the "old" course as the modern boundary would have to rest on an alleged persistence, during the colonial period, of the "old" course as boundary, on the basis of a rule concerning avulsion which would be a rule, not of international law, but of Spanish colonial law. El Salvador has expressed its agreement with Honduras that the Goascorán river was the boundary line between the relevant colonial provinces "during the colonial period", but has not committed itself to an opinion whether this was or was not the situation in 1821. While it has concentrated its argument as to the legal effect of avulsion on the sphere of international law, it has also asserted that the principle was recognized by Spanish legislation, "especially by Law XXXI of the Partidas of Alfonso El Sabio".

311. For the purposes of El Salvador's argument, therefore, the change in the river's course could have occurred at any time in the past, provided that by then the river had been adopted as provincial boundary. El Salvador concedes that it has not been possible to establish the date on which the Goascorán river ceased to flow along its old course; it suggests however that the change in fact took place in the 17th century, since this

> "can be deduced from the Spanish colonial documents of the sixteenth century in which what was considered to be the mouth of the río Goascorán was its oldest mouth in the Estero de La Cutú opposite the Isle de Zacata Grande".

On this basis, what international law may have to say, on the question of the shifting of rivers which form frontiers, becomes irrelevant: the problem is mainly one of Spanish colonial law. In fact the alleged rule originated in Roman law as a rule applicable to private property, not as a rule relating to rivers as boundaries of jurisdiction and administration. Furthermore, whatever its status in international law — a matter to be determined, if necessary, by the Chamber, on the basis of the principle of *jura novit curia* —, its possible application to the boundaries of Spanish colonial provinces would require to be proved.

312. In the Chamber's view, however, any claim by El Salvador that the boundary follows an old course of the river abandoned at some time *before* 1821 must be rejected. It is a new claim and inconsistent with the previous history of the dispute. A specific assertion that the boundary should follow an abandoned course of the river Goascorán was first made during the Antigua negotiations in 1972, when El Salvador in fact pro-

posed a boundary reaching the sea at a different point (the Estero El Coyol (the point marked D on sketch-map No. F-1 annexed)). As regards earlier claims, Honduras has drawn attention to, *inter alia*, the negotiations between the two States at Saco in 1880, where the two delegates,

> "after carefully considering the purpose of their mission, decided that, according to the opinion shared by the inhabitants of both countries, the eastern part of the territory of El Salvador is separated from the western part of the territory of Honduras by the river Goascorán; they agreed to recognize the said river as the frontier between the two Republics, from its mouth in the Gulf of Fonseca, Bay of La Unión, upstream in a north-easterly direction . . .".

Honduras regards this, and similar later references, as an agreement on the river Goascorán as boundary; El Salvador's reply is that such citations do not prove anything as to which of the various branches of the Goascorán river forms the international frontier, since none of these citations does more than refer to the river by its name, and there is no reference to where it flows into the Gulf of Fonseca. If it is borne in mind that the "purpose of the mission" of the delegates was to establish the boundary line of the 1821 *uti possidetis juris* (the instructions given to the Honduran delegate are specific on the point), it is evident that they were not aware of any claim by El Salvador that the 1821 boundary was not the 1821 course of the river, but an older course, preserved as provincial boundary by a provision of colonial law. The reference in 1880 to the "river Goascorán" could be interpreted, though with difficulty, as meaning an 1821 course of the river which had been abandoned between 1821 and 1880; to interpret the words "River Goascorán" as meaning a Spanish colonial boundary which in 1821 followed a long-abandoned course of the river, is out of the question. Similar considerations apply to the terms of further negotiations in 1884 (see paragraph 317 below).

313. The Chamber will therefore now consider the evidence made available to it concerning the course of the river Goascorán in 1821. El Salvador relied in its pleadings on certain titles to private lands, beginning with a survey of a property known as the Hacienda Los Amates in 1695. Honduras called very much in question the value of these titles; at the hearings, the Agent of El Salvador indicated that El Salvador did not "attach any particular relevance to these title-deeds", since they concerned only private property rights. However, it regarded them as relevant since they expressly state that the lands surveyed were within the jurisdiction of San Miguel; and El Salvador's cartographic representation of the titles places the lands surveyed in the disputed area, adjacent to what

El Salvador claims is the old course of the river, reaching the sea at Estero La Cutú. (Since the 1695 survey refers to the "river Goascorán", this would imply that the avulsion relied on would have occurred after that date.) Honduras however has demonstrated in its Counter-Memorial that El Salvador's representation of the position and extent of the Hacienda Los Amates on the map is, to say the least, disputable. In any event, since what is important is the course of the river in 1821, more significance must be attached to evidence nearer to that date. Honduras for its part has also produced some ancient land titles, dating from 1671, 1692 and 1821; but El Salvador has challenged Honduras's interpretation of them, and it is, in the Chamber's view, impossible to determine with any accuracy the position of the lands included in these titles.

314. Honduras has furthermore produced two ancient maps. The first is a map or chart (described as a "Carta Esférica") of the Gulf of Fonseca prepared by the captain and navigators of the brig or brigantine *El Activo*, who sailed in 1794, on the instructions of the Viceroy of Mexico, to survey the Gulf. The chart is not dated, but according to Honduras it is estimated that it was prepared around 1796; it appears to correspond with considerable accuracy to the topography as shown on modern maps. It shows the "Estero Cutú" in the same position as modern maps; and it also shows a river mouth, marked "Rº Goascoran", at the point where the river Goascorán today flows into the Gulf. Since the chart is one of the Gulf, presumably for navigational purposes, no features inland are shown except the "... best known volcanoes and peaks ..." (*"... volcanes y cerros mas conocidos ..."*), visible to mariners; accordingly, no course of the river upstream of its mouth is indicated. Nevertheless, the position of the mouth is quite inconsistent with the old course of the river alleged by El Salvador, or, indeed, any course other than the present-day one. In two places, the chart indicates the old and new mouths of a river (e.g., "Barra vieja del Río Nacaume" and "Nuevo Río de Nacaume"); since no ancient mouth is shown for the Goascorán, this suggests that in 1796 it had for some considerable time flowed into the Gulf where indicated on the chart. Also produced by Honduras is a descriptive report of the expedition, describing the Gulf, in which there is a mention of Conejo Point, the southernmost tip of the area here in dispute, and the small island of Conejo which lies off that point. The text continues:

> *"A cinco millas del yslote NO sale el Río de Goascoran de quatro y medio cables de ancho, y de largo veiente y seis leguas, poco mas ó menos ..."*

[Translation]

"Five miles north-west of the islet the River Goascoran flows out, four and a half cables wide, and about 26 leagues long . . ."

This description also places the mouth of the river Goascorán at its present-day position.

315. Honduras has produced a second map, of 1804, showing the location of the ecclesiastical parishes of the province of San Miguel in the Archdiocese of Guatemala. The scale of this map is however insufficient to make it possible to determine whether the course of the last section of the river Goascorán is that asserted by El Salvador, or that asserted by Honduras.

316. The Chamber considers that the report of the 1794 expedition and the "Carta Esférica" leave little room for doubt that the river Goascorán in 1821 was already flowing in its present-day course. So far as the legal value to be attributed to the 1796 map is concerned, the Chamber emphasizes that it is not a map which purports to indicate any frontiers or political divisions; it is a visual representation of what was recorded in the contemporary report, namely that at a particular point on the coastline a river flowed into the sea, and that that river was known as the Goascorán. While the Chamber in the *Frontier Dispute* case declared that

> "maps can . . . have no greater legal value than that of corroborative evidence endorsing a conclusion at which a court has arrived by other means unconnected with the maps" (*I.C.J. Reports 1986*, p. 583, para. 56),

this was in the context of maps presented "as evidence of a frontier". In the present case, where there is no apparent possibility of toponymic confusion, and the fact to be proved is otherwise a concrete, geographical fact, the Chamber sees no difficulty in basing a conclusion on the expedition report combined with the map. On the other hand, for the reasons explained by the *Frontier Dispute* Chamber, it attaches only the value of corroborative evidence to a number of maps of the 19th century, to which Honduras in particular has drawn attention, showing the political limits of the two States, including the present disputed sector of the land boundary. The large majority of these, to the extent that they show a clear line in the area, do however reflect the position that it is the present course of the Goascorán which constitutes the boundary.

317. Similar corroborative weight may be attached to the conduct of the Parties in negotiations in the 19th century. Reference has already been made to the agreement of the delegates of the two States at the Saco

negotiations in 1880. Again in 1884, it was agreed right from the start that

> *". . . la parte Oriental del territorio del Salvador se divide de la Occidental del de Honduras, por el río Goascorán y debe tenerse como límite de ambas Repúblicas, desde su desembocadura en el Golfo de Fonseca o Bahía de la Unión, aguas arriba, hasta la confluencia del río Guajiniquil o Pescado . . ."*
>
> *[Translation]*
>
> ". . . the eastern part of the territory of El Salvador is separated from the western part of the territory of Honduras by the Goascorán river, and it should be regarded as the boundary between the two Republics from its mouth in the Gulf of Fonseca or Bay of La Unión upstream as far as the confluence with the Guajiniquil or Pescado river . . ."

As observed above, the reference to the "Goascorán river" might conceivably be interpreted to have meant the 1821 course of the river; but in the first place, the 1880 record, quoted in paragraph 312 above, refers to the boundary following the river from its mouth "upstream in a north-easterly direction", i.e., the direction taken by the present course, not the hypothetical old course, of the river. Secondly, an interpretation of these texts as referring to the old course of the river becomes untenable in the light of the cartographic material of the period, which was presumably available to the delegates, and pointed overwhelmingly to the river being then in its present course, and forming the international boundary.

318. Some suggestion has been made by El Salvador that the river Goascorán might have returned to its old course, had it not been prevented from so doing by a wall or dike built by Honduras in 1916. The Chamber does not consider that this allegation, even if it were proved, would affect its decision. According to El Salvador's own argument, in 1916 the boundary still followed the abandoned course of the river; so that an artificial obstacle to any change of course by the river, while it would prevent the river from rejoining the political boundary, would have no effect whatever on that boundary. Moreover Honduras states that it has no record of any such construction in or around 1916, and that the wall which exists in the position referred to was constructed in the 1970s to prevent flooding of a nearby road.

319. In its pleadings, El Salvador has placed reliance on the *effectivités* or "arguments of a human nature" of the same kind as it has invoked in other sectors of the land boundary. However, at the hearings, the Agent and counsel for El Salvador stated that, since a large part of the disputed area in this sector is uninhabited, it appeared that neither side could adduce convincing arguments of a human nature. Since the Chamber has found that the boundary follows the present course of the Goascorán, as

claimed by Honduras, there is no need to enquire into any claims of *effectivités* put forward by Honduras.

320. The line of the boundary along the course of the river Goascorán has been indicated by Honduras on maps attached to its pleadings; these and the other maps available to the Chamber do not suggest that there is any doubt or ambiguity about the major part of the course of the river. At its mouth in the Bay of La Unión, however, the river divides into several branches, divided from each other by islands and islets; these are named, on a map produced by El Salvador, in order from north-west to south-east, the Islas (or Islotes) Ramaditas; the Islas Aterradas; and the Islotes de Ramazón. Honduras has indicated, on maps and in its submissions, that its claimed boundary line passes to the north-west of these islands, thus leaving them all in Honduran territory. El Salvador, in view of its contention that the boundary line does not follow the present course of the Goascorán at all, has not expressed a view on whether a line following that course should pass north-west or south-east of the islands, or between them. The area at stake is very small, and it does not appear that the islets involved are inhabited or habitable. It appears to the Chamber however that it would not complete its task of delimiting the sixth sector of the land boundary if it were to leave unsettled the question of the choice of one of the present mouths of the Goascorán as the situation of the boundary line. At the same time, it has to note that the material on which to found a decision is scanty.

321. Past references to the river Goascorán as the boundary between the States have been in such terms as those of the Cruz-Letona negotiations in 1880, "from its mouth in the Gulf of Fonseca in the Bay of La Unión"; the exact line at that mouth was presumably a matter of too little importance to be specified. The first precise claim in this respect was that of Honduras during the negotiations at Antigua, Guatemala, in 1972, and was that the "place where the river Goascorán flows into the Gulf of Fonseca is to the north-east *[Noreste]* of the Islas Ramaditas". Since the river flows into the Gulf, around the islands, in a direction north-east to south-west, it is probable that north-west *(Noroeste)* was meant. At all events in 1985, during the work of the Joint Frontier Commission, Honduras claimed that the frontier, having followed the course of the Goascorán, should terminate "at the point with the co-ordinates 13° 24′ 26″ N, 87° 49′ 05″ W, to the west of the Islas Ramaditas, *belonging to Honduras*". At a later meeting of the Commission, the course of the boundary claimed by Honduras was defined as following the course of the Goascorán to its mouth in the Bay of La Unión, "to the north-west of the Islas Ramaditas, belonging to Honduras". This line has been asserted, with the same geographic co-ordinates for its endpoint, in the Honduran submissions throughout these proceedings. Having been unable to accept the contrary submissions of El Salvador as to the old course of the Goascorán, and in

the absence of any reasoned contention of El Salvador in favour of a line to the south-east of the Ramaditas, the Chamber considers that it may uphold the Honduran submissions in the terms in which they were presented.

322. The Chamber therefore concludes that the course of the boundary in this final section of the land boundary is as follows. From the point known as Los Amates (point A on Map No. VI[1] annexed) the boundary follows the middle of the bed of the river Goascorán to the point where it emerges in the waters of the Bahía La Unión, Gulf of Fonseca, passing to the north-west of the Islas Ramaditas, the co-ordinates given by Honduras for this endpoint (point B on Map No. VI annexed) being 13° 24′ 26″ N, 87° 49′ 05″ W. For the purposes of illustration, the line so defined is indicated on Map No. VI annexed, which is composed of the following sheets of the United States of America Defense Mapping Agency 1:50,000 maps:

Series E752	Sheet 2656 II	Edition 2-DMA
Series E753	Sheet 2656 III	Edition 2-DMA.

* * *

LEGAL SITUATION OF THE ISLANDS

323. The Chamber now turns to the question of the legal situation of the islands. The jurisdiction conferred upon it by the Special Agreement as regards that dispute is defined in terms of Article 2, paragraph 2, thereof, as being "to determine the legal situation of the islands and maritime spaces" (in the original Spanish: *"Que determine la situación jurídica insular y de los espacios marítimos"*). The Parties are in agreement that the islands referred to are those within the Gulf of Fonseca; but they do not agree as to which are the islands whose legal situation the Chamber is requested to determine. El Salvador in its final submissions asks the Chamber to adjudge and declare that:

> "The sovereignty over all the islands within the Gulf of Fonseca, and, in particular, over the islands of Meanguera and Meanguerita, belongs to El Salvador, with the exception of the island of Zacate Grande and the Farallones Islands."

[1] A copy of the maps annexed to the Judgment will be found in a pocket at the end of this fascicle or inside the back cover of the volume of *I.C.J. Reports 1992. [Note by the Registry.]*

Honduras, on the other hand, asks the Chamber to adjudge and declare:

> "that only Meanguera and Meanguerita islands are in dispute between the Parties and that the Republic of Honduras has sovereignty over them".

The islands referred to by name in these submissions, Meanguera, Meanguerita, Zacate Grande and the Farallones, are far from being the only islands in the Gulf, but for the present the Chamber sees no need to enumerate the others.

324. The contention of Honduras that only Meanguera and Meanguerita islands are in dispute between the Parties has not been presented by it as a preliminary question, independent of the terms of the Special Agreement, on the basis that the existence of a dispute might be a precondition to the exercise of the Court's jurisdiction. The contention of Honduras is on the contrary "based from the outset on Article 2, paragraph 2, of the 1986 Special Agreement, according to which the subject-matter of the dispute is . . . to 'determine the legal situation of the islands' ". The question which the Chamber should first address is thus the interpretation of the Special Agreement: did the Parties intend that the Chamber should "determine the legal situation" of all the islands of the Gulf, or only of Meanguera and Meanguerita?

325. Considering first simply the words employed in the Special Agreement, the use in the Spanish text of the adjective *"insular"* appears to the Chamber to be less specific than the expression used in the agreed English translation, "of the islands", which would normally be understood, as was urged by counsel for El Salvador, as meaning "all the islands". However the Chamber considers that if the intention had been to ask the Chamber to determine the legal situation of only certain of the islands situated in the Gulf of Fonseca, some more precise expression might have been expected. The Chamber notes that the wording of Article 2, paragraph 2, of the Special Agreement had already been employed in Article 18 of the General Treaty of Peace, defining the function of the Joint Frontier Commission.

326. In the view of the Chamber, the provision of the Special Agreement that it determine *". . . la situación jurídica insular . . ."* confers upon the Chamber jurisdiction in respect of all the islands of the Gulf. In the exercise of that jurisdiction, however, a judicial determination is only required in respect of such islands as are in dispute between the Parties. While it is therefore not open to either Party, by means of a bald denial that the other Party can have any claim to a particular island, to exempt it from consideration by the Chamber, the Chamber does not consider that it is bound to exercise its jurisdiction to investigate the legal situation of every single island or islet in the Gulf. In practical terms, this excludes, first, the Farallones, which are recognized by both Parties as belonging to Nicaragua and therefore outside the dispute. None of the other islands are claimed by Nicaragua; during the hearings on its application for

permission to intervene in the proceedings, counsel for Nicaragua stated 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" (*I.C.J. Reports 1990*, p. 119, para. 65).

Secondly, notwithstanding the terms of the formal claim in the submissions of El Salvador, the Chamber should not exercise its jurisdiction so as to make a finding in relation to any islands which are not in dispute. While it is true that "Whether there exists an international dispute is a matter for objective determination" (*Interpretation of Peace Treaties, I.C.J. Reports 1950*, p. 74), the Chamber considers that prima facie the existence of a dispute over an island can, in the present proceedings, be deduced from the fact of its being the subject of specific and argued claims. The Chamber is entitled to conclude that, where there is an absence of such claims, there is no real dispute before the Chamber, since there is no "disagreement on a point of law or fact" or "a conflict of legal views or of interests", to use the terms of the Judgment in the case of the *Mavrommatis Jerusalem Concessions* (Judgment No. 5, *P.C.I.J., Series A, No. 5*, p. 11).

327. The Parties have produced diplomatic correspondence exchanged in 1985, prior to the conclusion of the Special Agreement. In a Note of 24 January 1985, El Salvador asserted that all the islands in the Gulf were in dispute and referred in particular to El Tigre; Honduras in its reply of 11 March 1985 rejected El Salvador's claim, stating that

> *"El Gobierno de la República de Honduras, lamenta muy profundamente que en la Nota de Vuestra Excelencia del 24 de enero, el Gobierno de la República de El Salvador, lejos de circunscribirse a la ancestral controversia sobre las islas de MEANGUERA Y MEANGUERITA, la haya extendido, sin justificación alguna, a la isla del Tigre, bajo soberanía hondureña y, de modo más grave, por su indeterminación, a 'otras islas'."*
>
> *[Translation]*
>
> "The Government of the Republic of Honduras deeply regrets that, in Your Excellency's Note of 24 January the Government of the Republic of El Salvador, far from confining itself to the age-old dispute over the islands of Meanguera and Meanguerita, has extended it, without any justification, to Tigre Island which comes under the sovereignty of Honduras and, much more serious still, given its indeterminate nature, to 'other islands'."

In the present proceedings before the Chamber, El Salvador has pressed its claim to El Tigre with arguments in support; and Honduras has

advanced counter-arguments, though with the object of showing that there is no dispute over El Tigre. Applying the criterion stated in the previous paragraph, the Chamber considers that, either since 1985 or at least since issue was joined in these proceedings, the islands in dispute are El Tigre, Meanguera and Meanguerita.

