

INTERNATIONAL COURT OF JUSTICE

***APPLICATION FOR REVISION OF THE JUDGMENT OF 11 SEPTEMBER 1992 IN THE CASE
CONCERNING THE LAND, ISLAND AND MARITIME FRONTIER DISPUTE
(EL SALVADOR/HONDURAS: NICARAGUA INTERVENING)
(EL SALVADOR v. HONDURAS)***

**COMMENTS OF THE GOVERNMENT OF HONDURAS ON THE DOCUMENTS WHOSE PRODUCTION
WAS AUTHORIZED BY THE CHAMBER ON 29 JULY 2003**

19 August 2003

[Translation by the Registry]

COMMENTS OF THE GOVERNMENT OF HONDURAS ON THE DOCUMENTS WHOSE PRODUCTION
WAS AUTHORIZED BY THE CHAMBER ON 29 JULY 2003

1. The Republic of Honduras has taken note of the decision of the Chamber in regard to the request submitted by El Salvador on 23 June 2003 pursuant to Article 56, paragraph 1 of the Rules of the Court to be permitted to produce a number of documents in the case concerning the *Application for Revision of the Judgment of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute* (El Salvador/Honduras: Nicaragua intervening) (*El Salvador v. Honduras*).

The Chamber, having heard the parties, acting under Article 56, paragraph 2, of the Rules of Court, decided to authorize El Salvador to produce the following documents:

- Documents I.1.-I.8 included, concerning “Implementation of the Judgment of the International Court of Justice of 11 September 1992”.
- Document III.1, namely the “Copy of the Order from the Outmost Excellent Viceroy about the reconnaissance of the coast of Nicaragua”.

The Chamber further decided not to authorize production of the certificate of the Director of the Madrid Naval Museum annexed to the Observations of Honduras of 10 July 2003.

2. The Republic of Honduras, in accordance with the authorization of the Chamber pursuant to Article 56, paragraph 3, of the Rules of Court, respectfully presents the following comments on the new documents which El Salvador has been authorized to produce:

A. Document I.1. “Official letter 94/02 from 27 August 2002, that the Minister of Foreign Affairs addresses to the Security Council”. This letter is consistent, from a formal point of view, with the public undertakings or obligations given by various Heads of States, both of El Salvador and of Honduras, in the joint declarations of 11 September 1992¹, 19 January 1998² and 27 August 1999³. Despite these encouraging promises, ten years later the harsh reality remains unchanged: words given and obligations entered into have not been followed by action. El Salvador has not executed the Judgment.

¹Annex 1. For example, paragraph 3 of the Joint Communiqué of 1992, which reads as follows: “Their intention to respect and to execute in good faith the Judgment given today by the International Court of Justice, which brings final closure to the *Land, Island and Maritime Frontier Dispute* between their respective States.”

²Annex 3, Vol. II of the Written Observations of Honduras, pp. 38-39. In the Agreement of 19 January 1998 for the Execution of the El Salvador-Honduras Border Demarcation Programme, the Heads of States declared:

“having resolved to demarcate the entire length of the land boundary defined by the General Peace Treaty of 1980, and in the sectors delimited by the Judgment of the International Court of Justice of 11 September 1992, HAVE AGREED AS FOLLOWS: . . . III. To allow the El Salvador-Honduras Special demarcation Commission a period of 12 months to demarcate all the sectors defined by the General Peace Treaty and the sectors delimited by the Judgment of the International Court of Justice of 11 September 1992, in accordance with the provisions of the manual and rules and procedures approved for the Honduras-El Salvador land boundary demarcation . . . VII. The present Agreement shall enter into force on the date of its signature.”

³*Ibidem*, p. 46. In their joint declaration of 27 August 1999, the Heads of States wrote

“THREE: Their decision to complete the demarcation of the land boundary within 12 months, from this day, in accordance with the provisions contained in the Agreement of 19 January 1998 on the Execution of the El Salvador-Honduras Border Demarcation Programme, according to the schedule jointly approved by the Special Demarcation Commission, . . .”

