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Cour internationale
de Justice
LA HAYE

International Court
of Justice
THE HAGUE

YEAR 1991

Public sitting of the Chamber

held on Wednesday 29 May 1991, at 10 a.m., at the Peace Palace,

Judge Sette-Camara, President of the Chamber, presiding

in the case concerning the Land, Island and Maritime Frontier Dispute
(El Salvador/Honduras: Nicaragua intervening)

VERBATIM RECORD

ANNEE l991

Audience publique de la Chambre

tenue le mercredi 29 mai 1991, à 10 heures, au Palais de la Paix,

sous la présidence de M. Sette-Camara, président de la Chambre

en l'affaire du Différend frontalier terrestre, insulaire et maritime
(El Salvador/Honduras; Nicaragua (intervenant))

COMPTE RENDU

Present:

Judge Sette-Camara, President of the Chamber
Judges Sir Robert Jennings, President of the Court
Oda, Vice-President of the Court
Judges *ad hoc* Valticos
Torres Bernárdez

Registrar Valencia-Ospina

Présents :

M. Sette-Camara, président de la Chambre
Sir Robert Jennings, Président de la Cour
M. Oda, Vice-Président de la Cour, juges
M. Valticos
M. Torres Bernárdez, juges *ad hoc*

M. Valencia-Ospina, Greffier

The Government of El Salvador is represented by:

Dr. Alfredo Martínez Moreno,
as Agent and Counsel;

H. E. Mr. Roberto Arturo Castrillo, Ambassador,
as Co-Agent;

and

H. E. Dr. 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

Prof. Dr. 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,

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

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

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

as Counsel and Advocates;

and

Dr. Francisco José Chavarría,

Lic. Santiago Elías Castro,

Lic. Solange Langer,

Lic. Ana María de Martínez,

Le Gouvernement d'El Salavador est représenté par :

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M. David Escobar Galindo, professeur de droit, vice-recteur de l'Université "Dr. José Matías Delgado" (El Salvador),

comme conseils et avocats;

ainsi que :

M. Francisco José Chavarría,

M. Santiago Elías Castro,

Mme Solange Langer,

Mme Ana María de Martínez,

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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,

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Mr. Raul Andino,

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Mr. Mario Felipe Martínez,

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M. Miguel Tosta Appel,

M. Mario Felipe Martínez,

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comme membres de la Commission de Souveraineté et des frontières.

The PRESIDENT: Please be seated. The sitting is open and we continue our hearings on the determination of the legal situation of the islands and I give the floor to Professor Lima.

M. LIMA:

I. INTRODUCTION

Mr. President, distinguished Members of the Chamber. I have the pleasure and the honour to appear today for the first time before the International Court of Justice to take part in this oral stage of the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras*). My specific task is to expound before this Chamber the position of my country in that part of the litigation which refers specifically to the determination of the juridical status of the islands.

El Salvador has, in its Memorial as well as in its Counter-Memorial and its Reply, been very clear in the exposition of its position and has affirmed that the dispute as to the islands can be viewed in two possible ways: El Salvador is able to rely on effective possession of the islands as the basis of its sovereignty thereof on the grounds that this is a case where sovereignty has to be attributed; equally, El Salvador is able to rely on historical Formal Title-Deeds as unquestionable proof of its sovereignty of the said islands in accordance with the principle of *uti possidetis juris* as it operated in 1821.

The position is not, as Honduras stated in its Counter-Memorial (p. 639), that these historical Formal Title-Deeds play only a subsidiary part, but rather that, as El Salvador made extremely clear in its Reply (p. 122, para. 5.2), they constitute "joint evidence" by means of which the rights of El Salvador over the islands "are not merely confirmed but fortified by the combined effect of the application of the two criteria which are at play".

The view of the determination of the legal status of the islands which I shall consider is in fact that relating to the historical Formal Title-Deeds, while another distinguished jurist would expound the position from the point of view of possession and the peaceful and continuous exercise and

display of State sovereignty by El Salvador.

Nevertheless, before embarking on my detailed discussion of this subject I consider that it is of fundamental importance to draw to the attention of the Chamber certain considerations of a general nature in order to enable the Chamber to reach a better understanding of the scope of the proofs presented by El Salvador and also in order to expose the strategy of Honduras, of using half truths, incomplete documents and other tactics which are at odds with the principle of "fair play" which ought to characterize the actuation of the Parties in their litigation before the most important Tribunal of the world.

II. CONSIDERATIONS OF A GENERAL NATURE

In the first place, I find myself obliged to insist that the dispute as to the islands is not concerned exclusively with the Isla de Meanguera and the Isla de Meanguerita, as is maintained by Honduras, but rather concerns all the islands situated in the Golfo de Fonseca other than the Isla de Zacate Grande which, for reasons of geographical proximity has been attributed to Honduras, and the Islas de los Farallones, which have always belonged to Nicaragua.

This question has been clearly analysed, discussed and proved, for which reason I consider that it is not really necessary for me to make any reference thereto; consequently, I would have preferred to mention this point merely in order to ensure that it be always borne in mind when analysing both the evidence presented by El Salvador and the lack of probative evidence which, as we shall see, characterizes the position adopted by Honduras in spite of its lengthy and confused expositions thereof.

However, in the light of the fact that in its Reply and in this oral stage of the proceedings, Honduras has continued to emphasize this point, I have no alternative but to refer very briefly thereto.

Honduras in its Reply (p. 884, para. 3), referring to the expression "the determination of the juridical status of the islands" in the Special Agreement, stated:

> "En second lieu, l'interprétation la plus correcte de l'expression est qu'elle s'applique à la situation des îles qui sont de fait en situation d'indétermination, c'est-à-dire à celles que les Parties considéraient comme étant en litige au moment de la signature du compromis."