328. It is however contended by Honduras that, in view of the use in the General Treaty of Peace of the same terms as appear in Article 2, paragraph 2, of the Special Agreement, the jurisdiction of the Chamber must be limited to the islands which were in dispute at the time that the General Treaty of Peace was concluded; and that at that time only Meanguera and Meanguerita were in dispute, as the Salvadorian claim to El Tigre was made only in 1985. If the two instruments referred expressly or by necessary interpretation to "the legal situation of the islands *in dispute*", this argument might be sustainable. The Chamber however considers that the jurisdiction or mandate conferred, on the Joint Frontier Commission by the General Treaty of Peace, and on the Chamber by the Special Agreement, extended in each case to all the islands; the question whether a given island is in dispute is relevant, not to the question of the existence of such jurisdiction, but to that of its exercise. The Chamber therefore has to determine, in the context of the proceedings currently before it, which islands were in dispute on 24 May 1986, the date of the Special Agreement, regardless of whether or not the Joint Frontier Commission in 1980 might or might not have found itself confronted with a dispute in respect of the same islands.

329. Honduras however also claims that there is no real dispute over El Tigre, that that island has since 1854 been recognized by El Salvador as belonging to Honduras, but that El Salvador has made a belated claim to it as a political or tactical move. In effect, Honduras's argument is that there cannot be any real dispute because El Salvador's claim to El Tigre is wholly unfounded; but the existence of a dispute does not depend on the objective validity of the claims of the Parties to it. Honduras contends that El Salvador's argument, which is primarily based on alleged events of 1833 is untenable; but for the Chamber to find, on the basis of that contention, that there is no dispute would require the Chamber first to determine that El Salvador's claim is wholly unfounded, and to do so can hardly be viewed as anything but the determination of a dispute. The Chamber therefore concludes that it should, in the exercise of the jurisdiction conferred on it by the Special Agreement, determine whether Honduras or El Salvador has jurisdiction over each of the islands of El Tigre, Meanguera and Meanguerita.

330. El Salvador's claim on the basis of the *uti possidetis juris* is that it is the successor of the Spanish Crown in respect of all the islands of the Gulf. Counsel for Honduras suggested that this claim is incompatible with the

reference in the current (1983) Constitution of El Salvador to the 1917 Judgement of the Central American Court of Justice. This Judgement quoted a report of a commission of the Lawyers Society of Honduras describing the geography of the Gulf of Fonseca, the relevant part of which reads as follows:

> *"Sus ensenadas o bahías son las de Cosigüina, San Lorenzo y la Unión, y sus principales islas, El Tigre, Zacate Grande, Güegüensi, Exposición, islotes de Sirena, Verde, Violín, Garrobo, Coyote, Vaca, Pájaros y Almejas, pertenecientes a Honduras. Meanguera, Conchaguita, Meanguerita, Punta Zacate, Martín Pérez y otros islotes, pertenecen a El Salvador. Farrallones corresponde a Nicaragua . . ."*
>
> *[Translation]*
>
> "Its coves or bays are those of Cosigüina, San Lorenzo and La Unión, and its principal islands are Tigre, Zacate Grande, Gueguensi, Exposición, the islets of Sirena, Verde, Violín, Garrobo, Coyote, Vaca, Pájaros and Almejas, belonging to Honduras; Meanguera, Conchaguita, Meanguerita, Punta Zacate, Martín Pérez, and other islets belonging to El Salvador, and the Farallones, belonging to Nicaragua . . ." (*American Journal of International Law*, 1917, p. 702.)

Counsel for Honduras drew attention to the fact that the 1917 Judgement, a decision often supported and praised by El Salvador, was considered so important that it is referred to in Article 84 of the 1983 Constitution, in these terms: "The territory of the Republic . . . comprises: the island territory, consisting of the islands, islets and reefs listed in the decision of the Central American Court of Justice handed down on 9 March 1917." The Agent of El Salvador however pointed out that Article 84 of that Constitution continues ". . . and additionally those islands which belong to it in accordance with the provisions of international law", and thus that it was not true that the Constitution only regarded as belonging to El Salvador the islands listed in the 1917 Judgement.

*

331. The next question to be determined by the Chamber is that of the law applicable to the island dispute, a matter on which there is no agreement between the Parties. It will be recalled that Article 5 of the Special Agreement provides that the Chamber is to "take into account the rules of international law applicable between the Parties, including, where pertinent, the provisions of the General Treaty of Peace", and that Article 26 of that Treaty provides that:

> "For the delimitation of the frontier line in areas subject to controversy, the Joint Frontier Commission shall take as a basis the documents which were issued by the Spanish Crown or by any other

Spanish authority, whether secular or ecclesiastical, during the colonial period, and which indicate the jurisdictions or limits of territories or settlements. It shall also take into account other evidence and arguments of a legal, historical, human or any other kind, brought before it by the Parties and admitted under international law."

332. It is the contention of Honduras that the law applicable to the island dispute by virtue of these provisions is solely the *uti possidetis juris* of 1821. El Salvador on the other hand initially (in its Memorial) relied heavily on the exercise or display of sovereignty over the islands, contending that the island dispute was, in its view, a dispute as to attribution of territory rather than a dispute over the delimitation of a frontier. Subsequently, however, it maintained that the dispute over the islands can be viewed in two possible ways: while it is able to rely on effective possession of the islands as the basis of its sovereignty thereof on the ground that this is a case where sovereignty has to be attributed, it is equally able to rely on historical formal title-deeds as unquestionable proof of its sovereignty of the islands in accordance with the principle of the *uti possidetis juris* of 1821. In the view of El Salvador, its rights over the islands are not merely confirmed but fortified by the combined effect of the application of the two criteria. While questioning whether Article 26 of the General Treaty of Peace is applicable to the islands at all, El Salvador also points to the final sentence of Article 26, which in its view was directed, even in the context of land boundaries, to balancing the application of Spanish colonial titles with "more modern concepts"; it concludes that the Chamber is bound to apply the modern law of the acquisition of territory, and to look at the effective exercise and display of State sovereignty over the islands as well as historical titles.

333. The Chamber has no doubt that the starting-point for the determination of sovereignty over the islands must be the *uti possidetis juris* of 1821. The islands of the Gulf of Fonseca were discovered in 1522 by Spain, and remained under the sovereignty of the Spanish Crown for three centuries. When the Central American States became independent in 1821, none of the islands were *terra nullius*; sovereignty over the islands could not therefore be acquired by occupation of territory. The matter was one of the succession of the newly-independent States to all former Spanish islands in the Gulf. The Chamber will therefore consider whether it is possible to establish the appurtenance in 1821 of each disputed island to one or the other of the various administrative units of the Spanish colonial structure in Central America. For this purpose, it may have regard not only to legislative and administrative texts of the colonial period, but also to "colonial *effectivités*" as defined by the Chamber in the *Frontier Dispute* case (see paragraph 45 above). In the case of the islands, there are no land titles of the kind which the Chamber has taken into account in order to reconstruct the limits of the *uti possidetis juris* on the mainland; and the legislative and administrative texts are confused and conflicting. The

attribution of individual islands to the territorial administrative divisions of the Spanish colonial system, for the purposes of their allocation to the one or the other newly-independent State, may well have been a matter of some doubt and difficulty, judging by the evidence and information submitted. It should be recalled that when the principle of the *uti possidetis juris* is involved, the *jus* referred to is not international law but the constitutional or administrative law of the pre-independence sovereign, in this case Spanish colonial law; and it is perfectly possible that that law itself gave no clear and definite answer to the appurtenance of marginal areas, or sparsely populated areas of minimal economic significance. For this reason, it is particularly appropriate to examine the conduct of the new States in relation to the islands during the period immediately after independence. Claims then made, and the reaction — or lack of reaction — to them may throw light on the contemporary appreciation of what the situation in 1821 had been, or should be taken to have been. In this light, it will first be appropriate to state briefly the conflicting claims of the Parties.

334. El Salvador claims all the islands of the Gulf (except Zacate Grande), by historic title from the Spanish Crown, on the basis that during the colonial period all the islands were "within the jurisdiction of the township of San Miguel in the Colonial province of San Salvador, which was in turn within the jurisdiction of the 'Real Audiencia' of Guatemala". The grounds advanced for this claim on the basis of historical title are as follows:

(i) a *Real Cédula* of 1563, confirmed by a *Real Cédula* of 1564, established that the boundaries of the Gobernación of Guatemala (which included what is now El Salvador) were "from the Bay of Fonseca inclusive" and "as far as the province of Honduras exclusive";

(ii) until 1672 what is now the coast of Honduras on the Gulf of Fonseca, namely Choluteca and Nacaome, formed part of the Gobernación of Guatemala, and were under the administrative jurisdiction of San Salvador and the ecclesiastical jurisdiction of Guatemala. Such ecclesiastical jurisdiction over Choluteca, originally appertaining to the Bishopric of Guatemala, was transferred to the Bishopric of Comayagua and Honduras by a *Real Cédula* of 1672; but this did not of itself affect administrative jurisdiction. Furthermore Nacaome, which is "the crucial commanding part of the coastline" on the Gulf, remained under the Bishopric of Guatemala;

(iii) in any event, Choluteca and Nacaome never had jurisdiction over the islands of the Gulf, which was exercised by

— the Convent of Nuestra Señora de Las Nieves in Amapala, El Salvador, as regards ecclesiastical jurisdiction;

— the Alcaldía Mayor of San Miguel, province of Guatemala, as regards civil jurisdiction;

(iv) after the transfer of ecclesiastical jurisdiction over Choluteca, civil jurisdiction over Choluteca also became transferred to Comayagua.

335. Honduras asserts that prior to 1821 the islands formed part of the Bishopric and province of Honduras; the two islands of Meanguera and Meanguerita had been attributed to that province by decision of the Spanish Crown: in this connection, Honduras draws attention to the provision in Article 26 of the 1980 General Treaty of Peace that the Joint Frontier Commission (and hence the Chamber) was to take as basis "the documents which were issued by the Spanish Crown or by any other Spanish authority, *whether secular or ecclesiastical*, during the colonial period" (emphasis added). Honduras bases its claim on the contention that its own national territory was, from independence, that of the Bishopric of Honduras and the Spanish province of Honduras; that that territory extended from the Atlantic to the Pacific; and that it included the islands adjacent to its Pacific coasts. It asserts further that ecclesiastical jurisdiction over the islands appertained to the parish of Choluteca and the Guardanía of Nacaome, which were assigned by the Spanish Crown to the Bishopric of Comayagua; that acts of jurisdiction over Meanguera and Meanguerita were performed by the Spanish authorities of Honduras between 1590 and 1685; and that neither the province of San Salvador nor the 1842 Bishopric of San Salvador included Meanguera and Meanguerita. Honduras also relies on acts of the Alcaldía Mayor de Minas de Tegucigalpa, an administrative unit already discussed in connection with the sixth sector of the land boundary (paragraph 307 above).

336. Honduras has presented an array of incidents and events by way of colonial *effectivités*. Some of these have in fact been invoked by both Parties to support their cases: for example, the Lorenzo de Irala incident and the *Jueces Reformadores de Milpas* incident to be examined in paragraph 340 below, are interpreted by the two Parties in different ways to support their respective claims. Honduras presents its claims of colonial *effectivités* under the two headings of civil jurisdiction and ecclesiastical jurisdiction. The incidents concerning exercise of the civil jurisdiction include the following. As a result of invasions of the islands by pirates in 1684, evacuation of the Indians from the island of Santa María Magdalena, called La Meanguera, and their resettlement on the mainland were carried out by the *Alcaldía Mayor de Minas de Tegucigalpa*, and not by the authorities of San Miguel, under the orders of the "Superior Government" to which the Indians had applied; the same authority gave instructions for the islands to be laid waste, so as to prevent their use by the pirates. The conclusion Honduras draws from these incidents is that the island of Meanguera belonged to the jurisdiction of the *Alcaldía Mayor de Minas de Tegucigalpa*. Also related to intrusions of this kind were the events of April 1819, triggered by the presence of "insurgent ships" in the

Bay of Fonseca. On this occasion both San Miguel and Tegucigalpa acted to expel the intruders from their coasts.

337. Honduras also relies on the evidence of action undertaken by the *Real de Minas de Tegucigalpa* against Francisco Felis, accused of the abduction of Juana Rodriguez, and his capture on the island of Meanguera, 20 December 1678. The collection of taxes has also been invoked by Honduras as evidence of colonial *effectivités*: for example a record in 1682 of villages of Choluteca paying taxes refers to the island of "La Miangola". Other instances of "colonial *effectivités*" produced by Honduras are submitted to show the exercise of autonomous jurisdiction in the 17th century by the *Alcaldía Mayor de Tegucigalpa*, not over the islands themselves but over the town of Choluteca and the southern areas bordering on the Gulf of Fonseca, a point disputed by El Salvador. These are, *inter alia*: (1) Proceedings undertaken by the *Alcaldía Mayor* of Tegucigalpa against Enrique Gómez and Andrés Ysleno, for smuggling English goods, October 1675; (2) Proceedings taken in the village of Goascorán by the *Alcaldía* against Juan de Llano y Valdéz for having engaged in indigo dying with the Indians, September 1677; (3) Proceedings taken against Franco Bravo de Arriola, also for having made indigo with the Indians, October 1677; (4) Decision of the *Alcalde Mayor de Minas de Tegucigalpa* and of the town of Jerez de Choluteca, Captain Antonio de Ayala, prohibiting the transporting of grain out of his administration.

338. The evidence of "colonial *effectivités*" on the islands presented by Honduras is considerably complicated by the detachment of the *Alcaldía Mayor de Minas de Tegucigalpa* from Comayagua, and its attachment to Guatemala in 1580. The majority of the events listed by Honduras, as evidence of such *effectivités*, was carried out by the *Alcaldía Mayor de Minas de Tegucigalpa* and not by the jurisdiction of Comayagua. The *Alcaldía Mayor de Minas*, until its incorporation into the Intendencia of Comayagua, by a *Real Cédula* of 24 July 1791, was undoubtedly under the jurisdiction of the Captaincy-General of Guatemala. The situation was different after 1791, and again in 1818, when a *Real Cédula* re-established the *Alcaldía Mayor de Minas de Tegucigalpa*, but confined its jurisdiction to economic matters, specifying that it would continue to be a "district" of the province of Honduras.

339. The exercise of ecclesiastical jurisdiction has been relied on as evidence of "colonial *effectivités*"; a Spanish *Real Ordenanza IV* of 1571 established that the limits of civil and ecclesiastical jurisdiction should coincide as much as possible (see also *Recopilación*, Title II, Book II, Law VII, and the Arbitral Award of the King of Spain, reproduced in the *I.C.J. Pleadings* in the case concerning that Award, Vol. I, p. 90). This how-

ever also presents difficulties. Firstly, the presence of the church on the islands was not permanent because the islands were sparsely populated. An illustration of this is a 16th century document, the list of villages drawn up by Pedro de Valverde in 1590, which contains a paragraph on the islands. It records that Meanguera (then called "La Miangola") contained a settlement of 20 Indians under the jurisdiction of La Choluteca. Ecclesiastical presence in the islands therefore amounted only to sporadic visits mostly undertaken by the religious order of St. Francis, from the Convent of Nuestra Señora de las Nieves de Amapala in El Salvador or San Andrés in Nacaome. The two villages of Choluteca and Nacaome were somewhat involved in these intermittent ecclesiastical activities on the islands. Choluteca was transferred to the Bishopric of Honduras in 1672. But a request for a similar transfer of Nacaome was rejected by the King, so that the Guardanía of Nacaome, of the Franciscan Order, continued to belong to the Bishopric of Guatemala.

340. The above is a simplified account of the essential contentions of the Parties on the historical basis of their respective claims. Apart from the complexity of the problem, the task of the Chamber is made more difficult by the fact that many of the historical events relied on can be, and have been, interpreted in different ways, and thus used to support the arguments of either Party on the elusive problem of the jurisdiction of the colonial administrative units. Two examples of this may be given. The first concerns a document of 1667 addressed to the *Jueces Reformadores de Milpas* (Reforming Judges of the Culture of Maize). Honduras has produced a letter from the Spanish Crown, and addressed to the Judge of the Culture of Maize of San Miguel and Choluteca, which specified that he would have no jurisdiction over the islands of the Gulf, citing expressly Conchagua, Teca and Miangola (i.e., Meanguera). El Salvador contends that the reference of Honduras is incomplete and distorted. According to El Salvador, the Indians of these islands themselves took the initiative to ask that the judge should not visit them to perform his official functions (which included the collection of dues), because "their townships were so poor and small that there were scarcely enough Indians to satisfy the obligations and responsibilities which they had". The other incident, the so-called "Lorenzo de Irala" incident, is dated 1765, in which year this Spanish citizen went to the *Juez de Tierras* (Judge of Lands) of the district of San Miguel to ask for the survey and measurement of lands on an island situated between the Isla de Tigre and the island of Zacate Grande or Ganado, which he wanted to acquire by *composición.* The reply of the Judge was that he was not sure whether the said island pertained to the jurisdiction of San Miguel, as claimed by Irala, or to the jurisdiction of Tegucigalpa. The Judge advised him to address his demand to the *Juez Privativo de Tierras* in Guatemala. Honduras uses the incident to cast doubt on the existence of jurisdiction by El Salvador over the islands. However, El Salvador replies by referring to the decision of the *Juez Privativo de Tierras* of the Real Audiencia of Guatemala, who empowered the

Sub-Delegate Judge of the jurisdiction of San Miguel to proceed according to the request of Lorenzo de Irala.

341. The Chamber considers it unnecessary to analyse in any further detail the arguments of each Party directed to showing that that Party acquired sovereignty over some or all of the islands of the Gulf by the application of the *uti possidetis juris* principle. It has reached the conclusion, after careful consideration of those arguments, that the material available to the Chamber, whether presented as evidence of title (as in the case of *Reales Cédulas*) or of pre-independence *effectivités*, is too fragmentary and ambiguous to be sufficient for any firm conclusion to be based upon it. The Chamber must therefore proceed, as indicated in paragraph 333 above, to consider the conduct of the Parties in the period following independence, as indicative of the then view of what must have been the 1821 position. This may further be supplemented by considerations independent of the *uti possidetis juris* principle, in particular the possible significance of the same conduct, or the conduct of the Parties in more recent years, as possibly constituting acquiescence. In accordance with Article 26 of the General Treaty of Peace, to which, as already observed, the Chamber is referred by Article 5 of the Special Agreement, it is authorized to consider all

> "other evidence and arguments of a legal, historical, human or other kind, brought before it by the Parties and admitted under international law".

342. As noted above (paragraph 332), El Salvador also bases its claims upon its exercise or display of sovereignty over the islands. Honduras contends that the law applicable to the island dispute does not depend on the distinction between disputes as to attribution of territory and disputes as to delimitation, but is dictated by the fact that the case is one of State succession by emancipation of colonial territories; that the applicable law is the *uti possidetis juris* of 1821, and not the *uti possidetis de facto*, or occupation followed by the peaceful and continuous exercise of State functions, since both States claim sovereignty over islands on the grounds of having succeeded to the Crown of Spain at the time of independence. The Chamber notes that the law of acquisition of territory invoked by El Salvador is, in principle, clearly established and buttressed by arbitral and judicial decisions; a classic *dictum* is that of the arbitrator Huber in the *Island of Palmas* case:

> "practice, as well as doctrine, recognizes — though under different legal formulae and with certain differences as to the conditions required — that the continuous and peaceful display of territorial sovereignty (peaceful in relation to other States) is as good as a title" (United Nations, *Reports of International Arbitral Awards*, Vol. II, p. 839).

This was the basis for the arbitrator to decide that the island of Palmas (or Miangas) "forms in its entirety a part of the Netherlands territory" (*UNRIAA*, Vol. II, p. 871). Reference may also be made to the case concerning the *Legal Status of Eastern Greenland* before the Permanent Court of International Justice.

343. The difficulty with application to the present case of principles of law in this category is however that they were developed primarily to deal with the acquisition of sovereignty over territories available for occupation, i.e., *terra nullius*. Both Parties however assert a title of succession from the Spanish Crown, so that the question arises whether the exercise or display of sovereignty by the one Party, particularly when coupled with lack of protest by the other, could indicate the presence of an *uti possidetis juris* title in the Party so exercising sovereignty, where the evidence on the basis of documentary titles or colonial *effectivités* was ambiguous. An illuminating decision is the Court's Judgment of 17 November 1953 in the *Minquiers and Ecrehos* case. In the dispute over these islets and rocks, lying between the British island of Jersey and the coast of France, both Parties produced a number of ancient historical titles, going back to the Middle Ages; but the United Kingdom presented, as the Court found, better and more convincing evidence of exercise during the critical period of State sovereignty by the authorities of the British island of Jersey over the two groups of islets. The finding of the Court was:

> "The Court further finds that British authorities during the greater part of the nineteenth century and in the twentieth century have exercised State functions in respect of the group [Ecrehos]. The French Government, on the other hand, has not produced evidence showing that it has any valid title to the group. In such circumstances it must be concluded that the sovereignty over the Ecrehos belongs to the United Kingdom." (*I.C.J. Reports 1953*, p. 67.)