- B. Document I.2.** “Report from the Salvadorian press from 31 October 2002”. “The sign posting of the border with Honduras starts.” This press excerpt speaks for itself, and clearly indicates that “. . . the Presidents of El Salvador and Honduras **started yesterday** at 10.00 a.m. the frontier demarcation of the six ex-disputed land portions which jurisdiction was solved by the International Court of Justice of the Hague in September 1992” (emphasis added); that is to say, demarcation finally began over ten years behind schedule.
- C. Document I.3.** “Report from the Honduran press from 13 February 2003, “Demarcation of the Frontier with El Salvador.” This press excerpt illustrates a show of “good diplomacy” on the part of the President of Honduras, playing host to the President of El Salvador. Over and above its “good diplomacy”, Honduras has actively urged and encouraged dynamic execution of the Judgment by El Salvador, as can be seen from the press communiqué of the Ministry of Foreign Affairs of Honduras of 30 October 2002⁴.
- D. Document I.4.** “Official letter 80/03 from 19 February 2003, that the Minister of Foreign Affairs of El Salvador addresses to the Minister of Foreign Affairs of Honduras with attached documentation”. The suggestions of El Salvador in these documents, with a view to conveying the impression that it has acted in good faith and with the intention of executing the Judgment of 1992, have been placed in their true light by the letter of 12 March 2003 from Honduras to the Secretary-General of the Pan-American Institute of Geography and History, circulated under cover of Security Council document S/2003/430, paragraphs 2,3,4,5 and 6 whereof are quoted as a footnote hereunder⁵. Honduras could not and would not have been in a position to question the validity, clarity and legitimacy of the Judgment of 1992.
- E. Documents I.5., I.6., I.7., I.8.** only serve to confirm that there existed no basis or ground to delay further the demarcation of the land boundary, which was scheduled to begin three months after the Judgment was delivered, in accordance with the reciprocal international obligations entered upon by both El Salvador and Honduras.

⁴Annex 2.

⁵Annex 3.

“2. In article 6 of the Special Agreement between El Salvador and Honduras, signed in the city of Esquipulas, Guatemala, on 24 May 1986, submitting the land, island and maritime frontier dispute between the two States to a decision of the International Court of Justice, the Parties undertook to enforce the Chamber’s Judgment fully and in good faith. To that end, the Special Demarcation Commission established by them under the Agreement of 11 February 1986 was to begin demarcating the boundary line delimited by the Judgment no later than three months after the date of the Judgment and was to pursue its activities diligently until demarcation was complete.

3. In view of El Salvador’s unwillingness to perform the obligation assumed in article 6 of the Special Agreement, on 18 February 2002 the Government of Honduras was forced to request the intervention and assistance of the United Nations Security Council, under Article 94 (2) of the Charter, in giving effect to the Judgment.

4. Although 10 years had elapsed since the Judgment was rendered, on 16 September 2002 the Presidents of El Salvador and Honduras once again called on the El Salvador-Honduras Special Demarcation Commission to demarcate all sectors of the boundary delimited by the 1992 Judgment within 18 months.

5. In response to the President’s call, it was only in November 2002 that El Salvador began to make prior reconnaissance visits to the sectors delimited by the 1992 Judgment of the International Court of Justice

6. Since those prior reconnaissance visits began 10 years after the Judgment was rendered, it was not until November 2002 that small differences were noted between the coordinates fixed by the International Court of Justice and some geographical features to which those coordinates referred, a phenomenon inherent in land delimitations based on information provided by the parties during court proceedings.”

F. Document III.1. “Copy of the Order from the Outmost Excellent viceroy about the reconnaissance of the coast of Nicaragua”. Honduras has the following comments to make on that document:

- (a) The Spanish texts of the documents furnished by Honduras and El Salvador are identical, because they are both copies of the original held at the Madrid Naval Museum;
- (b) Notwithstanding the foregoing, Honduras expresses its regrets that the French translation appended in Annex 4 was inadequate and would like to extend its apologies to the Chamber for this unintentional and unfortunate situation, whilst attaching herewith a new translation of that document into French⁶;
- (c) The objective of including the document in question in Annex 4 of the *Written Observations of the Government of Honduras* was to establish beyond all doubt the objective of the expedition entrusted to the brigantine *El Activo*, and, in particular, the precise instruction given by the Viceroy to explore the Gulf of Amapala;
- (d) This document constitutes additional and relevant evidence of the truthfulness and authenticity of the documents prepared by the expedition of brigantine *El Activo*. The fact that El Salvador has produced an improved translation is, it would appear, a sign that it does not challenge its content.

3. The Republic of Honduras understands that the procedural right to call witnesses and experts to give evidence during the oral proceedings, in accordance with Article 57 of the Rules of Court, expired in mid-July 2003, and that no list had been communicated by that date. Honduras would further emphasize that, in the event that El Salvador should at any stage in the proceedings wish to call a witness or expert pursuant to Article 63, paragraph 1, of the Rules of Court, Honduras reserves its right to object thereto.

The Hague, 19 August 2003

(Signed) Julio Rendón BARNICA
Co-Agent of the Republic of Honduras.

⁶Annex 4.

JOINT COMMUNIQUÉ

The President of the Republic of El Salvador, Alfredo Félix Cristiani Burkard, and of the Republic of Honduras, Rafael Leonardo Callejas Romero, meeting at the border post of Amatillo on this eleventh day of September 1992, conscious of the rights, duties and obligations ensuing for El Salvador and Honduras from the Judgment delivered on this day by the International Court of Justice in the case concerning the *Land, Island and Maritime Frontier Dispute* between the two countries, hereby declare:

- The unshakable aspiration of their peoples and governments to peace, respect for the principles of international law and aims set out in the Charters of the United Nations Organization and of the Organization of American States, in particular with regard to the peaceful settlement of disputes.
- Their intention to respect and execute in good faith the Judgment given today by the International Court of Justice, which brings final closure to the *Land, Island and Maritime Frontier Dispute* between their respective States.
- Confirm their absolute conviction that the final solution to this historic procedure will contribute significantly to increasing levels of trust and consolidating peace and stability in the region, and that it will inspire the process of Central American integration, the ultimate aspiration of the peoples of the region.
- Reassert, against the background of a new phase in bilateral relations between the two countries which has begun today, their firm will and commitment to further strengthening the existing links and fraternal relations between their respective peoples, having regard to the fact that it opens new perspectives of development and co-operation on the basis of mutual benefit.
- Emphasize their shared creation of a Joint Commission responsible for addressing issues of a human nature which could arise as a consequence of the Judgment, in order to guarantee respect for the rights of the citizens of both countries in the areas concerned.
- Trusting in God and in their shared destiny of peace, democracy and development of their peoples, are confident that the example set by El Salvador and Honduras in solving their disputes in a civilized manner through reason and good sense, will contribute to greatly strengthening the principles of international law and to maintaining peace and international security.

Alfredo Felix Cristiani BURKARD
President of the Republic of
El Salvador

Rafael Leonardo Callejas ROMERO
President of the Republic of
Honduras

MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF HONDURAS

COMMUNIQUÉ NO. 27

The Presidents of Honduras and of El Salvador, respectively Ricardo Maduro and Francisco Flores, following the instructions given at the meeting held at Marcala on 16 September of this year to the national divisions of both countries of the El Salvador-Honduras Special Demarcation Commission, with the aim of completing the demarcation procedure along the whole of their common border in the framework of an accelerated programme of 18 months starting on 30 October of this year, have decided that on that day the following will be done:

1. Construction of the first boundary marker of the borderline as defined by the International Court of Justice, situated on the left riverbank of the River Sumpul between the villages of San José de Jocotán in Honduras and Las Pilas in El Salvador will be completed.

2. Thereafter, in the vicinity of El Poy, the plaque affixed to the monument commemorating the commencement of the aforesaid accelerated programme will be unveiled, and the same monument will simultaneously serve to inaugurate symbolically the furthest markers of the two sectors immediately delimited by the said International Court, which will be situated as follows:

- Tepanguisir Sector: tripoint at the summit of Cerro Montecristo; summit of Cerro El Zapotal
- Cayaguanca Sector: Peña de Cayaguanca; confluence of *quebrada* Chiquita or Oscura with the River Sumpul.

3. This action will clearly and conclusively show the shared intention of both Governments to complete the entire demarcation of the common border between the two countries within the time-limits prescribed.

Ocatepeque, 30 October 2002

Department of Institutional Communication

ILLUSTRATION TO COMMUNIQUÉ NO. 27 DATED 30 OCTOBER 2002

- (1) Commemorative monument situated at El Poy, corresponding to Section II (General Peace Treaty), marker dating from late 1980s.
- (2) Monument of the border polygon at Sumpul River, Sector 2 (ICJ Judgment), marker dating from November 2002 (between San José de Jocotan (H) and Las Pilas (ES)).
- (3) Montecristo Tripoint: Section I (General Peace Treaty) and beginning of Sector 1 (ICJ Judgment), marker dating from 1930s.
- (4) Cerro El Zapotal: beginning of Section II (General Peace Treaty) and end of Sector 1 (ICJ Judgment), marker dating from late 1980s.
- (5) Peña de Cayaguanca: end of Section II (General Peace Treaty) and beginning of Sector 2 (ICJ Judgment), marker dating from late 1980s.
- (6) Confluence of the *quebrada* Chiquita or Oscura with the River Sumpul: beginning of Section III (General Peace Treaty) and end of Sector 2 (ICJ Judgment), marker dating from late 1990s.