Sovereignty over the Minquiers group was found to belong to Jersey; primarily on the basis of evidence of continuous and peaceful exercise of State power, the Court found:

> "that the sovereignty over the islets and rocks of the Ecrehos and Minquiers groups, in so far as these islets and rocks are capable of appropriation, belongs to the United Kingdom" (*I.C.J. Reports 1953*, p. 72).

344. The Court in that case did not however simply disregard the ancient titles, and decide on a basis of more recent display of sovereignty. It took care to observe that in view of the alleged titles,

> "The present case does not therefore present the characteristics of

> a dispute concerning the acquisition of sovereignty over *terra nullius*" (*I.C.J. Reports 1953*, p. 53).

When it stated that

> "What is of decisive importance, in the opinion of the Court, is not indirect presumptions deduced from events in the Middle Ages, but the evidence which relates directly to the possession of the Ecrehos and Minquiers groups" (*I.C.J. Reports 1953*, p. 53),

it was not assimilating the islands to *terra nullius*, but examining evidence of possession as confirmatory of title.

345. In the present case both Parties have argued their respective claims with regard to the operation of the *uti possidetis juris* on the basis, in effect, that this is a principle the application of which is automatic: on independence, the boundaries of the relevant colonial administrative divisions are transformed into international frontiers. In the first place, it should not be overlooked that Spanish colonial divisions in Spanish America did not individually have any "original" or "historic" titles, as those concepts are understood in international law. The original title belonged exclusively to the Spanish Crown, not the internal administrative subdivisions established by it; and it was equally the Spanish Crown which had sovereignty of the colonial territories. Secondly, as the Chamber's examination of the sectors of the land boundary has shown, in practice the operation of the principle is more complex. Where the relevant administrative boundary was ill-defined or its position disputed, in the view of the Chamber the behaviour of the two newly independent States in the years following independence may well serve as a guide to where the boundary was, either in their shared view, or in the view acted on by one and acquiesced in by the other (cf. paragraphs 64, 80 and 205 above). This aspect of the matter is of particular importance in relation to the status of the islands, by reason of their history.

346. Shortly after independence in 1821, the newly independent Central American States were united by the Constitution of 1824 in the Federal Republic of Central America, successor of Spain in the sovereignty over, *inter alia*, the islands. Uninhabited or sparsely inhabited, the islands were left dormant for some years, since the economic value of their exploitation was little. The problem of their appurtenance to one or other of the riparian States thus did not raise any interest or inspire any dispute until the break-up of the Federal Republic and the years nearing the mid-19th century. The well-protected waters of the Gulf of Fonseca, with its mouth extending over some 19 nautical miles, the good navigation channels, and the possibility of construction of safe and comfortable ports, had long commended the Gulf to pirates and buccaneers in search of a haven; from

the 1840s onward the attention of the big Powers, interested in having a foothold in Central America, began to be attracted to the islands of the Gulf.

347. Thus it was not until a number of years after the independence of the two States that the question of the appurtenance of the islands of the Gulf to the one or the other became of significant import. What then occurred appears to the Chamber to be highly material. The islands were not *terra nullius*, and in legal theory each island already appertained to one of the three States surrounding the Gulf as heir to the appropriate part of the Spanish colonial possessions, so that *acquisition* of territory by occupation was not possible; but the effective possession by one of the Gulf States of any island of the Gulf could constitute an *effectivité*, though a post-colonial one, throwing light on the contemporary appreciation of the legal situation. Possession backed by the exercise of sovereignty may be taken as evidence confirming the *uti possidetis juris* title. The Chamber does not find it necessary to decide whether such possession could be recognized even in contradiction of such a title, but in the case of the islands, where the historical material of colonial times is confused and contradictory, and the accession to independence was not immediately followed by unambiguous acts of sovereignty, this is practically the only way in which the *uti possidetis juris* could find formal expression so as to be judicially recognized and determined.

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348. From this standpoint, the Chamber will first deal with the island of El Tigre. El Salvador recognizes a presence of Honduras in the island since 1833, though it claims that prior to that date it had been under the authority of El Salvador, being administered from the township of San Miguel. El Salvador further claimed that

> "in 1833 the Salvadorian authorities allowed the Honduran authorities to occupy the Isla El Tigre on condition that the Honduran authorities would disarm and intern dissident forces in opposition to the Government of El Salvador who had taken refuge on the island",

and that Honduras's subsequent possession of the island is no more than "a *de facto* occupation . . . by Honduras on the basis of an authorization which, with limited objectives, was agreed by El Salvador in 1833".

349. In support of its claim to El Tigre, El Salvador has referred to a number of documents of dates from 1625 to 1820. None of these however appear to the Chamber to afford sufficient evidence in support of El Salvador's contention, particularly in the light of the fact that the place-name Amapala, which appears in many of them, attached not only to the port on

the island of El Tigre but also to a place on the mainland, under the undisputed sovereignty of El Salvador, and thus references in historical material to "Amapala" are ambiguous. In relation to El Tigre in the immediate post-independence period, El Salvador has alleged that

> "several sales of land on that island were carried out under the authorization of the Judge of the port of La Unión, and the appropriate purchase monies were paid over in the place of residence of the said Judge, San Alejo in El Salvador";

but no evidence to that effect has been produced.

350. As for the events of 1833, it was asserted by the Salvadorian writer Barberena in 1893 that the Honduran occupation was by permission of El Salvador, and he referred to a Convention of that date. No evidence whatever of this has been produced and El Salvador has disclaimed any intention of relying on a formal agreement of that date, the existence of which is categorically denied by Honduras. Nor is the limited purpose which El Salvador attributes to Honduras's presence in the island in 1833 compatible with the establishment by Honduras of a port there; the Honduran writer Vallejo stated in 1899 that this was done "... *en uso del derecho que se deriva del dominio eminente* ..." ("... in exercise of the right derived from eminent domain ..."), and a decree of 17 October 1833 provides for a system of administration and staffing of the port authority. In the circumstances, the Chamber considers that the Honduran presence in the island in 1833 may rather be regarded as a fulfilment of a pre-existing attribution of the island to the Spanish mainland territorial divisions which came to form Honduras, and thus an implementation of the *uti possidetis juris*. This view is also reinforced by subsequent events.

351. The events in question constitute perhaps the most salient example in the 19th century of the interest of the Powers of the epoch in the Gulf and its islands; they resulted from the action of the British Consul General in Central America, Mr. Frederick Chatfield, in 1849. Officially he acted with the purpose of pressuring both Honduras and El Salvador to pay their respective debts to British bankers. But the correspondence exchanged between Chatfield and Admiral Hornby, Commander-in-Chief of the British fleet in the area, and between the latter and Captain Henderson of the HMS *Sampson*, produced to the Chamber, reveals a concerted operation with more ambitious objectives. Both Parties have invoked and analysed this correspondence, as evidence of recognition of their respective alleged sovereignties over Meanguera — a matter to be examined below. Chatfield pursued his plans, and on 16 October 1849 took formal possession of the island of El Tigre in the name of the British Queen. The British occupation was short-lived. On 26 December 1849, Rear-Admiral Philipps Homely sent a communication to the Government

of Honduras according to which the island had reverted to the sovereignty of Honduras, with the withdrawal of the British forces. But the Government of Honduras had not waited for this outcome. On 9 October 1849 a decree was issued recording that Honduras had signed with the United States Consul, Mr. E. G. Squier, a "treaty" of cession to the latter country of the island of El Tigre for a period of 18 months.

352. By 1854, the growing interest of foreign powers in the islands encouraged the Government of Honduras to sell land on the coast and on the islands of the Gulf. An operation of that kind, proposed by the United States Consul, Agostin Follin, was reported on, and objected to, by the Financial Controller of Honduras in a report of 11 August 1854, published in the *Gaceta Oficial* of Honduras on 26 October 1854. That operation had triggered a Note of Protest of the Government of El Salvador, dated 12 October 1854. The opening paragraphs of that Note read as follows

> *"El Gobierno del Salvador ha sabido, con sorpresa, que el Sr. Presidente de Honduras ha tenido á bien acordar la venta de la isla del Tigre, despues de vender la de Sacate Grande, á subditos de una nación, que, no solo es estranjera, sino que amenaza la nacionalidad de todos estos paises y la absorción de la raza española en el nuevo mundo.*
>
> *Se ha asegurado tambien á este Gobierno, por funcionarios suyos en el Departamento de San Miguel, que ese mismo Sr. Jeneral Presidente ha acojido la denuncia, que ante él se ha formulado, de la isla de Meanguera y otras, que son de indisputable y reconocida propiedad del Salvador."*
>
> *[Translation]*
>
> "The Government of Salvador has learnt with surprise that the President of Honduras has accepted the sale of Tigre island, after having sold Sacate Grande island to nationals of a country which is not only foreign but also threatens the nationality of all these countries and might absorb the Spanish race throughout the new world.
>
> This Government has likewise been assured by our officials in the Department of San Miguel that the President-General has received the denunciation previously formulated regarding the island of Meanguera and other islands which are the recognized and undisputed property of Salvador."

In view of the distinction between El Tigre, in the first paragraph, and the Salvadorian claim, in the second paragraph, to "Meanguera and other islands", the implication is clearly that El Salvador, while strongly opposed to the sale of El Tigre, did not question Honduras's right to sell it, as sovereign of the island.

353. On the same date El Salvador sent a circular letter to the other countries of Central America, which read, in part:

"Por la Gaceta Oficial y otros impresos de Honduras y por informes de funcionarios de este Estado, en el Departamento de San Miguel, está impuesto el Gobierno del Salvador de que el del mismo Honduras ha acordado la venta, á estranjeros, de la importante isla del Tigre en el Golfo de Fonseca y de que se propone vender tambien la de Meanguera y otras, que son del indisputable dominio de este Estado."

[Translation]

"The Government of Salvador has learnt, from the *Gaceta Oficial*, other Honduran publications, and reports from officials of that State in the Department of San Miguel, that the Goverment of Honduras has decided upon the sale to foreigners of the important island of Tigre in the Gulf of Fonseca and that it is also proposing to sell the island of Meanguera and other islands which unquestionably come within the sovereignty *[dominio]* of this State."

In the view of the Chamber, it is right that importance be placed on this communication, which was a formal diplomatic act; the Chamber has no information as to whether Honduras reacted to that communication.

354. According to the material before the Chamber, Honduras has remained in effective occupation of El Tigre since 1849. At the end of 1873 El Salvador undertook a military invasion of the island of El Tigre, and briefly occupied the port of Amapala; but already in February 1874, the Deputy Chief of the Salvadorian Army communicated to the President of Honduras that Tigre island and the port of Amapala had been restored to the Government of Honduras. In 1900, when Honduras and Nicaragua agreed on a maritime delimitation within the Gulf (see paragraphs 359-361 below), El Tigre was taken as reference point on the Honduran side to establish an equidistance line, and no protest or objection by El Salvador is recorded. The 1917 Judgement of the Central American Court of Justice (discussed below, paragraphs 387 ff.), delivered in a case to which El Salvador was a party, recorded the existence of that delimitation, and the fact that it ran to "a point midway between the southern part of Tigre Island and the northern part of Cosigüina Point".

355. The Chamber concludes, in the light of these historical events, that the conduct of both Parties in the years following independence and the dissolution of the Federal Republic of Central America, was consistent with the assumption that the island of El Tigre appertained to the newly independent State of Honduras. Given the firm and consistent attachment of the States of Central America to the principle of the *uti possidetis juris*, the Chamber considers also that these events support the conclusion that that contemporary assumption implied also belief that Honduras was entitled to the island of El Tigre by succession from Spain; or, at least, that such succession by Honduras was not contradicted by any known Spanish colonial title in favour of one of the other two States of the Gulf. Furthermore Honduras has been in effective possession and control

of the island for over a hundred years prior to the conclusion of the Special Agreement. Accordingly, the Chamber finds that, while the legal situation of El Tigre was formally in dispute at the date of the Special Agreement, it was so solely as a result of a recent assertion of title by El Salvador; and that the claim, in the submissions of El Salvador, to the islands of the Gulf cannot be upheld as regards El Tigre. Although Honduras, in its submissions, has not formally requested a finding of its sovereignty over El Tigre, the Chamber considers that it should, consistently with its interpretation of its task under the Special Agreement, define the legal situation of El Tigre by holding that sovereignty over the island belongs to Honduras.

*

356. The Chamber now turns to the islands of Meanguera and Meanguerita. The two islands are described by Honduras as follows:

> "*Meanguera Island.* Situated above Tigre Island, its highest point is 480 metres above sea level. It measures 6 km from north to south and 3.7 km from east to west, and has an over-all area of 1,586 hectares. It is covered with vegetation and has an elevated and rocky coastline.
>
> *Meanguerita Island.* This small island, to the south-east of Meanguera, has an over-all area of 26 hectares."

Meanguera is now, and has long been inhabited: Meanguerita is not. Throughout the argument before the Chamber the islands of Meanguera and Meanguerita were treated by both Parties as constituting a single insular unity; neither Party, in its final submissions, claimed a separate treatment for each of the two islands. The small size of Meanguerita, its contiguity to the larger island, and the fact that it is uninhabited, allow its characterization as a "dependency" of Meanguera, in the sense that the Minquiers group was claimed to be a "dependency of the Channel Islands" (*I.C.J. Reports 1953*, p. 71). That Meanguerita is "capable of appropriation", to use the wording of the *dispositif* of the *Minquiers and Ecrehos* case, is undoubted; it is not a low-tide elevation, and is covered by vegetation, although it lacks fresh water. The Parties have treated it as capable of appropriation, inasmuch as they each claim sovereignty over it.

357. The initial formal manifestation of the dispute over Meanguera and other islands was the Salvadorian Note of Protest of 12 October 1854, already quoted in paragraph 352 above; the circular letter of the same date, also already quoted, made widely known El Salvador's claim to Meanguera. Furthermore, the Government of El Salvador, in August 1856, published in its official journal *(Gaceta)* reports on the lands

referred to the Surveyor of the Department of San Miguel to be surveyed as vacant lands, and these included "the land called Meanguera", "the islands Zacate and Conejo", and "the island called El Tigre". On 30 December 1879 an auction sale of "the vacant land of Meanguera island" was announced in the *Gaceta*. The Chamber has seen no record of reactions or protest by Honduras to these publications. In the unratified Cruz-Letona Convention of 1884, the line of delimitation in the Gulf left Meanguera and Meanguerita clearly on the Salvadorian side of the line. Indeed Article 2 of the Convention reads:

> *"La línea marítima entre Honduras y El Salvador, sale del Pacífico, dividiendo por mitad, en el golfo de Fonseca, la distancia que hay entre las islas Meanguera, Conchagüita, Martín Pérez, y Punta de Sacate, del Salvador y las islas del Tigre, Sacate-grande, Ynglesa y Exposición de Honduras y termina en la desembocadura del Goascorán."*
>
> *[Translation]*
>
> "The maritime boundary between Honduras and El Salvador shall run from the Pacific, bisecting, in the Gulf of Fonseca, the distance between the islands of Meanguera, Conchaguita, Martín Pérez and Punta Sacate, of El Salvador, and the islands of Tigre, Sacate Grande, Inglesa and Exposición of Honduras, and shall end at the mouth of the Goascorán."

The Congress of Honduras however rejected the Cruz-Letona Convention, criticizing, *inter alia*, its treatment of the Gulf of Fonseca; in 1886 El Salvador and Honduras signed and concluded the Zelaya-Castellanos Convention which, as regards the land frontier, provided for respect for the status quo prevailing in 1884, prior to the Cruz-Letona Convention, but made no reference to the islands or the maritime boundary. Similarly the conventions of arbitration concluded in 1889 and 1895, which were not put into effect, dealt specifically only with the land frontier.

358. In short, since 1854, throughout many incidents, vicissitudes and fruitless attempts towards a negotiated solution or arbitration, the controversy over the "legal situation" of Meanguera and Meanguerita remained unchanged. Neither during the period 1949-1967, when the two countries established in 1963 a Joint Frontier Commission, nor during the period of the mediation of President Bustamante y Rivero, 1978-1980, nor during the negotiations within the further Joint Frontier Commission established on 1 May 1980 and referred to in Article 18 of the General Peace Treaty of 1980, could the Parties reach agreement on the legal situation of these islands. Several "conciliatory proposals" were exchanged, to meet only with rejection by the other side.

*

359. In the meantime, however, the presence of El Salvador on Meanguera had, from the later years of the 19th century onward, been intensified, still without objection or protest from Honduras. The Chamber has been supplied with considerable documentary evidence concerning the administration of Meanguera by El Salvador. By a letter of 25 March 1991, addressed to the Registrar of the Court, the Government of El Salvador submitted a "Documentary Annex containing Materials Illustrating the 'Status-Quo' on the Island of Meanguera" (cf. paragraph 21 above). The documents were certified by the Chief Archivist of the General Department of Boundaries of the Ministry of Foreign Relations of the Republic of El Salvador and presented in the following sections:

Section I — *Appointments of Justice of the Peace* — contains a certificate issued by the Supreme Court of El Salvador on the creation in 1922 of the Office of the Justice of the Peace of the Municipality of Meanguera del Golfo, Department of La Unión, and three certificates issued by the Supreme Court on the appointments of Justice of the Peace of the same municipality in 1941, 1961, and 1990, as well as a selection from similar documentation deposited in the Archives of the Government of the Republic of El Salvador for the years running from 1951 to 1991 (35 documents).

Section II — *Military Appointments and/or Orders* — refers to military appointments and orders relating to the Municipality of Meanguera del Golfo made by competent military authorities of El Salvador during the period 1918-1980. It contains detailed reference to six appointments, and reference to similar documentation deposited in the Archives corresponding to the years 1930, 1931, 1936, 1982 and 1989.

Section III — *Issue of Licences* — contains two examples of licences issued to inhabitants of Meanguera del Golfo, of 1964 and 1969, and makes reference to similar documents for the years 1970, 1981 and 1984, deposited in the Archives.

Section IV — *Holding of Elections* — contains documents related to elections held in the Municipality of Meanguera del Golfo in the years 1939, 1941, 1952 and 1984, with additional mention of electoral events in 1988 and 1991.

Section V — *Taxation* — contains a copy of the Official Gazette of 10 December 1919, publishing a decree of 19 November 1919 on the tax tariff to be enforced in the Municipality of Meanguera del Golfo. Likewise reference is made to similar documentation for the years 1930, 1931, 1936, 1939, 1982 and 1989.

Section VI — *National Censuses* — contains a certificate issued by the Office of General Statistics and Censuses of El Salvador regarding successive censuses held in El Salvador, and specific information about the island of Meanguera appearing in successive censuses between 1930 and 1971 (population data classified by sex and urban/rural inhabitancy in the Municipality of Meanguera del Golfo). Reference is likewise made to

documentation of a similar kind retained and deposited in the official Archives relating to the year 1971.

Section VII — *Registry of Births and Deaths* — contains summaries of the registration in the Registries of the Department of La Unión of a number of births and deaths which occurred on the island of Meanguera in the years 1890, 1891, 1917, 1943, 1960 and reference to similar documentation filed in the Archives relating to the years 1892-1991 (a total of 78 registrations).

Section VIII — *Land Registry* — includes a selection of registrations of contracts of sale of land situated on the island of Meanguera corresponding to the years 1948, 1960, 1967 and 1986, and reference to other documents of the same kind for the period 1948-1989.

Section IX — *Civil Proceedings* — contains reference to three proceedings before the Justice of the Peace of Meanguera del Golfo in the years 1930 and 1943 and proceedings in 1969 before the Court of First Instance of La Unión relating to land on the island of Meanguera, and mentions additional documentation relating to the years 1922, 1932, 1943, 1945, 1987, 1990 and 1991, deposited in the Archives.