Section I : 00.0 km

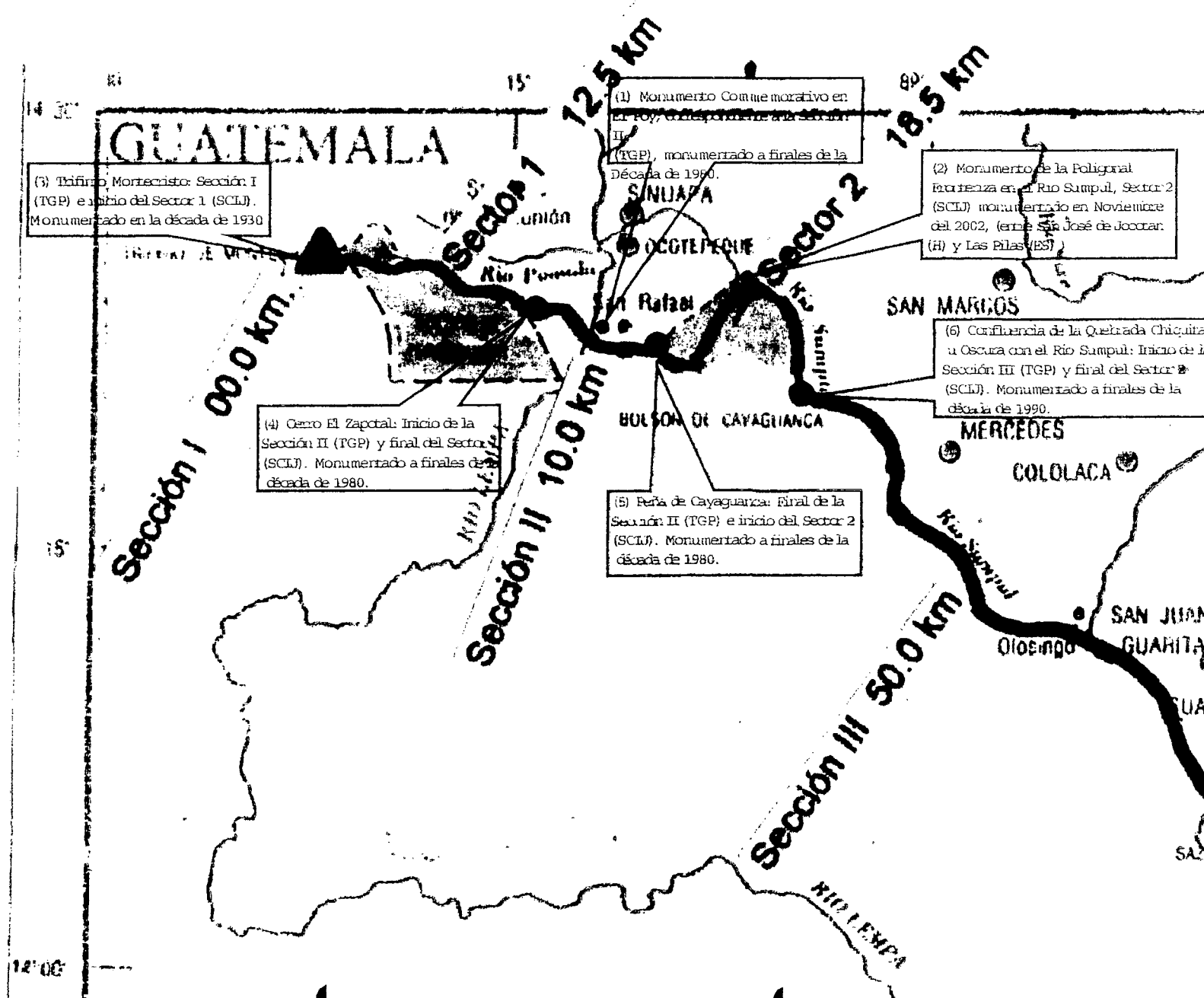
Section II : 10.0 km

Section III : 50.0 km

Sector 1 : 12.5 km

Sector 2 : 18.5 km





ANNEX 3

**LETTER ADDRESSED BY HONDURAS TO THE SECRETARY-GENERAL OF THE PAN AMERICAN
INSTITUTE OF GEOGRAPHY AND HISTORY, DATED 12 MARCH 2003, AND CIRCULATED UNDER
COVER OF SECURITY COUNCIL DOCUMENT S/2003/430 OF 15 APRIL 2003**

**Security Council**

Distr.: General
15 April 2003
English
Original: Spanish

Letter dated 8 April 2003 from the Permanent Representative of Honduras to the United Nations addressed to the President of the Security Council

On instructions from my Government, I have the honour to request that the attached letter dated 12 March 2003, and the documents appended thereto, addressed by Mr. Raul Andino Torres, Chairman of the Honduras National Section of the El Salvador-Honduras Demarcation Commission, to Mr. Carlos A. Carballo Yanes, Secretary General of the Pan American Institute of Geography and History, in connection with the Judgment rendered by the International Court of Justice in the El Salvador/Honduras case (see annex*) be distributed as a document of the Security Council.

(Signed) Manuel Acosta Bonilla
Ambassador
Permanent Representative

* The annexed documents are being circulated in the languages of submission only. The maps are available for consultation in the Secretariat.



Annex to the letter dated 8 April 2003 from the Permanent Representative of Honduras to the United Nations addressed to the President of the Security Council

12 March 2003

I have the honour to request that you appoint a technical expert of recognized competence and impartiality who is not a national or a resident of either El Salvador or Honduras to act as third and final arbitrator in resolving technical differences in the demarcation of the border between El Salvador and Honduras, pursuant to article 25 of the General Treaty of Peace of 30 October 1980 between the Republics of El Salvador and Honduras.

In my capacity as Chairman of the Honduras National Section of the El Salvador-Honduras Special Demarcation Commission established by the Agreement signed between the two States in San Salvador Republic of El Salvador, on 11 February 1986, I have the honour to inform you of the following:

1. On 11 September 1992, the special Chamber of the International Court of Justice rendered its final Judgment in the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras; Nicaragua Intervening)*.
2. In article 6 of the Special Agreement between El Salvador and Honduras, signed in the city of Esquipulas, Guatemala, on 24 May 1986, submitting the land, island and maritime frontier dispute between the two States to a decision of the International Court of Justice, the Parties undertook to enforce the Chamber's Judgment fully and in good faith. To that end, the Special Demarcation Commission established by them under the Agreement of 11 February 1986 was to begin demarcating the boundary line delimited by the Judgment no later than three months after the date of the Judgment and was to pursue its activities diligently until demarcation was complete.
3. In view of El Salvador's unwillingness to perform the obligation assumed in article 6 of the Special Agreement, on 18 February 2002 the Government of Honduras was forced to request the intervention and assistance of the United Nations Security Council, under Article 94 (2) of the Charter, in giving effect to the Judgment.
4. Although 10 years had elapsed since the Judgment was rendered, on 16 September 2002 the Presidents of El Salvador and Honduras once again called on the El Salvador-Honduras Special Demarcation Commission to demarcate all sectors of the boundary delimited by the 1992 Judgment within 18 months.
5. In response to the Presidents' call, it was only in November 2002 that El Salvador began to make prior reconnaissance visits to the sectors delimited by the 1992 Judgment of the International Court of Justice.
6. Since those prior reconnaissance visits began 10 years after the Judgment was rendered, it was not until November 2002 that small differences were noted between the coordinates fixed by the International Court of Justice and some geographical features to which those coordinates referred, a

phenomenon inherent in land delimitations based on information provided by the parties during court proceedings.

7. During the session of the Special Demarcation Commission held in the city of Metapán, Republic of El Salvador, from 24 to 28 February 2003, I proposed to the El Salvador National Section that Mr. Paul L. Peeler, Jr. should be appointed as third arbitrator to resolve technical differences in the demarcation of the border, pursuant to paragraph 1 of article 25 of the above-mentioned General Treaty of Peace.
8. That proposal was not accepted either explicitly or implicitly by the El Salvador National Section, as can be seen from the appended copy of the corresponding minutes.
9. Since the possibility of choosing a third arbitrator by mutual agreement has already been exhausted to no avail, I hereby invoke paragraph 2 of article 25 of the General Treaty of Peace, under which the Republics of El Salvador and Honduras conferred on the Pan American Institute of Geography and History of the Organization of American States specific jurisdiction to appoint the third arbitrator, who must fulfil the same requirements as the technical expert referred to in paragraph 1.