Section X — *Criminal Proceedings* — lists a selection of important passages from the record of five criminal proceedings, which took place before the Justice of the Peace of Meanguera del Golfo in the years 1930, 1931, 1945, 1955 and 1977, and refers to proceedings of the same kind in the years 1924 to 1988.

Section XI — *Administrative Disposition of Land* — lists relevant passages of municipal proceedings in the Municipality of Meanguera del Golfo held in 1966 and 1967 and refers to additional proceedings in the years 1981, 1982, 1983, 1985, 1986 and 1989.

Section XII — *Postal Services* — includes the Constitution Certificate of the Creation of the Postal Office of the township of Meanguera del Golfo, Department of La Unión, by the Postal General Directorship of the Government of El Salvador, on 15 October 1952, and a copy of the Official Gazette which published the decree authorizing its creation. Related documentation for the years 1970-1991 is referred to as deposited in the Archives.

Section XIII — *Public Works* — includes publication of documentation on the inauguration of electrical service on the islands in 1966. Also included are publications relating to the inauguration of the City Hall building of the Municipality of Meanguera del Golfo in 1967, and a report on the existence of five public schools maintained by the Salvadorian Government on the islands. Reference is also made to a Public School for Boys and Girls built in 1968 with the co-operation of the United States Government. Documentation on similar governmental activities during 1990 and 1991 is equally referred to.

Section XIV — *Public Health Services* — contains a certified copy of a "Health Project", executed by the Government of El Salvador in Mean-

guera in 1964, complemented by a "Project of Medical Assistance" of the same year. Further activities of the same kind, referred to in the documentation deposited in the Archives and corresponding to the years 1984, 1988, 1989, 1990 and 1991, are also mentioned in Section XIV.

Section XV — *Education* — lists a series of documents on the construction of schools and appointment of teachers in the years 1893, 1966 and 1967, also containing the Academic Records for the years 1963 and 1988. Reference is made to documents of the same kind deposited in the Archives, relating to the years 1988 and 1991.

360. During the hearings, counsel for El Salvador alluded to the documents referred to, but not reproduced, in the "Meanguera dossier", and asked Honduras to concede or agree that such documents did exist; failing which El Salvador would seek to file the complete documentation under Article 56 of the Rules of Court. Counsel for Honduras declined to do so, contending that the documents were of little probative value. Counsel for El Salvador renewed its call to Honduras to admit the existence and content of the Meanguera dossier. In reply the Honduran Agent stated that Honduras could not say whether or not it admitted a document without knowing its content, that it was too late in the proceedings to present further documents, and that Honduras therefore opposed the admission of the Meanguera dossier. In September 1991, after the close of the hearings, the Agent of El Salvador submitted to the Chamber complete sets of all the additional documents referred to in the Meanguera dossier, "subject to Article 56 of the Rules of Court". The President of the Chamber, while noting that the submission of further documents to the Court after the closure of the written proceedings was not a normal part of the procedure, took the view that it was appropriate to apply to them, by extension and *mutatis mutandis*, the provisions of Article 56 of the Rules. A set of copies of the documents was therefore transmitted to Honduras, which objected to the admission of the additional documents submitted by El Salvador. After examining the question the Chamber decided not to authorize the submission of those documents; it took the view that if the material of the kind included and referred to in the Meanguera dossier was relevant and appropriate to prove what El Salvador sought to establish, the material already available was sufficient for that purpose.

361. Throughout the whole period covered by the documentation produced by El Salvador concerning Meanguera, there is no record of any protest made by Honduras to El Salvador, with the exception of one recent event, to which reference is made below. Furthermore, at the hearings (cf. paragraph 20 above) El Salvador called a witness, Mr. Avilés Dominguez, a Salvadorian resident of the island, and his testimony, which was not challenged by counsel for Honduras, leaves no doubt that

El Salvador has exercised State power over the island of Meanguera, first through the Municipality of La Unión, and as from 1916, when the Municipality of Meanguera del Golfo was created, directly.

362. It was on 23 January 1991, according to the material before the Chamber, that the Government of Honduras first made any protest to the Government of El Salvador. By a Note of that date, the Foreign Minister of Honduras stated as follows:

> *"Por medio del presente Oficio, mi Gobierno presenta, ante el Ilustrado Gobierno de la República de El Salvador, formal y enérgica protesta por los hechos siguientes:*
>
> *1. En la Isla de Meanguera, sometida al litigio que mantienen nuestros dos países ante la Corte Internacional de Justicia, se han efectuado recientemente varias obras físicas, cuya ejecución viola el Artículo 37 del Tratado General de Paz, que obliga a ambos países a mantener el status quo de 1969.*
>
> . . . . . .
>
> *2. La prensa salvadoreña ha anunciado que el 10 de marzo del presente año, se realizarán elecciones en la República de El Salvador, para elegir 262 alcaldes y 84 Diputados. Entre otros puntos donde habrá elecciones, aparece el así llamado Meanguera del Golfo. Este último lugar queda en la Isla del mismo nombre, actualmente en litigio entre nuestros dos países ante la Corte Internacional de Justicia.*
>
> *Un acto como ese, desnaturaliza en consecuencia la situación jurídica planteada por los litigantes. Y desde el momento en que nuestros dos países han sometido a la decisión de la Corte Internacional de Justicia la determinación de la soberanía sobre dicha Isla, se produce una situación judicial que constriñe a ambos a no modificar sus posiciones. Efectuar elecciones en una zona en litigio, puede interpretarse como que se quiere alterar la esencia de la situación presentada ante el Tribunal."*

[Translation]

> "By this official letter, my Government presents, before the Illustrious Government of the Republic of El Salvador, formal and energetic protest for the following acts:
>
> 1. Recently, in the island of Meanguera, currently part of the dispute our two countries have *sub judice* before the International Court of Justice, a number of material works have been carried out, the execution of which violates Article 37 of the General Treaty of Peace, which obligates both countries to maintain the 1969 status quo
>
> . . . . . .
>
> 2. The Salvadorian press has announced that on 10 March of this year elections will be held in El Salvador by which 262 mayors and 84 congressmen are to be elected. Amongst other places where the elections will take place appears the so-called Meanguera del

Golfo. This place is located on the island of Meanguera, currently in dispute between our two countries before the International Court of Justice.

Such an act thus undermines the juridical situation submitted by the Parties. And as from the moment that our countries submitted determination of sovereignty over the island to the decision of the International Court of Justice, a judicial situation arose that obligates both countries not to modify their positions. To hold elections in a disputed zone could be interpreted as an intention to modify the essence of the situation presented before the Court."

The works complained of were the construction of a *Casa Comunal*, two school classrooms and a clinic. By a further Note dated 29 January 1991, the Honduran Ministry referred to the proposed inauguration on 7 February 1991 of an electrification service on the island of Meanguera, and contended that this too

". . . está en pugna con el espíritu de la solicitud conjuntamente hecha a la Honorable Corte Internacional de Justicia, y es una violación manifiesta del Artículo 37 del Tratado General de Paz vigente entre nuestros dos países . . ."

[Translation]

". . . goes against the spirit of the joint submission both countries have made of the dispute to the Honourable International Court of Justice, and is a manifest violation of Article 37 of the General Treaty of Peace in force between our two countries . . ."

363. By a Note in reply dated 31 January 1991, the Foreign Minister of El Salvador stated that his Government rejected these protests; and that

"En efecto, el status quo *de la Isla de Meanguera, es que sobre la misma el Gobierno de El Salvador, tiene plena posesión y ejerce su soberanía. Además, el Municipio de Meanguera del Golfo, en la mencionada Isla de Meanguera, fue creado por Decreto Legislativo del 17 de junio de 1916, publicado en el Diario Oficial No. 145, Tomo 80 de 27 de junio del mismo año y en esa comprensión territorial siempre se han efectuado elecciones para que los habitantes de la misma, como salvadoreños que son, elijan a los miembros de su Concejo Municipal, así como a las Supremas Autoridades como lo son el Presidente y Vice Presidente de la República y a los Diputados de la Asamblea Legislativa. Las referidas elecciones se hacen en cumplimiento de la Constitución de la República y la celebración de las mismas en todo el territorio nacional no podemos considerarla como violatoria a la letra o al espíritu del Tratado General de Paz. Específicamente, desde la vigencia del mencionado Tratado y hasta la fecha, se han celebrado seis eventos*

electorales en todo el territorio nacional, incluyendo la Isla de Meanguera, sin que ninguno de ellos haya motivado protestas de Vuestro Ilustrado Gobierno.

Por otra parte, mientras nuestro país posea la Isla de Meanguera y ejerza su soberanía sobre la misma, el Gobierno de la República continuará realizando las obras que considere necesarias para el bienestar de los salvadoreños que la habitan, como siempre lo ha hecho."

[Translation]

"In fact, the status quo of the island of Meanguera is that on that island the Government of El Salvador has full possession and exercises its sovereignty. Furthermore, the Municipality of Meanguera del Golfo, on the aforesaid island of Meanguera, was created by Legislative Decree of 17 June 1916, published in Official Gazette No. 145, Volume 80, of 27 June of that same year, and within that expanse of territory elections have always been held so that the inhabitants can, as the Salvadorian citizens that they are, elect the members of their Municipal Council, as well as the Supreme Authorities such as the President and Vice-President of the Republic, and the Deputies of the Legislative Assembly. The elections referred to are being held in compliance with the Constitution of the Republic, and the fact that they are being held throughout the national territory cannot be considered by us as violative of the letter or spirit of the General Treaty of Peace. Specifically, since that Treaty came into force and until this date, six elections have taken place throughout the national territory, including the island of Meanguera, and none of them has given rise to protests on the part of your Illustrious Government.

On the other hand, as long as our country is in possession of the island of Meanguera and exercises therein its sovereignty, the Government of the Republic shall continue carrying out the works it considers necessary to the welfare of the Salvadorian citizens that inhabit the island, as it has always done."

364. The Chamber considers that this protest of Honduras, coming after a long history of acts of sovereignty by El Salvador in Meanguera, was made too late to affect the presumption of acquiescence on the part of Honduras. The conduct of Honduras vis-à-vis earlier *effectivités* reveals an admission, recognition, acquiescence or other form of tacit consent to the situation. Furthermore, Honduras has laid before the Chamber a bulky and impressive list of material relied on to show Honduran *effectivités* relating to the whole of the area in litigation, but fails in that material to advance any proof of its presence on the island of Meanguera.

365. One further argument of El Salvador has to be considered, concerning the maritime delimitation line of 1900, agreed upon by Honduras and Nicaragua. As recalled in the Chamber's Judgment of 13 September

1990 (*I.C.J. Reports 1990*, pp. 101-102, para. 26), waters within the Gulf of Fonseca between Honduras and Nicaragua were delimited in 1900 by a Mixed Commission established pursuant to a Treaty concluded between the two States on 7 October 1894. The published records of the delimitation established by the Mixed Commission describe that delimitation line as follows:

> *"Desde el punto conocido con el nombre de Amatillo, en la parte inferior del río Negro, la línea limítrofe es una recta trazada en dirección al volcán de Cosigüina, con rumbo astronómico Sur, ochenta y seis grados, treinta minutos Oeste (S. 86° 30′ O.), y distancia aproximada de treinta y siete kilómetros (37 Kms) hasta el punto medio de la bahía de Fonseca, equidistante de las costas de una y otra República, por este lado; y de este punto, sigue la división de las aguas de la bahía por una línea, también equidistante de las mencionadas costas, hasta llegar al centro de la distancia que hay entre la parte septentrional de la Punta de Cosigüina y la meridional de la isla de El Tigre."* (*"Límites definitivos entre Honduras y Nicaragua"*, Honduran Ministry of Foreign Affairs, 1938, p. 24.)
>
> *[Translation]*
>
> "From the point known as Amatillo, in the lower reaches of the river Negro, the delimitation is a straight line drawn in the direction of the volcano of Cosigüina, astronomic bearing south, 86 degrees, 30 minutes west (S 86° 30′ W), for a distance of approximately thirty-seven kilometres (37 km) to the central point of the Bay of Fonseca, equidistant from the coasts of the two Republics, on this side; and from that point it follows the division of the waters of the bay by a line, also equidistant from the said coasts, to arrive at the centre of the distance between the northern part of Punta de Cosigüina and the southern part of the island of El Tigre."

366. If, at that time, Honduras had been sure of its sovereignty over Meanguera, and since equidistance was the method used to draw the line, then, it is suggested, there would have been no reason for stopping the line at the midpoint between the southernmost point on Tigre island and "the northern point of Punta de Cosigüina" in Nicaragua. The line could and, it is argued, should have advanced at least as far as the midpoint between the Farallones islands and the south-easternmost point on Meanguera island, if that island was part of Honduras. Honduras contends that the terminus of the 1900 delimitation line was in fact equidistant from three points, Punta de Cosigüina, El Tigre and Meanguera, and that Meanguera was not mentioned in order not to produce difficulties with El Salvador. The fact however remains that it was El Tigre which was mentioned as reference point in the 1900 delimitation, not Meanguera; and that if Meanguera was a Honduran island, the endpoint of the line could have been determined without any reference to El Tigre. The Chamber concludes that the circumstance that the 1900 delimitation was in no way

governed by the position of Meanguera, while of little significance in itself, supports the other evidence and considerations pointing to Salvadorian control of the island at that date.

367. Thus the conclusion of the Chamber concerning Meanguera is that, while the *uti possidetis juris* position in 1821 cannot be satisfactorily ascertained on the basis of colonial titles and *effectivités*, the fact that El Salvador asserted a claim to the island of Meanguera in 1854, and was thereafter in effective possession and control of the island, justifies the conclusion that El Salvador may be regarded as sovereign over the island. If there remained any doubt, its position in respect of Meanguera is made definitive by the acquiescence of Honduras in its exercise of sovereignty in the island since the later years of the last century. As regards Meanguerita the Chamber does not consider it possible, in the absence of evidence on the point, that the legal position of that island could have been other than identical with that of Meanguera.

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368. The conclusion at which the Chamber arrives in respect of the disputed islands is thus the following. It is the Chamber's duty, under Article 5 of the Special Agreement, to take into account the "rules of International Law applicable between the Parties, including, where pertinent, the provisions of the General Treaty of Peace". In relation to the islands in dispute, the "documents which were issued by the Spanish Crown or by any other Spanish authority, whether secular or ecclesiastical", do not appear sufficient to "indicate the jurisdictions or limits of territories or settlements" in terms of Article 26 of that Treaty, so that no firm conclusion can be based upon such material, taken in isolation, for deciding between the two claims to an *uti possidetis juris* title. Under the final sentence of Article 26, the Chamber is however entitled to consider both the effective interpretation of the *uti possidetis juris* by the Parties, in the years following independence, as throwing light on the application of the principle and the evidence of effective possession and control of an island by one Party without protest by the other, as pointing to acquiescence. The evidence as to possession and control, and the display and exercise of sovereignty, by Honduras over El Tigre and by El Salvador over Meanguera (to which Meanguerita is an appendage), coupled in each case with the attitude of the other Party, clearly shows however, in the view of the Chamber, that Honduras was treated as having succeeded to Spanish sovereignty over El Tigre, and El Salvador to Spanish sovereignty over Meanguera and Meanguerita.

* * *

LEGAL SITUATION OF THE MARITIME SPACES

369. The Chamber now turns to the question of the legal situation of the maritime spaces; it therefore becomes necessary at this point to take account of the intervention of Nicaragua. The participation of Nicaragua in the present proceedings was authorized by the Chamber's Judgment of 13 September 1990. Nicaragua had presented an application for permission to intervene on the basis of Article 62 of the Statute of the Court, which provides that

> "1. Should a State consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.
> 2. It shall be for the Court to decide upon this request."

The Court having found, by its Order of 28 February 1990, that it was for the Chamber formed to deal with the present case to decide whether Nicaragua's Application should be granted, the Chamber gave a Judgment of which the operative part was as follows:

> "THE CHAMBER,
>
> Unanimously,
>
> 1. *Finds* that the Republic of Nicaragua has shown that it has an interest of a legal nature which may be affected by part of the Judgment of the Chamber on the merits in the present case, namely its decision on the legal régime of the waters of the Gulf of Fonseca, but has not shown such an interest which may be affected by any decision which the Chamber may be required to make concerning the delimitation of those waters, or any decision as to the legal situation of the maritime spaces outside the Gulf, or any decision as to the legal situation of the islands in the Gulf;
> 2. *Decides* accordingly that the Republic of Nicaragua is permitted to intervene in the case, pursuant to Article 62 of the Statute, to the extent, in the manner and for the purposes set out in the present Judgment, but not further or otherwise." (*I.C.J. Reports 1990*, p. 137, para. 105.)

370. In accordance with Article 85, paragraph 1, of the Rules of Court, Nicaragua was accordingly authorized to file, and did file, a written statement, and both Parties furnished written observations on that statement, as contemplated by the same provision of the Rules. At the hearings, the representatives of Nicaragua were authorized, in accordance with paragraph 3 of Article 85, to submit its observations on the subject-matter of the intervention, and these observations were commented on by the two Parties. In its written observations on Nicaragua's written statement, Honduras complained that that statement had entered into matters on which the Chamber had ruled specifically that Nicaragua had no right to intervene, or had dealt with matters extraneous to the issue over which the

Chamber had ruled that Nicaragua did have a right to intervene. El Salvador in its observations also expressed reservations regarding what it considered to be Nicaragua's expression of its point of view with respect to delimitation within the Gulf, as to which Nicaragua was not granted the right to intervene. At the hearings, following the concluding statement of Nicaragua of its observations on the subject-matter of the intervention, the Agent of Honduras made a protest, considering that the representatives of Nicaragua

> "have dealt with matters which they were not entitled to do according to the sentence issued by this Chamber. They have dealt with matters concerning delimitation and they have questioned the rights of Honduras in connection with the waters outside the Gulf."

In response, the Agent of Nicaragua stated that

> "Nicaragua's Agent and counsel have tried in all possible ways to remain within what we have understood to be the limits set by the Chamber",

and added that "Any other decision in this matter, of course, rests in the hands of the Chamber." The Agent of El Salvador stated, at a later sitting, that

> "El Salvador has no objection to the manner in which Nicaragua has exercised the rights accorded to it by the Judgment of 13 September 1990".

The President of the Chamber stated that the protest of Honduras had been noted and would be considered by the Chamber in due course.

371. The Chamber must emphasize that States engaged in proceedings before the Court or a Chamber are under a duty to conform with all decisions as to procedure, which the Court is specifically empowered to make by Articles 30 and 48 of its Statute. At the same time, in the present case, in which questions of the legal status of waters within the Gulf have been presented by the Parties as closely bound up with the status of the waters outside the Gulf (and, in the presentation of Honduras, with questions of delimitation), the Chamber considers that no useful purpose would be served by endeavouring to single out in the present Judgment which of the contentions of Nicaragua were squarely within the limits of its permitted intervention, and which might be said to have gone beyond those limits. The Chamber has taken account of the arguments of Nicaragua only where they appeared to it to be relevant in its consideration of the legal régime of the waters of the Gulf of Fonseca. The same approach has been adopted in relation to the "formal conclusions" presented by Nicaragua at the afternoon hearing of 13 June 1991, and set out in paragraph 26 of this Judgment. Since Nicaragua has not, by being admitted to intervene,

become a party to the case, the Chamber does not see in those conclusions any definition of the *petita* reflecting the Chamber's mission. These "conclusions" were presented by the Nicaraguan Agent as being "to aid the Chamber", and it is on that basis that the Chamber has taken note of them, to the extent that they relate to the permitted object of the intervention.

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372. The task conferred on the Chamber by the Special Agreement in respect of the dispute over the maritime spaces is, according to Article 2, paragraph 2, thereof, "to determine the legal situation of the . . . maritime spaces". There is a fundamental disagreement between the Parties as to the interpretation of this text, namely whether or not it empowers or requires the Chamber to delimit a maritime boundary, either within or without the Gulf. In terms of the formal submissions of the Parties, El Salvador stated in its final submissions that "the Chamber has no jurisdiction to effect any delimitation of the maritime spaces". Honduras, on the other hand, sought the delimitation of the maritime boundary inside and outside the Gulf of Fonseca by asking the Chamber, in its final submissions, to adjudge and declare that

> "the régime of the waters in the Bay of Fonseca, the delimitation of the maritime areas in that Bay, and the rights of Honduras beyond the closing line of the Bay of Fonseca, in the Pacific Ocean, *and the delimitation of the maritime areas attaching to the two Parties by means of a line* are matters of dispute to be decided by the Chamber of the Court".

These contentions have to be seen in relation to the arguments advanced by the Parties as to the legal status of the waters of the Gulf of Fonseca, to be examined below: in brief, El Salvador claims that the waters are subject to a condominium in favour of the three coastal States of the Gulf, and that delimitation would therefore be inappropriate; Honduras argues that within the Gulf there is a community of interests which both permits of and necessitates a judicial delimitation.

373. On the face of the text of the Special Agreement, no reference is made to any delimitation by the Chamber. For the Chamber to have the authority to delimit maritime boundaries, whether inside or outside the Gulf, it must have been given a mandate to do so, either in express words, or according to the true interpretation of the Special Agreement. It is therefore necessary, in application of the normal rules of treaty interpretation, to ascertain whether the text is to be read as entailing such delimitation. If account be taken of the basic rule of Article 31 of the Vienna

Convention on the Law of Treaties, according to which a treaty shall be interpreted "in accordance with the ordinary meaning to be given to the terms", it is difficult to see how one can equate "delimitation" with "determination of a legal situation . . ." *("Que determine la situación jurídica . . .")* No doubt the word "determine" in English (and, as the Chamber is informed, the verb *"determinar"* in Spanish) can be used to convey the idea of setting limits, so that, if applied directly to the "maritime spaces" its "ordinary meaning" might be taken to include delimitation of those spaces. But the word must be read in its context; the object of the verb "determine" is not the maritime spaces themselves but the legal situation of these spaces. No indication of a common intention to obtain a delimitation by the Chamber can therefore be derived from this text as it stands.

374. This conclusion is also confirmed if the phrase is considered in the wider context, first of the Special Agreement as a whole, and then of the 1980 General Treaty of Peace, to which the Special Agreement refers. The question must be why, if delimitation of the maritime spaces was intended, the Special Agreement used the wording "to delimit the boundary line . . ." *("Que delimite la línea fronteriza . . .")* regarding the land frontier, while confining the task of the Chamber as it relates to the islands and maritime spaces to "determine [their] legal situation . . ." *("Que determine la situación jurídica . . .")*. The same contrast of wording can be observed in Article 18 of the General Treaty of Peace, which, in paragraph 2, asks the Joint Frontier Commission to "delimit the frontier line in the areas not described in Article 16 of this Treaty", while providing in paragraph 4, that "it shall determine the legal situation of the islands and maritime spaces". Honduras itself recognizes that the islands dispute is not a conflict of delimitation but of attribution of sovereignty over a detached territory. It is difficult to accept that the same wording "to determine the legal situation", used for both the islands and the maritime spaces, would have a completely different meaning regarding the islands and regarding maritime spaces.

375. The ordinary meaning of the term "maritime spaces" in the context of the modern law of the sea must, in the view of Honduras, include areas both inside and outside the Gulf, including for example, the territorial sea and the exclusive economic zone; nor does El Salvador disagree that the Special Agreement refers to those spaces. Honduras argues further that the context of the Treaty of Peace and the Special Agreement do not permit it to be supposed that the Parties intended such a half-measure as a determination of the legal situation of such spaces unaccompanied by a delimitation, since it is already established that the rights of the coastal States over areas off their coasts exist *ipso facto* and *ab initio* (cf. *North Sea Continental Shelf* case, *I.C.J. Reports 1969*, p. 22, para. 19). In the contention of Honduras, the object and purpose of the Special Agreement is to dispose completely of a corpus of disputes some elements of which are

more than a century old, as is clear from the Preamble to the 1980 General Treaty of Peace; in the light of this, the Special Agreement should be interpreted to require a delimitation, since for Honduras a legal title without delimitation of its scope is a title without any real substance. In support of this contention, Honduras has invoked the principle of effectiveness *(effet utile)*, or of effective interpretation, quoting the jurisprudence of the Permanent Court of International Justice (*Free Zones of Upper Savoy and the District of Gex* case, *P.C.I.J., Series A, No. 22*, p. 13) and of the Court (*Corfu Channel* case, *I.C.J. Reports 1949*, p. 24). Honduras maintains that, without delimitation, the Judgment will fail to attain its objective, which is the final solution for the dispute between the Parties.

376. In the Chamber's view, however, in interpreting a text of this kind it must have regard to the common intention as it is expressed in the words of the Special Agreement. The situation closely resembles that in the recent case before the Court between Guinea-Bissau and Senegal, where the Court observed:

> "In short, although the two States had expressed in general terms . . . their desire to reach a settlement of their dispute, their consent thereto had only been given in the terms laid down by Article 2." (*Arbitral Award of 31 July 1989, I.C.J. Reports 1991*, p. 72, para. 56.)

In effect, what Honduras is proposing is recourse to the "circumstances of the conclusion" of the Special Agreement, but these, it is generally recognized, constitute no more than a supplementary means of interpretation, used only where the meaning of the text is ambiguous or obscure, or the interpretation would lead to a manifestly absurd or unreasonable result (see Vienna Convention on the Law of Treaties, Art. 32).

377. However, Honduras has put forward what it regards as the explanation of the absence of any specific reference to delimitation in the Special Agreement. This explanation arises out of the effect attributed by El Salvador to a provision in its Constitution, such that it does not permit of any delimitation of the waters of the Gulf of Fonseca, claimed by El Salvador to be subject to a condominium of the three coastal States of the Gulf. El Salvador for its part accepts the well-established rule in international law that

> "a State cannot adduce as against another State its own Constitution with a view to evading obligations incumbent upon it under international law or treaties in force" (*Treatment of Polish Nationals in Danzig, P.C.I.J., Series A/B, No. 44*, p. 24)

and does not attempt to elevate the Constitution over the international obligations of El Salvador. The constitutional position is only put forward as material in assessing the likelihood of there having been an intention to

confer such power on the Chamber; in El Salvador's view, its representatives could never have intended to sign a Special Agreement which contemplated such a delimitation. In reply to this Honduras contends that it was specifically to meet that difficulty that the expression "determine the legal situation" was chosen. It was, according to Honduras, intended as a neutral term which would not prejudice the position of either Party; and that it is not open to one Party unilaterally on the basis of its own legal position, to impose an interpretation, but is for a court so seised to interpret the compromise formula. In essence, it is arguing that a special meaning — one comprising the concept of delimitation — was intended by the Parties to attach to the phrase "determine the legal situation of the . . . maritime spaces". The onus is therefore on Honduras to establish that such was the case.

378. The Chamber is unable to accept this contention of Honduras; it amounts to a recognition that, when the Special Agreement was signed, the Parties were not able to agree that the Chamber should have jurisdiction to delimit the waters of the Gulf. Since the jurisdiction of the Chamber, as of the Court, depends upon the consent of the Parties, it follows that it has no jurisdiction to effect any such delimitation. It is true that, as Honduras observes, States may and do draft definitions of disputes to be submitted to a settlement procedure in terms which will avoid any clear surrender of the legal position of either of them. In the present case the Parties have reserved their legal positions in this way on the question whether the legal situation of the waters of the Gulf is such as to require or permit a delimitation; that will be a question for the Chamber to decide. But there can be no such reservation of the question of what the jurisdiction of the tribunal to be seised of the dispute will be, since it is only from the meeting of minds on that point that jurisdiction is created. Honduras in effect interprets the Special Agreement to mean that the Parties intended that the Chamber should decide for itself whether it has jurisdiction to delimit the maritime spaces; but a positive decision to that effect could only be based on the consent of both Parties to a judicial delimitation, which, on Honduras's own argument, is lacking. The Chamber concludes that there was agreement between the Parties, expressed in Article 2, paragraph 2, of the Special Agreement, that the Chamber should determine the legal situation of the maritime spaces, but that this agreement did not extend to delimitation of those spaces, as part of that operation.

379. Honduras has also invoked the rule that subsequent practice of the parties may be taken into account to interpret a treaty. Relying on the fact that the expression "determine the legal situation of the islands and

the maritime spaces" is also used in Article 18 of the General Treaty of Peace of 1980, defining the role of the Joint Frontier Commission, it invokes the subsequent practice of the Parties in the application of that Treaty to show that the delimitation of the maritime spaces was contemplated by them. Honduras has invited the Chamber to take into account the fact that the Joint Frontier Commission examined, *inter alia*, proposals aimed at the delimitation of the maritime spaces. El Salvador has expressed reservations at this recourse to matters raised during negotiations, but argues that any approaches of its delegates in the Commission to delimitation of the waters were purely by way of conciliation and did not prejudice its legal position; it maintains further that there exists no dispute between the Parties as to delimitation of the waters of the Gulf, and the Chamber therefore cannot decide such a non-existent dispute.

380. The Chamber considers that, while both customary law and the Vienna Convention on the Law of Treaties (Art. 31, para. 3 *(b)*) contemplate that such practice may be taken into account for purposes of interpretation, none of these considerations raised by Honduras can prevail over the absence from the text of any specific reference to delimitation. In considering the ordinary meaning to be given to the terms of the treaty, it is appropriate to compare them with the terms generally or commonly used in order to convey the idea that a delimitation is intended. Whenever in the past a special agreement has entrusted the Court with a task related to delimitation, it has spelled out very clearly what was asked of the Court: the formulation of principles or rules enabling the parties to agree on delimitation, the precise application of these principles or rules (see *North Sea Continental Shelf* cases, *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* and *Continental Shelf (Libyan Arab Jamahiriya/Malta)* cases), or the actual task of drawing the delimitation line (*Delimitation of the Maritime Boundary in the Gulf of Maine Area* case). Likewise, in the Anglo-French Arbitration of 1977, the Tribunal was specifically entrusted by the terms of the Special Agreement with the drawing of the line.

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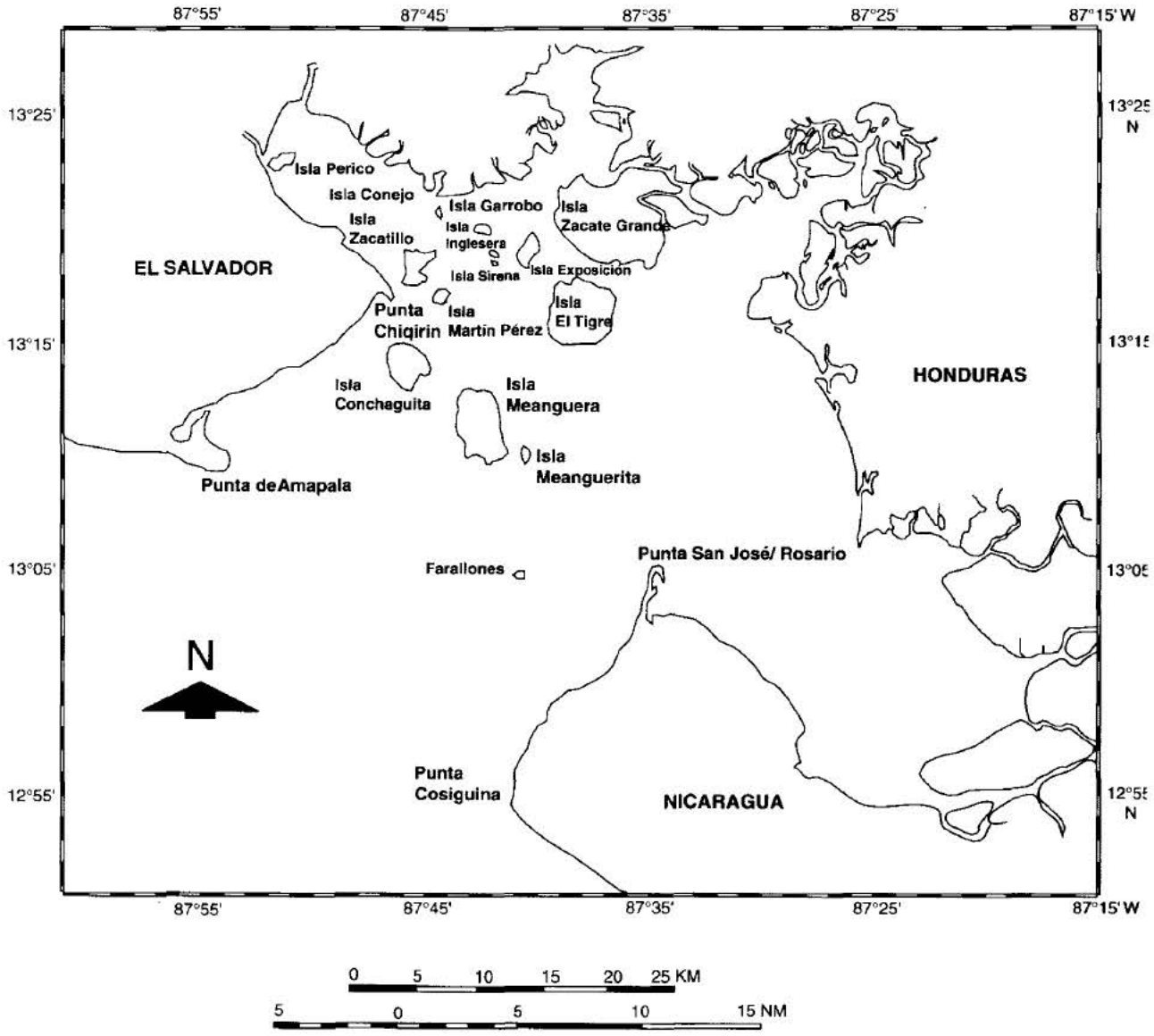
381. The legal situation of the waters of the Gulf of Fonseca falls to be determined by the application of "the rules of international law applicable between the Parties, including where pertinent, the provisions of the General Treaty of Peace", as is provided in Articles 2 and 5 of the Special Agreement.

382. The Gulf of Fonseca lies on the Pacific coast of Central America, opening to the ocean in a generally south-westerly direction; it is shown on sketch-map No. G-1 annexed. The north-west coast of the Gulf is the land territory of El Salvador, and the south-east coast that of Nicaragua;



SKETCH-MAP No. G-1

Gulf of Fonseca

the land territory of Honduras lies between the two, with a substantial coast on the inner part of the Gulf. The mouth of the Gulf, between Punta Amapala in El Salvador to the north-west, and Punta Cosigüina in Nicaragua to the south-east, is some 19.75 nautical miles wide. The penetration of the Gulf from a line drawn between these points varies between 30 and 32 nautical miles.

383. The Gulf of Fonseca is a relatively small bay with an irregular and complicated coastline in its inner part, a large number of islands, islets and rocks, and is in the rare if not unique position that the coastline is divided between three States. To all three coasts there are only four entrance channels, of which only two can be used for deep-draught vessels. The entrance to the Gulf, between Punta Amapala (El Salvador) and Punta Cosigüina (Nicaragua) being only 19.75 miles wide, the geographical dimensions and proportions of the Gulf are such that it would nowadays — though not in former times when the "10-mile", or even "6-mile", rule applied — be a juridical bay within the meaning of Article 4 of the Convention on the Territorial Sea and the Contiguous Zone of 1958, and Article 10 of the Convention on the Law of the Sea (1982); which would have the consequence that, if it were a single-State bay, a closing line might now be drawn and the waters be thereby enclosed and "be considered as internal waters". Neither El Salvador nor Honduras, nor yet Nicaragua, the intervening State, is party to either of these two Conventions, and the 1982 Convention is not yet in force, but these provisions on bays might be found to express general customary law. In the terms of both Conventions, however, the Article describing bays is said to apply only to "bays the coasts of which belong to a single State", and furthermore not to apply to "so-called 'historic bays'". The Gulf of Fonseca is manifestly not a bay the coasts of which belong to one State; and the Parties and the intervening State, and commentators generally, are agreed that it is an historic bay, and that the waters of it are accordingly historic waters.

384. In a passage much cited in the oral proceedings in this case, the Court, in the *Fisheries* case between the United Kingdom and Norway, said:

> "By 'historic waters' are usually meant waters which are treated as internal waters but which would not have that character were it not for the existence of an historic title." (*I.C.J. Reports 1951*, p. 130.)

This, however, should be read in the light of what the Court said in the *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* case, where, also referring to the exception of "historic bays" from the definition of bay in both the 1958 and the 1982 Conventions, the latter then still in draft, the Court said:

> "There are, however, references to 'historic bays', or 'historic titles' or historic reasons in a way amounting to a reservation to the rules set forth therein. It seems clear that the matter continues to be governed by general international law which does not provide for a *single* 'régime' for 'historic waters' or 'historic bays', but only for a particular régime for each of the concrete, recognized cases of 'historic waters' or 'historic bays'." (*I.C.J. Reports 1982*, p. 74.)

It is clearly necessary, therefore, to investigate the particular history of the Gulf of Fonseca to discover what is the "régime" of that Gulf resulting therefrom; especially as the Court in the same Judgment also said "Historic titles must enjoy respect and be preserved as they have always been by long usage." (*I.C.J. Reports 1982*, p. 73.) Moreover, the particular historical régime established by practice must be especially important in a pluri-State bay; a kind of bay for which there are notoriously no agreed and codified general rules of the kind so well established for single-State bays.

385. The Gulf was discovered by the Spanish navigator Andrés Niño in 1522, who named the Gulf after Juan Rodriguez de Fonseca, Bishop of Burgos, patron of his expedition, which had been organized by Captain Gil González Davila. It appears that the Spanish Crown thereafter claimed and exercised continuous and peaceful sovereignty over the waters of the Gulf, without serious or more than temporary contestation, until the three present riparian States gained their independence in 1821. For the greater part of its long, known history, therefore, the Gulf was a single-State bay, the waters of which were under the single sway of the Spanish Crown. Moreover, also from 1821 to 1839 the Gulf was under the sway of the Federal Republic of Central America of which the three coastal States were member States, along with Guatemala and Costa Rica. The rights in the Gulf of Fonseca of the present coastal States were thus acquired, like their land territories, by succession from Spain.

386. Accordingly, it is necessary to enquire into the legal situation of the waters of the Gulf in 1821 at the time of succession from Spain; for the principle of the *uti possidetis juris* should apply to the waters of the Gulf as well as to the land. No evidence has been presented to the Chamber suggesting that there was for these waters prior to, or at 1821, anything analogous to those boundaries of provincial sway, which have been so much discussed in respect of the land. What then was the legal status of the Gulf waters after the succession to Spain of the three new coastal States, in 1821?

387. This is a question which faced the Central American Court of Justice in the case between El Salvador and Nicaragua, concerning the Gulf of Fonseca, and in which it rendered its Judgement of 9 March 1917. An

historic bay has a history which, in the words used in the 1982 Judgment of the International Court of Justice (see paragraph 384 above), is determinative of the "particular régime" which applies to this "concrete, recognized" case "of 'historic waters' or 'historic bays'". The Judgement of 1917 which thus examined the particular régime of the Gulf of Fonseca must therefore be taken into consideration as an important part of the Gulf's history. Both Parties recognized this when they devoted much of their pleadings to discussion of the Central American Court's decision. It will be convenient to look first at the substance of the decision and then at its possible relevance for the determination of the present case.

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388. That case was brought by El Salvador against Nicaragua, because of the Nicaraguan Government's entry into the Bryan-Chamorro Treaty of 1914 with the United States, by which treaty Nicaragua granted a concession to the United States for the construction of an interoceanic canal and of a United States naval base in the Gulf of Fonseca. The view was taken by El Salvador that this arrangement would prejudice El Salvador's own rights in respect of the waters of the Gulf.

389. On the underlying question of the status of the waters of the Gulf which was thus raised before the Central American Court, there were by then three matters which practice and the 1917 Judgement took account of: first, the practice of all three coastal States had established and mutually recognized a 1 marine league (3 nautical miles) littoral maritime belt off their respective mainland coasts and islands (see the passage of the 1917 Judgement quoted in paragraph 400 below), in which belt they each exercised an exclusive jurisdiction and sovereignty, though with rights of innocent passage conceded on a mutual basis; second, all three States recognized a further belt of 3 marine leagues (9 nautical miles) for rights of "maritime inspection" for fiscal purposes and for national security; third, there was an Agreement of 1900 between Honduras and Nicaragua by which a partial maritime boundary between the two States had been delimited, which, however, stopped well short of the waters of the main entrance to the bay.