In view of the foregoing, I hereby request the Pan American Institute of Geography and History, in exercise of the jurisdiction conferred on it by the Republics of El Salvador and Honduras under article 25 of the above-mentioned General Treaty of Peace, to appoint the third arbitrator to resolve technical differences in the demarcation of the border, taking into account the provisions of paragraph 3 of that article, which states that the decision of the third arbitrator, which shall be final, must be issued within a period not exceeding 30 days from the date on which that person communicates his acceptance of the position.

I base this request on article 25 of the General Treaty of Peace between the Republics of El Salvador and Honduras, the Agreement between the Republics of El Salvador and Honduras establishing a Special Commission for the Demarcation of the El Salvador-Honduras Frontier Line pursuant to the General Treaty of Peace of 30 October 1980 and article 6 "Enforcement of Judgment" of the Special Agreement between El Salvador and Honduras submitting the land, island and maritime frontier dispute between the two States to a decision of the International Court of Justice.

Accept, Sir, the assurances of my highest consideration.

(Signed) Raul Andino Torres
Chairman
Honduras National Section

Appended documents:

1. Operative part of the Judgment of the Chamber of the International Court of Justice rendered on 11 September 1992 (and its cartographic annexes).
2. General Treaty of Peace between the Republics of El Salvador and Honduras, signed on 30 October 1980 in Lima, Peru.

3. Agreement between the Republics of El Salvador and Honduras establishing a Special Commission for the Demarcation of the El Salvador-Honduras Frontier Line pursuant to the General Treaty of Peace of 30 October 1980, signed on 11 February 1986.
4. Special Agreement between El Salvador and Honduras submitting the land, island and maritime frontier dispute between the two States to a decision of the International Court of Justice, signed on 24 May 1986.
5. Minutes of the session of the Special Demarcation Commission held in the city of Metapán, Republic of El Salvador, from 24 to 28 February 2003.
6. Curriculum vitae of the third arbitrator proposed by Honduras.

ANNEX 4

**COPY OF THE ORDER OF HIS VERY EXCELLENT VICEROY CONCERNING
THE RECONNAISSANCE OF THE COAST OF NICARAGUA,
MEXICO, 7 DECEMBER 1793**

“Copy of the Order of His Very Excellent Viceroy concerning the Reconnaissance of the Coast of Nicaragua. Mexico, 7 December 1793” MN. Ms. 280, folios 167-170.

The reconnaissance of the coast which is to be carried out pursuant to my Order of 21 May last must be limited only to the part situated between Acapulco and Sonsonate, whilst observing the latitude of the main points, the tide of the ports and accurately producing a corresponding map thereof.

The Gulf of Amapala must be considered as secondary, and although it is not necessary to examine it in detail, it must be studied sufficiently to obtain an adequate view of it.

The reconnaissance of the Isles of Cocos and of the other isles between El Realejo and the Galapagos does not need to be carried out as yet. It is not necessary to travel to Peru, and no plans to do so exist at present in view of the fact that supplies of [illegible words] may be obtained from Cabite, which the Compañía Asiática (Asian Company) is seeking to sell to the Real Hacienda (Royal Treasury).

Both the vessel *Concepcion* and a small schooner with corresponding small crafts will be available for the journey, and both vessels will be under the command of Lieutenant Don Salvador Melendez as they will navigate side by side, the command of the small schooner being entrusted to navigator Don Gonzalo Lopez de Haro whenever necessary.

Once duly empowered, the aforementioned crew will rapidly set sail for Acapulco, where they will arm themselves with the artillery left there by the *Gertrudis*, and will carry out their mission as close as possible to the coast in order to list all its inlets, ports or rivers and mark them on the chart.

The astronomical instruments stored in San Blas will be handed over to the Commander, together with a formal list thereof for the event that he wishes to make use of them.

Specific instructions will be given on the internal rules of the expedition in order to achieve the best possible results, and the logbooks and maps will be handed to me personally in order that appropriate use may be made of them.

On the basis hereof, I entrust the command of both vessels to Lieutenant Don Salvador Melendez, who, together with the Commissioner, will be responsible for the provision of food stocks, in order to avoid any delays on arrival of the frigate *Concepcion de Loreto*. Commander de Melendez shall give such orders as he deems necessary in order to accomplish the present mission to the highest possible level of satisfaction.

May God bless Your Grace for years to come.

Mexico, 7 December 1793

Revilla Ggedo. Acting Commander of San Blas

Third Volume — 170 folios

[Signature] T. G.