390. The 1917 Judgement is of course in Spanish, and its official text, published by the Court in Costa Rica in 1917, will be quoted in that language; an English translation was published in 1917 by the Legation of El Salvador in Washington and printed in the 1917 volume of the *American Journal of International Law*, and this translation, which was used in argument by the Parties before the Chamber, will also be quoted in this Judgment. The Judgement of the Central American Court is in part in the

form of answers by the judges to questions (24 in all) formulated by the Court. The answers relevant for present purposes are those about the international legal status of the Gulf and on the consequences of that status for the waters of the Gulf. The ninth of these questions was:

> *"¿A la Novena pregunta que dice: '¿Atendiendo a las condiciones geográficas e históricas, así como a la situación, extensión y configuración del Golfo de Fonseca cómo debe reputarse su situación jurídica internacional?'"* (Corte de Justicia Centroamericana, *Sentencia*, 9 de marzo de 1917, p. 27.)

> "*Ninth question* — Taking into consideration the geographic and historic conditions, as well as the situation, extent and configuration of the Gulf of Fonseca, what is the international legal status of that Gulf?" (*AJIL* trans., p. 693.)

To this question the judges gave the following answer: *"Contestaron unánimemente los Magistrados: que es una Bahía histórica y con carácteres de mar cerrado."* ("The judges answered unanimously that it is an historic bay possessed of the characteristics of a closed sea.") *(Ibid.)* To the tenth question — *"¿En cuál o en cuáles de esos caracteres están conformes las Altas Partes litigantes?"* ("As to which of those characteristics are the parties litigant in accord?") — the judges answered, again unanimously, that *". . . están conformes en que es un mar cerrado . . ."* (". . . the parties are agreed that the Gulf is a closed sea . . .") *(ibid.)*; and by "closed sea" the Court seems to mean simply that it is not part of the high seas, and its waters are not international waters (cf. the passage of the Judgement at page 718 of the *AJIL* translation).

391. It should be added that, in another part of the Judgement (*AJIL* trans., p. 717), the Court refers to the Gulf as ". . . an historic or vital bay . . ." *(". . . Bahía histórica o vital . . .")* thus importing a further reason — the strategic and defence requirements of the coastal States — why the waters of the bay could not be international waters. Other reasons given by the Court for the Gulf being an historic bay are the usually recognized ones: *". . . una posesión secular o inmemorial con* animo domini, *pacífica y contínua y con aquiescencia de las demás naciones . . ."* (CJC, *Sentencia*, p. 27) (". . . secular or immemorial possession accompanied by *animo domini* both peaceful and continuous and by acquiescence on the part of other nations . . ." (*AJIL* trans., p. 705)). Further, the Court found authority for its conclusion in "what was decided as to territorial waters by the arbitral award of the Permanent Court" of Arbitration of 7 September 1910 in the *North Atlantic Fisheries* case, and referred in particular to the "commentaries of the eminent jurist Dr. Drago, one of the judges in the arbitration

who rendered a separate opinion" (*AJIL* trans., p. 707). In this connection the Court also attached importance to the famous passage in that Award that "the character of a bay is subject to conditions that concern the interests of the territorial sovereign to a more intimate and important extent than those connected with the open coast" (*AJIL* trans., pp. 707-708).

392. It may be as well at this stage to deal with a possible source of misunderstanding about the terminology of the period. It has sometimes been suggested that the Judgement is confused because it speaks, as in the above quotation and elsewhere (see paragraph 397 below), of the waters of the Gulf outside the 3-mile littoral maritime belts as "territorial waters"; and in the argument before the Chamber, the 1917 Judgement did not escape criticism on that ground. But the term "territorial waters" was, 75 years ago, not infrequently used to denote what would now be called "internal" or "national" waters, as the legal literature of the time abundantly shows. Accordingly, the term "territorial waters" did not necessarily, or even usually, indicate what would now be called "territorial sea" [1]. So, by "territorial waters", in this context, the Central American Court means waters claimed *à titre de souverain.* To have recognized exclusive "maritime belts" along the littoral *inside* those "territorial waters", the property of the three States in common, was no doubt an anomaly in terms of the modern law of the sea; but it was in accord with what had emerged from actual practice of the coastal States in the Gulf of Fonseca at that time, and was perhaps also a remnant of the view, to be mentioned below, that the maritime belt in a pluri-State bay, followed the sinuosities of the coast, the remainder of the bay waters being high seas. At any rate, the 3-mile maritime belts were firmly established by practice.

393. There is what might appear at first sight to be an inconsistent element of the Court's pronouncement, when it allows that the waters of the Gulf that ". . . belong to the three States that surround them . . ." (*". . . las aguas del Golfo pertenezcan a los tres Estados que lo circundán . . ."*), are subject to ". . . the right of *uso inocente* over those waters . . ." by ". . . the merchant ships of all nations . . ." (*". . . teniendo las naves mercantes de todas las naciones el derecho de* uso inocente *sobre esas mismas aguas . . ."*) (CJC, *Sentencia,* p. 55; *AJIL* trans., p. 715). Such rights of "innocent use" are at odds with the present general understanding of the legal status of

[1] See, for example, an article by Sir Cecil Hurst, later President of the Permanent Court of International Justice ("The Territoriality of Bays", *British Year Book of International Law,* Vol. 3 (1922-1923), p. 43).

the waters of a bay as constituting "internal waters", whether the waters are of a juridical bay or one which has arisen from an historic title. Yet the rules and principles which normally apply to "bays the coasts of which belong to a single State" (United Nations Convention on the Law of the Sea, Art. 10 (1)) are not necessarily appropriate to a bay which is a pluri-State bay and is also an historic bay (for the fact that the Gulf of Fonseca would today qualify geographically as a "juridical" bay cannot now call in question or replace its historic status). Moreover, the Gulf being a bay with three coastal States, there is a need for shipping to have access to any of the coastal States through the main channels between the bay and the ocean. That rights of innocent passage are not inconsistent with a régime of historic waters is clear, for that is precisely now the position in archipelagic internal waters and indeed in former high seas enclosed as internal waters by straight baselines. Furthermore, there is another practical point, for since these waters were outside the 3-mile maritime belts of exclusive jurisdiction in which innocent passage was nevertheless recognized in practice, it would have been absurd not to recognize passage rights in these waters, which had to be crossed in order to reach these maritime belts.

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394. This unanimous finding that the Gulf of Fonseca is an historic bay with the character of a closed sea presents now no great problem. All three coastal States continue to claim this to be the position, and it seems also to continue to be the subject of that "acquiescence on the part of other nations" to which the 1917 Judgement refers, for the Chamber is unaware of any expression of a differing view by a third State. Moreover, that position has been generally accepted by the commentators. For example while the successive editors of Oppenheim's *International Law*, from the first edition of Oppenheim himself (1905) to the eighth edition by Hersch Lauterpacht (1955), were consistently of the view that "All gulfs and bays enclosed by the land of more than one littoral State, however narrow their entrance may be, are non-territorial", a note was added in the third edition (1920, p. 344, n. 4) making the general qualification, "except in the case of such bays as possess the characteristics of a closed sea". The note then refers to the position of the Gulf of Fonseca as decided in the 1917 Judgement, adding finally, "The United States acknowledges the territorial characteristics of this Gulf. The attitude of other States is not known." There is also the authority of Gidel for the proposition that the Gulf of Fonseca is an historic bay (G. Gidel, *Le droit international public de la mer* (1934), Vol. 3, pp. 626-627). Reference may also be made to the United Nations Secretariat study prepared following the 1958

Conference on the Law of the Sea (doc. A/CN.4/143, para. 147) which stated

> "If all the bordering States act jointly to claim historic title to a bay, it would seem that in principle what has been said above regarding a claim to historic title by a single State would apply to this group of States."

395. What does present a problem, however, is the precise character of the sovereignty which the three coastal States enjoy in these historic waters. No great difficulty arises about the legal position of the waters of an historic bay that constitutes an enclosed sea entirely within the territory of a single State; then the enclosed waters are simply internal waters of the coastal State. A complication arises when the shores of the bay comprise three States. For an enclosed pluri-State bay presents the need of ensuring practical rights of access from the ocean for all the coastal States; and especially so where the channels for entering the bay must be available for common user, as in the case of an enclosed sea. It was doubtless this problem of navigational access to the pluri-State bay, that accounts for the view, prevalent, though not unopposed, in the time of the 1917 Judgement and even for some years later, that in such a bay, if it is not historic waters, the territorial sea follows the sinuosities of the coast and the remainder of the waters of the bay are part of the high seas. This solution, however, is not possible in the case of the Gulf of Fonseca since it is an historic bay and therefore a "closed sea".

396. It was the eleventh question of the Central American Court which directly raised the legal status of the Gulf waters. It was:

> *"¿Cuál es la condición jurídica del Golfo de Fonseca según las respuestas que anteceden, y la conformidad de las Altas Partes que contienden, expresada en sus alegaciones, en orden al dominio y demás derivados?"* (CJC, *Sentencia*, p. 26.)

> "What is the legal status of the Gulf of Fonseca in the light of the foregoing answer and the concurrence of the high parties litigant, as expressed in their arguments, with respect to ownership and the incidents derived therefrom?" (*AJIL* trans., p. 693.)

The answer of four of the five judges was that *". . . la condición jurídica del Golfo de Fonseca, según los términos de la pregunta, es la de pertenecer en*

propiedad a los tres países que lo circundan . . ."(". . . the legal status of the Gulf of Fonseca, according to the terms of the question, is that of property belonging to the three countries that surround it . . ."); Judge Gutiérrez Navas however, answered that the ownership of the waters of the Gulf, *". . . pertenece, en la porción respectiva, a los tres países ribereños . . .*"(". . . belongs, respectively, to the three riparian countries in proportion . . ."). Furthermore, in answer to the twelfth question, which read:

> *"¿Existe conformidad en las Altas Partes que contienden sobre el hecho de que las aguas pertenecientes a la zona de inspección que les corresponde, se empalman y confunden en las fauces o entrada del Golfo de Fonseca?"* (CJC, *Sentencia*, p. 27.)

> "Are the high parties litigant in accord as to the fact that the waters embraced in the inspection zones that pertain to each, respectively, are intermingled at the entrance of the Gulf of Fonseca?" (*AJIL* trans., p. 693.)

the judges were unanimously of the opinion that *". . . existe conformidad en que las aguas que forman la entrada del Golfo se empalman . . .*"(". . . the high parties are agreed that the waters which form the entrance to the Gulf intermingle . . ."). In addition the decision recognized (in response to the fifteenth question) that the maritime belts of 1 marine league from the coast were within the exclusive jurisdiction of the coastal State and therefore should "be excepted from the community of interest or co-ownership" (CJC, *Sentencia*, p. 28; *AJIL* trans., p. 694). Also the Court recognized the further zone of 9 nautical miles as a zone of rights of inspection and the exercise of police power for fiscal purposes and for national security; and the Court took note also of the existence of the 1900 Honduras and Nicaragua agreed boundary line (see paragraph 413 below).

397. The general conclusion of the Court is set forth in the following paragraphs:

> *"CONSIDERANDO: Que evidentemente se deduce de los hechos constatados en los párrafos que preceden, que el Golfo de Fonseca pertenece a la categoría especial de Bahía histórica y es del dominio exclusivo de El Salvador, Honduras y Nicaragua; porque reune todos los caracteres o condiciones que los expositores del Derecho de Gentes, los Institutos Internacionales y los precedentes han establecido sobre el carácter de las aguas territoriales; esto es, una posesión secular o inmemorial con* animo domini, *pacífica y contínua y con aquiescencia de las demás naciones; la especial configuración geográfica que guarda cuantiosos intereses de vital importancia para la vida económica, comercial, agrícola e industrial de los Estados ribereños; y la necesidad absoluta, indispensable que estos Estados tienen de poseerlo tan plenamente*

como lo exigen esos primordiales intereses y los de la defensa nacional." (CJC, *Sentencia*, p. 43.)

"*WHEREAS*: It is clearly deducible from the facts set forth in the preceding paragraphs that the Gulf of Fonseca belongs to the special category of historic bays and is the exclusive property of El Salvador, Honduras and Nicaragua; this on the theory that it combines all the characteristics or conditions that the text writers on international law, the international law institutes and the precedents have prescribed as essential to territorial waters[1], to wit, secular or immemorial possession accompanied by *animo domini* both peaceful and continuous and by acquiescence on the part of other nations, the special geographical configuration that safeguards so many interests of vital importance to the economic, commercial, agricultural and industrial life of the riparian States and the absolute, indispensable necessity that those States should possess the Gulf as fully as required by those primordial interests and the interest of national defense." (*AJIL* trans., p. 705.)

And in the following, later, paragraph:

"CONSIDERANDO: Que reconocida por este Tribunal la condición jurídica del Golfo de Fonseca como Bahía histórica, con caracteres de mar cerrado, se ha reconocido, en consecuencia, como condueños de sus aguas a los tres países ribereños, El Salvador, Honduras y Nicaragua, excepto en la respectiva legua marina del litoral, que es del exclusivo dominio de cada uno de ellos; y que en orden al condominio existente entre los Estados en litigio, al votarse el punto décimocuarto del cuestionario, se tomó en cuenta que en las aguas no litorales del Golfo existe una porción de ellas en donde se empalman o confunden las jurisdicciones de inspección para objetos de policía, de seguridad y fines fiscales; y otra en donde es posible que no suceda lo mismo. Por lo tanto, el Tribunal ha decidido que entre El Salvador y Nicaragua existe el condominio en ambas porciones, puesto que están dentro del Golfo; pero con la salvedad expresa de los derechos que coresponden a Honduras como copartícipe en esas mismas porciones." (CJC, *Sentencia*, pp. 55-56.)

"*WHEREAS*: The legal status of the Gulf of Fonseca having been recognized by this Court to be that of a historic bay possessed of the characteristics of a closed sea, the three riparian States of El Sal-

[1] On the use by the Central American Court of this term, see paragraph 392 above.

vador, Honduras and Nicaragua are, therefore, recognized as co-owners of its waters, except as to the littoral marine league which is the exclusive property of each, and with regard to the co-ownership existing between the States here litigant, the Court, in voting on the fourteenth point of the questionnaire, took into account the fact that as to a portion of the non-littoral waters of the Gulf there was an overlapping or confusion of jurisdiction in matters pertaining to inspection for police and fiscal purposes and purposes of national security, and that, as to another portion thereof, it is possible that no such overlapping and confusion takes place. The Court, therefore, has decided that as between El Salvador and Nicaragua co-ownership exists with respect to both portions, since they are both within the Gulf; with the express proviso, however, that the rights pertaining to Honduras as coparcener in those portions are not affected by that decision." (*AJIL* trans., p. 716.)

398. The essence of the 1917 decision concerning the legal status of the waters of the Gulf was thus that these historic waters were then subject to a "co-ownership" *("condominio")* of the three coastal States. On the correctness of this part of the decision the Parties are diametrically opposed. El Salvador approves strongly of the condominium concept in these waters and holds that this status not only prevails but also cannot be changed without its consent. Honduras opposes the condominium idea and accordingly calls in question the correctness of this part of the 1917 Judgement, whilst also relying on the fact that it was not a party to the case and so cannot be bound by the decision, as indeed it made clear to the Court in 1917 and as that Court accepted. Nicaragua, the intervening State, which was a party to the 1917 proceedings, is and has consistently been opposed to the condominium solution.

399. Honduras also argues against the condominium *inter alia* upon the ground that, allegedly, condominia can only be established by agreement, though in its Memorial it had contended that some sort of "trilateral local custom of the nature of a convention" might have the same effect. It is doubtless right in claiming that the historical examples of condominia, in the sense of arrangements for the common government of territory which would otherwise be, and in many cases already had been, delimited between two or more States, is ordinarily created by treaty. It is difficult to see how such a structured system of joint government could be created otherwise than by an agreement between the States concerned. It is true that condominium as a term of art in international law usually indicates just such a structured system for the joint exercise of sovereign governmental powers over a territory; a situation that might more aptly be called co-imperium. But this was not what the Central American Court of Justice had in mind. By a condominium they clearly meant to indicate the

existence of a joint sovereignty arising as a juridical consequence of the succession of 1821. A State succession is one of the ways in which territorial sovereignty passes from one State to another; and there seems no reason in principle why a succession should not create a joint sovereignty where a single and undivided maritime area passes to two or more new States.

400. The Chamber, accordingly, sees the Judgement of 1917 as using the term condominium, or "co-ownership", to describe what it regards as the legal result where three States jointly inherited by succession waters which for nearly three centuries had been under the single sway of the State from which they were the heirs; and in which waters there were no maritime administrative boundaries at the time of inheritance, at 1821 or indeed at the end of the Federal Republic of Central America in 1839. Thus, that Court says:

> *"La Alta Parte demandada reconoce que existió indemarcación entre los países adyacentes al Golfo, antes de que constituyeran entidades independientes, a pesar de que no eran desconocidas las delimitaciones entonces; pero no aduciéndose prueba alguna de que posteriormente esos mismos Estados hayan llevado a cabo una división completa de todas las aguas que circundan el Golfo de Fonseca, pues aunque se ha invocado la que se efectuó con Honduras en mil novecientos, la línea trazada, según el mapa del Ingeniero Fiallos, que fué miembro de la Comisión Mixta, sólo llegó hasta un punto medio entre la isla del Tigre y Punta de Cosigüina, dejando sin dividir como ya se ha dicho antes, una considerable porción de aguas comprendida entre la línea trazada desde Punta Amapala a Punta Cosigüina y el punto terminal de la división entre Honduras y Nicaragua. Por consiguiente, hay que concluir en que, exceptuando esa parte, el resto de las aguas del Golfo ha quedado* pro-indiviso, *en estado de comunidad entre El Salvador y Nicaragua, y en que por la particular configuración del mismo, esas aguas quedan frente a frente, confundiéndose por un empalme declarado en el dictamen de los Ingenieros Barbarena y Alcaine, y reconocido por la Alta Parte demandada. Y si bien puede decirse en principio, que no toda indemarcación constituye comunidad, sí es evidente que toda comunidad supone necesariamente la indivisión en sentido jurídico. Esta comunidad en el Golfo ha venido existiendo por el uso continuado y pacífico de los Estados ribereños, y la demuestra más evidentemente ese empalme de las jurisdicciones en la zona en que ambos países contendientes han ejercido su* imperium*; de donde se deduce que ese estado jurídico no existe en las tres millas marinas que forman el litoral en las costas de tierra*

firme e islas que les corresponden a cada Estado, en las cuales ejercen un dominio y posesión exclusivos y absolutos, . . ." (CJC, *Sentencia*, pp. 50-51.)

"The high party defendant recognizes that no demarcation existed among the countries adjacent to the Gulf prior to their constitution as independent entities, notwithstanding the fact that demarcations were then not unknown; but no proof whatever is adduced to show that subsequently those same States ever effected a complete division of all the waters embraced therein, for, although there was a division made with Honduras in 1900 — which has been here invoked — the line drawn, according to the map of the engineer Fiallos (who was a member of the Mixed Commission), only extends as far as a point midway between Tigre Island and Cosigüina Point, thus leaving undivided, as already stated, a considerable portion of the waters embraced between the line drawn from Amapala Point to Cosigüina Point and the terminal point of the division between Honduras and Nicaragua.

Consequently, 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, and that, by reason of the particular configuration of the Gulf, those waters though remaining face to face, were, as declared in the report of the engineers Barberena and Alcaine and as recognized by the high party defendant, confounded by overlapping.

And, while it may be said that in principle not every absence of demarcation always results in community, it is self-evident that every community necessarily presupposes, in the legal sense, the absence of partition. This community in the Gulf has continued to exist by virtue of continued and peaceful use of it by the riparian States, and this is shown most clearly by the overlapping of jurisdictions in the zone in which both litigant countries have been exercising their rights of *imperium*, from which it is deduced that that legal status does not exist in the three marine miles that form the littoral on the coasts of the mainland and islands which belong to the States separately and over which they exercise ownership and possession both exclusive and absolute . . ." (*AJIL* trans., revised, p. 711.)

401. Thus the *ratio decidendi* of the 1917 Judgement appears to be this: there was, at the time of independence, no delimitation between the three countries; and while the absence of delimitation does not always result in community, the undelimited waters of the Gulf have remained undivided and in a state of community, which entails a condominium or co-ownership of these waters. Further, the existence of a community was evidenced by continued and peaceful use of the waters by all the riparian States after independence. It seems to the Chamber that the Central American Court

was correct, as a matter of international law, in holding that the mere absence of the delimitation of divisions of a maritime territory, cannot be said of itself "always" to entail a joint sovereignty over that area of maritime territory. What matters, however, is not what is "always" true, but what was the position in this particular case, in which the maritime area in question had long been historic waters under a single State's sovereignty, apparently without any demarcated administrative limits, and was in 1821 jointly acquired by the three successor States by reason of the succession. That seems to be the essence of the decision of the Central American Court for this confined maritime area which so intimately concerns all three coastal States. Certainly there is no reason why a joint sovereignty should not exist over maritime territory. An instance of a condominium of the waters of a bay is the Baie du Figuier at the Atlantic boundary between France and Spain: by a "Declaration" of 1879, the bay was said, for purposes of jurisdiction to be in three parts, "la troisième formant des eaux communes".

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402. The question now poses itself of the legal status of the 1917 Judgement. It has not been suggested that it was invalid or a nullity. The Court's jurisdiction in the matter was contested by Nicaragua, but the Court found that it had jurisdiction; a decision which was within the remit of any court to decide its own jurisdiction. Nicaragua protested the Judgement; but it cannot be allowed that a judgment may be invalidated by the protest of a disappointed party. The 1917 Judgement is therefore a valid decision of a competent Court. Obviously it could not be *res judicata* between the Parties in the present case. Honduras, on learning of the proceedings brought by El Salvador before the Central American Court of Justice, had formally protested to El Salvador that it "... has not recognized the status of co-ownership with El Salvador, nor with any other Republic, in the waters belonging to it in the Gulf of Fonseca ..." (*"... no ha reconocido estado de condominio con El Salvador ni con ninguna otra República en las aguas que le corresponden en el Golfo de Fonseca ..."*) (CJC, *Sentencia*, p. 32; *AJIL* trans., p. 696), and that protest was brought to the notice of the Central American Court. Honduras has also, in its pleadings in the present case, made clear its reliance on the principle that a decision in a judgment or an arbitral award "can only be opposed to the parties" (see *I.C.J. Reports 1990*, p. 106, para. 31). Nicaragua, which was a party to the 1917 case, is an intervener in the present proceedings but is not a party in the present case. It does not appear, therefore, that this Chamber is at present required now to pronounce upon whether the 1917 Judgement is *res judicata* between the States parties to it, only one of which is a Party to the present proceedings. Moreover the Court's decision on what was in 1917 the principal question respecting the responsibilities of Nicaragua in

entering into the Bryan-Chamorro Treaty and its effect on El Salvador's rights in the Gulf, is in any event not relevant to the case before this Chamber.

403. In truth, however, the question of the existence or not of a *res judicata* arising from a case with two parties is not helpful in a case raising a question of a joint sovereignty of three coastal States. This is indeed confirmed by the fact of Nicaragua's having sought, and been granted, a right to intervene precisely on this question of the legal position of the Gulf waters. The position, therefore, is that the Chamber should take the 1917 Judgement into account as a relevant precedent decision of a competent court, and as, in the words of Article 38 of the Court's Statute, "a subsidiary means for the determination of rules of law". In short, the Chamber must make up its own mind on the status of the waters of the Gulf, taking such account of the 1917 decision as it appears to the Chamber to merit.

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404. The opinion of the Chamber on the particular régime of the historic waters of the Gulf parallels the opinion expressed in the 1917 Judgement of the Central American Court of Justice. The Chamber finds that the Gulf waters, other than the 3-mile maritime belts, are historic waters and subject to a joint sovereignty of the three coastal States. The Court in 1917 also excluded from the condominium the waters delimited in 1900 between Honduras and Nicaragua; this delimitation will be considered below (paragraph 413).

405. The reasons for this conclusion, apart from the reasons and effect of the 1917 decision of the Central American Court of Justice, are the following: as to the historic character of the Gulf waters, the consistent claims of the three coastal States, and the absence of protest from other States. As to the character of rights in the waters of the Gulf: those waters were waters of a single-State bay during the greater part of their known history. They were, during the colonial period, and even during the period of the Federal Republic of Central America not divided or apportioned between the different administrative units which at that date became the three coastal States of El Salvador, Honduras and Nicaragua. There was no attempt to divide and delimit those waters according to the principle of *uti possidetis juris*. The Chamber has been much struck at the fundamental difference, in this respect, between the land areas it has had to deal with, and this maritime area. The delimitation effected between Nicaragua and Honduras in 1900, quoted in the Chamber's Judgment on the intervention of Nicaragua (*I.C.J. Reports 1990*, pp. 101-102, para. 26) which was substantially an application of the method of equidistance, gives no clue that it was in any way inspired by the application of the

uti possidetis juris to the waters. It is evident that the Mixed Commission responsible for that delimitation based its work on the land boundaries on 17th and 18th century titles, but simply took it as axiomatic that "there belonged to each State that part of the Gulf or Bay of Fonseca adjacent to its coasts" (*Límites Definitivos entre Honduras y Nicaragua*, Honduran Ministry of Foreign Affairs, 1938, p. 24). 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 juris* itself.

406. It is noteworthy that Honduras, whilst arguing against the condominium, evidently formed the view that, given the historical, geographical and political situation of the Gulf of Fonseca, it is not sufficient simply to reject the condominium. Accordingly, Honduras proposes another and alternative idea: that of a "community of interests" or of "interest" as expounded in the Judgment of the Permanent Court of International Justice in the case of the *Territorial Jurisdiction of the International Commission of the River Oder* of 1929 (Judgment No. 16, 1929, *P.C.I.J., Series A, No. 23*, p. 27), concerning navigation rights when "a single waterway traverses or separates the territory of more than one State"; in which situation,

> "a solution of the problem has been sought not in the idea of a right of passage for upstream States, but in that of a community of interest of riparian States".

The Judgment goes on:

> "This community of interest in a navigable river becomes the basis of a common legal right *[communauté de droit]*, the essential features of which are the perfect equality of all riparian States in the user of the whole course of the river and the exclusion of any preferential privilege of any one riparian State in relation to the others."

407. That there is a community of interest of the three coastal States of the Gulf is not open to doubt. It seems odd, however, to postulate a community of interest régime as an argument against a condominium régime; 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". And it is interesting to note how the language of common interest, with its emphasis on a community comes so near to the language employed by the Central American Court of Justice in its 1917 Judgement. The community of interest argument, however, is important and valuable in demonstrating an awareness that a mere delimitation of these narrow waters into separate and unqualified sovereignties, and without other arrangements such as rights of passage, might give rise to great practical difficulties.

408. The essential feature of the "community of interests" which, according to Honduras, exists in respect of the waters of the Gulf, and the feature which distinguishes it from the *"condominio"* ("co-ownership") referred to by the Central American Court of Justice, or the "condominium" insisted on by El Salvador on the basis of the Judgement of that Court, is that the "community of interests" does not merely permit of a delimitation of the waters but necessitates such a delimitation. Honduras emphasizes that there is in its view a community of interests, not a *communauté de patrimoines*, in the waters, that each State remains master of its own area of jurisdiction. Therefore, according to Honduras, while delimitation is incompatible with the continued existence of a condominium, a community of interests, on the contrary, presupposes delimitation. The community of interests implies, it is said, that each of the coastal States of the Gulf of Fonseca, because it is a coastal State, has an equal right with the other States to have defined maritime spaces attributed to it, over which it can exercise the competences conferred on it by international law. Honduras backs this argument by citing the difficulties and delays in achieving any measures of co-operative action by the three States in the Gulf, and the various incidents involving the vessels and naval forces of the Parties in the waters of the Gulf which, it suggests, are attributable to the uncertainties resulting from the absence of any delimitation of the waters between them.

409. In the arguments of the Parties before the Chamber, the question of whether the legal situation of the waters of the Gulf is such as to permit or require a delimitation has at times not been clearly distinguished from the different question whether the Chamber has been given jurisdiction to effect a delimitation. El Salvador asserts that

> "The juridical situation of the Gulf of Fonseca, derived from its particular individual nature, does not permit the dividing up of the waters held in condominium precisely because what was in issue was not the recognition of common ownership of an object which is capable of being divided up but rather the definition of an object which had, for geographical reasons, an indivisible character given its configuration and dimensions."

It is however not suggesting that the waters subject to joint sovereignty cannot be divided, if there is agreement to do so. Condominia can cease to exist given the necessary agreement. What El Salvador maintains is that a decision on the status of the waters of the Gulf, including the position of the 1917 Judgement, is an essential prerequisite to the process of delimitation which can then be negotiated on a realistic basis. Account must be taken of the fact that the geographical situation of the Gulf, which underlies the juridical status of the waters, is such that mere delimitation without agreement on questions of passage and access would leave many practical problems unsolved. It is not easy to conceive of a satisfactory final solution without the participation of all three States together in the

creation of a suitable régime, whether or not including delimitation of separate areas of internal waters.

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410. If the Gulf is an historic bay, it is necessary to determine the closing line of the waters of the bay. The normal geographical closing line for the waters of the Gulf of Fonseca would be the line Punta Amapala to Punta Cosigüina. This seems to have been the closing line recognized by the three coastal States in practice. It is, moreover, the closing line referred to in the 1917 Judgement (*loc. cit.*, p. 706). It had not been necessary to say more, had not El Salvador elaborated a thesis of an "inner Gulf" and an "outer Gulf", based on the reference in the Judgement of 1917, to an inner closing line from Punta Chiquirin, through Meanguera and Meanguerita, to Punta Rosario. The purpose of El Salvador's reference to this inner line, in its argument before the Chamber, was apparently to suggest that the Honduran legal interest in the Gulf waters was limited to the area inside the inner line, the remainder being left to El Salvador and Nicaragua. But there is nothing in the Judgement of the Central American Court of Justice to support this. There is no suggestion in that Judgement that Honduras was excluded from the waters between that inner line and the outer closing line subject to the régime of condominium found by the Court.

411. A word more needs to be said about the closing line proper, from Punta Amapala to Punta Cosigüina. This was constantly referred to in the argument of the Parties and of the intervening State, and geographically it is obviously the outer limit of the Gulf. There was also considerable argument between the Parties about whether this closing line is also a baseline. El Salvador thought not and sought to define it simply as a line depicting the ocean limit of the Gulf of Fonseca. The Chamber is content with that paraphrase of the words "closing line", but has difficulty in understanding how, if this line is the Gulf's ocean limit, it can escape being also the baseline for whatever régime lies beyond it, which must be different from that of the Gulf.

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412. As to the legal status of the waters, inside the Gulf closing line, and other than the 3-mile maritime belts, the 1917 Judgement had no difficulty in referring to them as "territorial"; meaning thereby not territorial sea but waters that were not international and were on historical grounds claimed *à titre de souverain* by the three coastal States. Are they, therefore, in terms of the modern law, and as Honduras argued, "internal waters"?

There are some difficulties in using this term which is apt to a single-State historic bay, but is not free from complications when applied to a pluri-State historic bay. Since the practice of the three coastal States still accepts that there are the littoral maritime belts subject to the single sovereignty of each of the coastal States, but with mutual rights of innocent passage, there must also be rights of passage through the remaining waters of the Gulf, not only for historical reasons but because of the practical necessities of a situation where those narrow Gulf waters comprise the channels used by vessels seeking access to any one of the three coastal States. Accordingly, these rights of passage must be available to vessels of third States seeking access to a port in any one of the three coastal States; such rights of passage being essential in a three-State bay with entrance channels that must be common to all three States. The Gulf waters are therefore, if indeed internal waters, internal waters subject to a special and particular régime, not only of joint sovereignty but of rights of passage. It might, therefore, be sensible, to regard the waters of the Gulf, insofar as they are the subject of the condominium or co-ownership, as *sui generis*. No doubt, if the waters were delimited, they would then become "internal" waters of each of the States; but even so presumably they would need to be subject to the historic and necessary rights of innocent passage, so they would still be internal waters in a qualified sense. Nevertheless, the essential juridical status of these waters is the same as that of internal waters, since they are claimed *à titre de souverain* and, though subject to certain rights of passage, they are not territorial sea.

413. It is necessary now also to take account of the fact that there were two exceptions to the area of joint sovereignty which were already in existence at the time of the 1917 Judgement, and recognized in that Judgement: the 3-mile belt of exclusive jurisdiction enjoyed by each of the States along its coast; and the Honduran/Nicaraguan delimitation line adopted by a Mixed Commission on 12 June 1900, the Mixed Commission having been appointed under the Gámez-Bonilla Treaty of 1884. The existence of this latter line, which terminates well short of the closing line of the Gulf, was described in the 1917 Judgement (*AJIL* trans., p. 710). El Salvador made a qualified recognition of the drawing of this line when, in 1916, the Foreign Minister of El Salvador observed that it had no objection to make against the "validity of the Agreement" nor against "the corresponding limitation of jurisdictions between Honduras and Nicaragua in the waters of the Gulf, to the extent that it affected only the legal relations of those two Republics"; but adding that it could not admit that this "partial division of the patrimony could result in the annulment of the rights of condominium that belong to El Salvador in the waters of the

Gulf". Before the Central American Court it claimed that *". . . este acto se llevó a cabo sin intervención de El Salvador, indispensable para su validez y práctica efectividad . . ."* (CJC, *Sentencia*, p. 8) (". . . that act was brought about without the intervention of El Salvador, and such intervention was essential to its validity and practical effect . . .", *AJIL* trans., p. 678). In the present proceedings it has emphasized that the Treaty by which the delimitation was effected is not binding on El Salvador; but it has claimed in its submissions that the legal situation of the maritime spaces corresponds to the legal position "established by" the 1917 Judgement. The Judgement of the Central American Court was that "with the exception of that part (i.e., the part divided in 1900) the rest of the waters have remained undivided and in a state of community between El Salvador and Nicaragua" (*AJIL* trans., p. 711); the 1917 Judgement is referred to in the 1983 Constitution of El Salvador. The Chamber concludes that the existence of the delimitation has been accepted by El Salvador in the terms indicated in the 1917 Judgement.

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414. If the condominium could, by an agreement, be substituted as Honduras evidently desires by the delimitation of separate areas of sovereignty, the question may be asked in what practical ways that process of delimitation would be at all affected by the fact that the waters were subject to a régime of a condominium rather than being simply undelimited waters. The existence of the joint sovereignty in all that area of waters other than those subject to the treaty or customary delimitations means that Honduras has existing legal rights (not merely an interest) in the Gulf waters up to the bay closing line, subject of course to the equivalent rights of El Salvador and Nicaragua. This position of principle cannot but endorse Honduras's case that any eventual delimitation should not assume that the rights of Honduras are in some way confined to the back of the Gulf; and this as will be seen below must have certain consequences also for the waters outside the Gulf.

* *

415. The question of the waters outside the Gulf involves entirely new concepts of law unthought of in 1917; in particular, continental shelf and the exclusive economic zone, both emanations of the last few decades. There is also, however, a prior question about territorial sea; and although, as mentioned above, the legal régime of the territorial sea was still a matter of some debate in 1917, the existence of a maritime belt of sovereign waters and subsoil was already established. There is already the 3-mile maritime littoral belt of exclusive jurisdiction within the Gulf, recognized by the 1917 Judgement, and long established as a practical

reality in the practice of the coastal States. Can there nevertheless be a further belt of territorial sea in the sense of the modern law, of up to 12-miles breadth, outside the closing line of the Gulf? This question is no doubt the reason why the closely related question whether the line between Punta Cosigüina and Punta Amapala is also a baseline was so strenuously contested before the Chamber, El Salvador contending that it is not a baseline, and Honduras contending that it is a baseline.

416. That a State cannot have two territorial seas off the same littoral is manifest. The question arises, however, whether the littoral maritime belts of 1 marine league along the coastlines of the Gulf are truly territorial seas in the sense of the modern law of the sea. In the view of the Chamber they are not. For a territorial sea normally has beyond it the continental shelf, and either waters of the high seas (in some cases with a contiguous zone of jurisdiction) or an exclusive economic zone. The maritime belts within the Gulf do not have outside them any of these areas. In fact it is the closing line of the Gulf which constitutes "the coast", in the sense of a territorial sea baseline; and this would seem to be so whether the Gulf waters are regarded as subject to joint sovereignty, or indeed, as Honduras would have it, as waters subject to undelimited separate sovereignties subject to a community of interest. 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 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.

417. There is therefore a territorial sea proper, seawards of the closing line of the Gulf. There can be no serious doubt that the closing line of an historic bay is the baseline of the territorial sea. To hold otherwise would be incompatible with the legal status of a bay.

418. Given that there is a condominium of the waters of the Gulf, it follows that there is a tri-partite presence at the closing line and that Honduras is not locked out from rights in respect of the ocean waters outside the bay. This also seems equitable. Honduras has by far the longest coastline of the Gulf and the only Gulf coastline facing the Ocean. If the Punta Amapala/Punta Cosigüina closing line is a baseline, there are within the Gulf no territorial seas of the other two States which would operate to lock Honduras into the back of the bay. The exclusive littoral maritime belts within the Gulf have remained limited to 3 miles in

breadth, and, as both Parties agree, are not territorial seas, but internal waters subject to a single, exclusive sovereignty. It is therefore only seaward of the Gulf's closing line that modern territorial seas can exist. To hold that there could now be territorial seas within the Gulf would be incompatible with the Gulf's waters being waters of an historic bay, which the Parties and the intervening State agree to be the legal position. And if the waters internal to that bay are subject to a threefold joint sovereignty, it is the *three* coastal States that are entitled to territorial sea without the bay.

419. What then is the legal régime of the waters, seabed and subsoil off the closing line of the Gulf of Fonseca? First let it be said that the problem, whether of the territorial sea, the contiguous zone, the continental shelf, or the exclusive economic zone, must be confined to the area off the baseline but excluding a 3-mile, or 1-marine-league, strip of it at either extremity, corresponding to the existing maritime belts of El Salvador and Nicaragua respectively. As to the waters outside the remainder of the baseline, what is their present juridical status? At the time of the Central American Court of Justice's decision in 1917, these waters, though not mentioned in the Judgement, were high seas. Certainly the Court made no finding as to the condominium extending beyond the closing line of the Gulf. Nevertheless the modern law of the sea has added territorial sea extending from the baseline, i.e., the low-water mark or the closing line of waters claimed in sovereignty; has recognized continental shelf as extending beyond the territorial sea and belonging *ipso jure* to the coastal State; and confers a right on the coastal State to claim an exclusive economic zone extending up to 200 miles from the baseline of the territorial sea.

420. There can be no question that this law applying to the seas and seabed and subsoil off a coast, applies now to the area off the Gulf of Fonseca; and that, as always, the entitlement to these rights depends upon and reflects the territorial position of the coast to which the rights are appurtenant. The coast of a bay is for this purpose the closing line of the bay, for the waters inside are claimed in sovereignty. Since the legal situation on the landward side of the closing line is one of joint sovereignty, it follows that all three of the joint sovereigns must have entitlement outside the closing line to territorial sea, continental shelf and exclusive economic zone. This must be so, both in respect of continental shelf rights belonging *ipso jure* to the three coastal States, and in respect of an exclusive economic zone which requires proclamation. Whether this situation should remain in being, or be replaced by a division and delimitation into three separate zones is, as inside the Gulf also, a matter for the three States to decide. Any such delimitation of maritime

areas will fall to be effected by agreement on the basis of international law.

* * *

421. The Chamber recalls that this case is the first in the history of the Court and its predecessor in which a third State has been permitted to intervene in accordance with Article 62 of the Statute. In its Judgment of 13 September 1990 giving permission to intervene, the Chamber considered it appropriate "to give some indication of the procedural rights acquired by the intervening State as a result of that permission" (*I.C.J. Reports 1990*, p. 135, para. 102). Similarly, at the present stage, it appears appropriate for the Chamber to make some observations on the effect of the present Judgment for the intervening State. The terms on which intervention was granted, as stated in paragraph 102 of the 1990 Judgment, were that Nicaragua would not, as intervening State, become party to the proceedings. The binding force of the present Judgment for the Parties, as contemplated by Article 59 of the Statute of the Court, does not therefore extend also to Nicaragua as intervener.

422. In its Application for permission to intervene (para. 6) Nicaragua stated that it "intends to subject itself to the binding effect of the decision to be given", that is to say the decision in the main proceedings, and in its Judgment authorizing the intervention the Chamber formally took note of that statement (*I.C.J. Reports 1990*, p. 109, para. 38). However, in its written statement, presented to the Chamber in its capacity as intervening State, Nicaragua stated its position as follows:

> "It is the understanding of Nicaragua that as a non-party in this case, it cannot be affected by the decision of the Chamber on the merits. As a non-party Nicaragua is under the protection of Article 59 of the Statute of the Court and the right it has acquired by having its Application admitted is fundamentally the right to be heard by the Chamber. With respect to Nicaragua, the decision to be rendered by the Chamber on the merits will remain *res inter alios acta*. Nicaragua understands that this is the clear meaning of paragraph 102 of the Judgment of 13 September 1990 . . ." (Para. 37.)

Nicaragua thus does not now regard itself as obligated to treat the Judgment as binding upon it.

423. The Chamber considers that it is correct that a State permitted to intervene under Article 62 of the Statute, but which does not acquire the status of party to the case, is not bound by the Judgment given in the proceedings in which it has intervened. As the Chamber observed in its Judgment of 13 September 1990:

> "the intervening State does not become party to the proceedings, and does not acquire the rights, or become subject to the obligations,

which attach to the status of a party, under the Statute and Rules of Court, or the general principles of procedural law" (*I.C.J. Reports 1990*, pp. 135-136, para. 102).

In these circumstances, the right to be heard, which the intervener does acquire, does not carry with it the obligation of being bound by the decision.

424. The question however remains of the effect, if any, to be given to the statement made in Nicaragua's Application for permission to intervene that it "intends to submit itself to the binding effect of the decision to be given". In the Chamber's Judgment of 13 September 1990, emphasis was laid on the need, if an intervener is to become a party, for the consent of the existing parties to the case, either consent *ad hoc* or in the form of a pre-existing link of jurisdiction. This is essential because the force of *res judicata* does not operate in one direction only: if an intervener becomes a party, and is thus bound by the judgment, it becomes entitled equally to assert the binding force of the judgment against the other parties. A non-party to a case before the Court, whether or not admitted to intervene, cannot by its own unilateral act place itself in the position of a party, and claim to be entitled to rely on the judgment against the original parties. In the present case, El Salvador requested the Chamber to deny the permission to intervene sought by Nicaragua; and neither Party has given any indication of consent to Nicaragua's being recognized to have any status which would enable it to rely on the Judgment. The Chamber therefore concludes that in the circumstances of the present case, this Judgment is not *res judicata* for Nicaragua.

* *

425. For the reasons set out in the present Judgment, in particular paragraphs 68 to 103 thereof,

THE CHAMBER,

Unanimously,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the first sector of their common frontier not described in Article 16 of the General Treaty of Peace signed by the Parties on 30 October 1980, is as follows:

From the international tripoint known as El Trifinio on the summit of the Cerro Montecristo (point A on Map No. I[1] annexed; co-ordinates: 14° 25′ 10″ N, 89° 21′ 20″ W), the boundary runs in a generally easterly

[1] A copy of this map will be found in a pocket at the end of this fascicle or inside the back cover of the volume of *I.C.J. Reports 1992*. *[Note by the Registry.]*

direction along the watershed between the rivers Frío or Sesecapa and Del Rosario as far as the junction of this watershed with the watershed of the basin of the *quebrada* de Pomola (point B on Map No. I annexed; co-ordinates: 14° 25′ 05″ N, 89° 20′ 41″ W); thereafter in a north-easterly direction along the watershed of the basin of the *quebrada* de Pomola until the junction of this watershed with the watershed between the *quebrada* de Cipresales and the *quebrada* del Cedrón, Peña Dorada and Pomola proper (point C on Map No. I annexed; co-ordinates: 14° 25′ 09″ N, 89° 20′ 30″ W); from that point, along the last-named watershed as far as the intersection of the centre-lines of the *quebradas* of Cipresales and Pomola (point D on Map No. I annexed; co-ordinates: 14° 24′ 42″ N, 89° 18′ 19″ W); thereafter, downstream along the centre-line of the *quebrada* de Pomola, until the point on that centre-line which is closest to the boundary marker of Pomola at El Talquezalar; and from that point in a straight line as far as that marker (point E on Map No. I annexed; co-ordinates: 14° 24′ 51″ N, 89° 17′ 54″ W); from there in a straight line in a south-easterly direction to the boundary marker of the Cerro Piedra Menuda (point F on Map No. I annexed; co-ordinates: 14° 24′ 02″ N, 89° 16′ 40″ W), and thence in a straight line to the boundary marker of the Cerro Zapotal (point G on Map No. I annexed; co-ordinates: 14° 23′ 26″ N, 89° 14′ 43″ W); for the purposes of illustration, the line is indicated on Map No. I annexed.

426. For the reasons set out in the present Judgment, in particular paragraphs 104 to 127 thereof,

THE CHAMBER,

Unanimously,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the second sector of their common frontier not described in Article 16 of the General Treaty of Peace signed by the Parties on 30 October 1980, is as follows:

From the Peña de Cayaguanca (point A on Map No. II[1] annexed; co-ordinates: 14° 21′ 54″ N, 89° 10′ 11″ W), the boundary runs in a straight line somewhat south of east to the Loma de Los Encinos (point B on Map No. II annexed; co-ordinates: 14° 21′ 08″ N, 89° 08′ 54″ W), and from there in a straight line to the hill known as El Burro or Piedra Rajada (point C on Map No. II annexed; co-ordinates: 14° 22′ 46″ N, 89° 07′ 32″ W); from there the boundary runs in a straight line to the head of the *quebrada* Copantillo, and follows the middle of the *quebrada* Copantillo downstream to its confluence with the river Sumpul (point D on Map No. II annexed; co-ordinates: 14° 24′ 12″ N, 89° 06′ 07″ W), and then follows the middle of the river Sumpul downstream to its confluence

[1] A copy of this map will be found in a pocket at the end of this fascicle or inside the back cover of the volume of *I.C.J. Reports 1992. [Note by the Registry.]*

with the *quebrada* Chiquita or Oscura (point E on Map No. II annexed; co-ordinates: 14° 20′ 25″ N, 89° 04′ 57″ W); for the purposes of illustration, the line is indicated on Map No. II annexed.

427. For the reasons set out in the present Judgment, in particular paragraphs 128 to 185 thereof,

THE CHAMBER,

Unanimously,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the third sector of their common frontier not described in Article 16 of the General Treaty of Peace signed by the Parties on 30 October 1980, is as follows:

From the Pacacio boundary marker (point A on Map No. III[1] annexed; co-ordinates: 14° 06′ 28″ N, 88° 49′ 18″ W) along the río Pacacio upstream to a point (point B on Map No. III annexed; co-ordinates: 14° 06′ 38″ N, 88° 48′ 47″ W), west of the Cerro Tecolate or Los Tecolates; from there up the *quebrada* to the crest of the Cerro Tecolate or Los Tecolates (point C on Map No. III annexed; co-ordinates: 14° 06′ 33″ N, 88° 48′ 18″ W), and along the watershed of this hill as far as a ridge approximately 1 kilometre to the north-east (point D on Map No. III annexed; co-ordinates: 14° 06′ 48″ N, 88° 47′ 52″ W); from there in an easterly direction to the neighbouring hill above the source of the Torrente La Puerta (point E on Map No. III annexed; co-ordinates: 14° 06′ 48″ N, 88° 47′ 31″ W) and down that stream to where it meets the river Gualsinga (point F on Map No. III annexed; co-ordinates: 14° 06′ 19″ N, 88° 47′ 01″ W); from there the boundary runs along the middle of the river Gualsinga downstream to its confluence with the river Sazalapa (point G on Map No. III annexed; co-ordinates: 14° 06′ 12″ N, 88° 46′ 58″ W), and thence upstream along the middle of the river Sazalapa to the confluence of the *quebrada* Llano Negro with that river (point H on Map No. III annexed; co-ordinates: 14° 07′ 11″ N, 88° 44′ 21″ W); from there south-eastwards to the top of the hill (point I on Map No. III annexed; co-ordinates: 14° 07′ 01″ N, 88° 44′ 07″ W), and thence south-eastwards to the crest of the hill marked on the map as a spot height of 1,017 metres (point J on Map No. III annexed; co-ordinates: 14° 06′ 45″ N, 88° 43′ 45″ W); from there the boundary, inclining still more to the south, runs through the triangulation point known as La Cañada (point K on Map No. III annexed; co-ordinates: 14° 06′ 00″ N, 88° 43′ 52″ W) to the ridge joining the hills indicated on the map as Cerro El Caracol and Cerro El Sapo (through point L on Map No. III annexed; co-ordinates: 14° 05′ 23″ N, 88° 43′ 47″ W) and

[1] A copy of this map will be found in a pocket at the end of this fascicle or inside the back cover of the volume of *I.C.J. Reports 1992. [Note by the Registry.]*

from there to the feature marked on the map as the Portillo El Chupa Miel (point M on Map No. III annexed; co-ordinates: 14° 04′ 35″ N, 88° 44′ 10″ W); from there, following the ridge, to the Cerro El Cajete (point N on Map No. III annexed; co-ordinates: 14° 03′ 55″ N, 88° 44′ 20″ W), and thence to the point where the present-day road from Arcatao to Nombre de Jesús passes between the Cerro El Ocotillo and the Cerro Lagunetas (point O on Map No. III annexed; co-ordinates: 14° 03′ 18″ N, 88° 44′ 16″ W); from there south-eastwards to the crest of a hill marked on the map as a spot height of 848 metres (point P on Map No. III annexed; co-ordinates: 14° 02′ 58″ N, 88° 43′ 56″ W); from there slightly south of eastwards to a *quebrada* and down the bed of the *quebrada* to its junction with the Gualcuquín river (point Q on Map No. III annexed; co-ordinates: 14° 02′ 42″ N, 88° 42′ 34″ W); the boundary then follows the middle of the Gualcuquín river downstream to the Poza del Cajón (point R on Map No. III annexed; co-ordinates: 14° 01′ 28″ N, 88° 41′ 10″ W); for purposes of illustration, this line is shown on Map No. III annexed.

428. For the reasons set out in the present Judgment, in particular paragraphs 186 to 267 thereof,

THE CHAMBER,

By four votes to one,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the fourth sector of their common frontier not described in Article 16 of the General Treaty of Peace signed by the Parties on 30 October 1980, is as follows:

From the source of the Orilla stream (point A on Map No. IV[1] annexed; co-ordinates: 13° 53′ 46″ N, 88° 20′ 36″ W) the boundary runs through the pass of El Jobo to the source of the Cueva Hedionda stream (point B on Map No. IV annexed; co-ordinates: 13° 53′ 39″ N, 88° 20′ 20″ W), and thence down the middle of that stream to its confluence with the river Las Cañas (point C on Map No. IV annexed; co-ordinates: 13° 53′ 19″ N, 88° 19′ 00″ W), and thence following the middle of the river upstream as far as a point (point D on Map No. IV annexed; co-ordinates: 13° 56′ 14″ N, 88° 15′ 33″ W) near the settlement of Las Piletas; from there eastwards over a col indicated as point E on Map No. IV annexed (co-ordinates: 13° 56′ 19″ N, 88° 14′ 12″ W), to a hill indicated as point F on Map No. IV annexed (co-ordinates: 13° 56′ 11″ N,

[1] A copy of this map will be found in a pocket at the end of this fascicle or inside the back cover of the volume of *I.C.J. Reports 1992. [Note by the Registry.]*

88° 13′ 40″ W), and then north-eastwards to a point on the river Negro or Pichigual (marked G on Map No. IV annexed; co-ordinates: 13° 57′ 12″ N, 88° 13′ 11″ W); downstream along the middle of the river Negro or Pichigual to its confluence with the river Negro-Quiagara (point H on Map No. IV annexed; co-ordinates: 13° 59′ 37″ N, 88° 14′ 18″ W); then upstream along the middle of the river Negro-Quiagara as far as the Las Pilas boundary marker (point I on Map No. IV annexed; co-ordinates: 14° 00′ 02″ N, 88° 06′ 29″ W), and from there in a straight line to the Malpaso de Similatón (point J on Map No. IV annexed; co-ordinates: 13° 59′ 28″ N, 88° 04′ 22″ W); for the purposes of illustration, the line is indicated on Map No. IV annexed.

IN FAVOUR: *Judge* Sette-Camara, *President of the Chamber*; *President* Sir Robert Jennings; *Vice-President* Oda; *Judge* ad hoc Torres Bernárdez;

AGAINST: *Judge* ad hoc Valticos.

429. For the reasons set out in the present Judgment, in particular paragraphs 268 to 305 thereof,

THE CHAMBER,

Unanimously,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the fifth sector of their common frontier not described in Article 16 of the General Treaty of Peace signed by the Parties on 30 October 1980, is as follows:

From the confluence with the river Torola of the stream identified in the General Treaty of Peace as the *quebrada* de Mansupucagua (point A on Map No. V[1] annexed; co-ordinates: 13° 53′ 59″ N, 87° 54′ 30″ W) the boundary runs upstream along the middle of the river Torola as far as its confluence with a stream known as the *quebrada* del Arenal or *quebrada* de Aceituno (point B on Map No. V annexed; co-ordinates: 13° 53′ 50″ N, 87° 50′ 40″ W); thence up the course of that stream as far as a point at or near its source (point C on Map No. V annexed; co-ordinates: 13° 54′ 30″ N, 87° 50′ 20″ W), and thence in a straight line somewhat north of east to a hill some 1,100 metres high (point D on Map No. V annexed; co-ordinates: 13° 55′ 03″ N, 87° 49′ 50″ W); thence in a straight line to a hill near the river Unire (point E on Map No. V annexed; co-ordinates: 13° 55′ 16″ N, 87° 48′ 20″ W), and thence to the nearest point on the river Unire; downstream along the middle of that river to the point known as the Paso de Unire (point F on Map No. V annexed; co-ordinates:

[1] A copy of this map will be found in a pocket at the end of this fascicle or inside the back cover of the volume of *I.C.J. Reports 1992*. *[Note by the Registry.]*

13° 52′ 07″ N, 87° 46′ 01″ W); for the purposes of illustration, the line is indicated on Map No. V annexed.

430. For the reasons set out in the present Judgment, in particular paragraphs 306 to 322 thereof,

THE CHAMBER,

Unanimously,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the sixth sector of their common frontier not described in Article 16 of the General Treaty of Peace signed by the Parties on 30 October 1980, is as follows:

From the point on the river Goascorán known as Los Amates (point A on Map No. VI[1] annexed; co-ordinates: 13° 26′ 28″ N, 87° 43′ 25″ W), the boundary follows the course of the river downstream, in the middle of the bed, to the point where it emerges in the waters of the Bahia La Unión, Gulf of Fonseca, passing to the north-west of the Islas Ramaditas, the co-ordinates of the endpoint in the bay being 13° 24′ 26″ N, 87° 49′ 05″ W; for the purposes of illustration, the line is indicated on Map No. VI annexed.

431. For the reasons set out in the present Judgment, in particular paragraphs 323 to 368 thereof,

THE CHAMBER,

(1) By four votes to one,

Decides that the Parties, by requesting the Chamber, in Article 2, paragraph 2, of the Special Agreement of 24 May 1986, "to determine the legal situation of the islands . . .", have conferred upon the Chamber jurisdiction to determine, as between the Parties, the legal situation of all the islands of the Gulf of Fonseca; but that such jurisdiction should only be exercised in respect of those islands which have been shown to be the subject of a dispute;

IN FAVOUR: *Judge* Sette-Camara, *President of the Chamber*; *President* Sir Robert Jennings; *Vice-President* Oda; *Judge* ad hoc Valticos;

AGAINST: *Judge* ad hoc Torres Bernárdez.

(2) *Decides* that the islands shown to be in dispute between the Parties are:

[1] A copy of this map will be found in a pocket at the end of this fascicle or inside the back cover of the volume of *I.C.J. Reports 1992. [Note by the Registry.]*

(i) by four votes to one, El Tigre;

IN FAVOUR: *Judge* Sette-Camara, *President of the Chamber*; *President* Sir Robert Jennings; *Vice-President* Oda; *Judge* ad hoc Valticos;

AGAINST: *Judge* ad hoc Torres Bernárdez;

(ii) unanimously, Meanguera and Meanguerita.

(3) Unanimously,

Decides that the island of El Tigre is part of the sovereign territory of the Republic of Honduras.

(4) Unanimously,

Decides that the island of Meanguera is part of the sovereign territory of the Republic of El Salvador.

(5) By four votes to one,

Decides that the island of Meanguerita is part of the sovereign territory of the Republic of El Salvador;

IN FAVOUR: *Judge* Sette-Camara, *President of the Chamber*; *President* Sir Robert Jennings; *Vice-President* Oda; *Judge* ad hoc Valticos;

AGAINST: *Judge* ad hoc Torres Bernárdez.

432. For the reasons set out in the present Judgment, in particular paragraphs 369 to 420 thereof,

THE CHAMBER,

(1) By four votes to one,

Decides that the legal situation of the waters of the Gulf of Fonseca is as follows: the Gulf of Fonseca is an historic 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, jointly, 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; the waters at the central portion of the closing line of the Gulf, that is to say, between a point on that line 3 miles (1 marine league) from Punta Amapala and a point on that line 3 miles (1 marine league) from Punta Cosigüina, are subject to the joint entitlement of all three

States of the Gulf unless and until a delimitation of the relevant maritime area be effected;

IN FAVOUR: *Judge* Sette-Camara, *President of the Chamber*; *President* Sir Robert Jennings; *Judge* ad hoc Valticos; *Judge* ad hoc Torres Bernárdez;

AGAINST: *Vice-President* Oda.

(2) By four votes to one,

Decides that the Parties, by requesting the Chamber, in Article 2, paragraph 2, of the Special Agreement of 24 May 1986, "to determine the legal situation of the . . . maritime spaces", have not conferred upon the Chamber jurisdiction to effect any delimitation of those maritime spaces, whether within or outside the Gulf;

IN FAVOUR: *Judge* Sette-Camara, *President of the Chamber*; *President* Sir Robert Jennings; *Vice-President* Oda; *Judge* ad hoc Valticos;

AGAINST: *Judge* ad hoc Torres Bernárdez.

(3) By four votes to one,

Decides that the legal situation of the waters outside the Gulf is that, the Gulf of Fonseca being an historic bay with three coastal States, the closing line of the Gulf constitutes the baseline of the territorial sea; the territorial sea, continental shelf and exclusive economic zone of El Salvador and those of Nicaragua off the coasts of those two States are also to be measured outwards from a section of the closing line extending 3 miles (1 marine league) along that line from Punta Amapala (in El Salvador) and 3 miles (1 marine league) from Punta Cosigüina (in Nicaragua) respectively; but entitlement to territorial sea, continental shelf and exclusive economic zone seaward of the central portion of the closing line appertains to the three States of the Gulf, El Salvador, Honduras and Nicaragua; and that any delimitation of the relevant maritime areas is to be effected by agreement on the basis of international law;

IN FAVOUR: *Judge* Sette-Camara, *President of the Chamber*; *President* Sir Robert Jennings; *Judge* ad hoc Valticos; *Judge* ad hoc Torres Bernárdez;

AGAINST: *Vice-President* Oda.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this eleventh day of September, one thousand nine hundred and ninety-two, in four copies, one of which will be placed in the archives of the Court and the others transmitted to the Gov-

ernment of the Republic of El Salvador, the Government of the Republic of Honduras and the Government of the Republic of Nicaragua, respectively.

(Signed) José SETTE-CAMARA,
President of the Chamber.

(Signed) Eduardo VALENCIA-OSPINA,
Registrar.

Vice-President ODA appends a declaration to the Judgment of the Chamber.

Judges *ad hoc* VALTICOS and TORRES BERNÁRDEZ append separate opinions to the Judgment of the Chamber.

Vice-President ODA appends a dissenting opinion to the Judgment of the Chamber.

(Initialled) J.S.C.
(Initialled) E.V.O.