In relation to this thesis advanced by Honduras, I wish to cite the note of 24 January 1985 that the Foreign Minister of El Salvador sent to the Foreign Minister of Honduras, which is cited by the Government of Honduras, with the relevant part translated into French, on page 489 of its Memorial:

> "En réponse à votre note, je me permets de vous déclarer nettement de la part de mon Gouvernement, que *non seulement l'île de Meanguera n'est pas définie dans le Traité Général de Paix mais aussi que toutes les îles du Golfe de Fonseca et, de ce point de vue, toutes les îles se trouvent en litige*, car il s'agit d'une zone non déterminée. Parmi les autres îles se trouve celle du Tigre qui est salvadorienne et sur laquelle Honduras a des prétensions." (Original emphasis.)

This note was sent at the highest diplomatic level during the time in which the Parties were carrying out direct negotiations in the manner established by the General Treaty of Peace of 1980. When these negotiations broke down, then discussions were initiated for the purpose of drawing up the Special Agreement which was signed six months later. At that time Honduras was, consequently, aware of the thesis of El Salvador that all the islands were included within the subject-matter of the dispute.

If Honduras had at this stage really intended to limiting the subject-matter of the litigation to the Isla de Meanguera and the Isla de Meanguerita, it would surely have stated this objective so as to obtain the necessary precision in the drafting of the Special Agreement, the final form of which was only adopted after six full months of negotiations.

Honduras could obviously have demanded such precision in the drafting either when the appropriate clause in the Special Agreement was being drawn up or when the Special Agreement was signed or when the Special Agreement was ratified; it is not entitled now, by means of an interpretation without foundation, to try to limit the dispute to only two islands, despite the fact that the clause of the Special Agreement which refers to the objectives of the litigation refers in a generic form to all the islands. Honduras has been obliged to adopt this position due to the presssure of public opinion in Honduras, which severely censured the actuation of its representatives in the negotiation of the Special Agreement.

This in itself makes it clear that in the determination of the objectives of the litigation, the thesis which won the day was the thesis of El Salvador, by means of which all the islands are embraced within the formula "the determination of the juridical status of the islands and of the maritime spaces".

El Salvador cannot accept the position of Honduras, which is trying to modify the objectives of the litigation by at one and the same time increasing the competence of the Chamber by asking it to delimit the waters of the Gulf and the Pacific Ocean and reducing its competence by confining the dispute as to the islands to only two of the islands of the Golfo de Fonseca.

I now turn to a different question. Honduras has in various parts of its written pleadings attempted to base its argument on what it is accustomed to call the history of the negotiations.

The fact that Honduras seeks to rely on these class of proceedings leaps to the attention for the following reason: during the sessions of the negotiations which took place on 23 and 24 July 1984, carried out during the period in which the Parties were seeking a negotiated settlement of the disputes between them in accordance with the disposition of the General Treaty of Peace of 1980, the delegation of Honduras asked that it should be agreed that any proposals which might be made by either of the Parties in order to try to achieve a conciliatory agreement should not be able to be taken as a precedent for the purposes of founding any particular position in the future.

For this reason, everything which was discussed in that period prior to the matter being referred to the International Court of Justice must be regarded as never having been written, and as having no probative force either of a moral or of a juridical nature. El Salvador accepted this proposal since, in the event that it had not been approved, it would have been absolutely impossible for either of the Parties to have presented any suggestions or proposals which might have led to a negotiated settlement to the dispute.

That concludes, Mr. President, my comments on the precise scope of the dispute as to the islands. I will now make some preliminary comments on the arguments which have been presented by Honduras.

Given its lack of historical Formal Title-Deeds, Honduras relies primarily on the account of

historians, some of them are Hondurans, in order to try to prove the positions which it adopts. It is not my intention to detract in any way from the importance and the interest of history.

I recognize that, within any national culture, history has a very great importance. However, this matter is now in the hands of a Tribunal of justice which must resolve the matter on the basis of the juridical value of the evidence presented. El Salvador is obliged to recognize that the historical narratives which abound in the written pleadings of Honduras do not have any probative force save in so far as they are based on documents and testimony which have per se juridical force in accordance with legal procedure.

In this latter case, of course, what would really have juridical force would be the documents or testimony themselves rather than the version thereof given by the historians.

In this respect, I should add that it is also a characteristic feature of the written pleadings of Honduras to combine a simple historical narrative with some title-deed or other which appears in the Annexes to those pleadings, in an extracted form and at times without even a date, in an attempt to give juridical value to evidence which either has no probative force whatsoever or, if it has some such force, has so in respect of a question quite different from that in respect of which it has been presented as evidence.

Of special importance for the case which has been argued before the Chamber are the precise dates of the documents which have been presented in order to prove the existence of any particular administrative bodies. This importance arises principally from the fact that, during the more than 300 years of the Spanish Colonial régime in Central America, many changes in the administrative organization of the "Capitanía General" of Guatemala took place and these changes logically had the consequential effect on the exercice of the various subordinate jurisdictions.

For this reason, any exercise of such jurisdiction must be precisely dated, in order to determine its temporal validity. For example, Choluteca was originally subject to the ecclesiastical jurisdiction of the Bishopric of Guatemala and it was only by virtue of a "Real Cédula" of 1672 that, as will be seen in due course, it became subject to the ecclesiastical jurisdiction of the Bishopric of Honduras.

Consequently, any document or title-deed prior to 1672 which confers any status or jurisdiction on Choluteca has consequences very different from those of a similar document or title-deed after 1672. In its written pleadings, Honduras has taken every possible advantage of such changes of administrative organization and has played very cleverly with the dates, which it does not mention at all when this is convenient, in order to confuse those who have to judge this case.

Another question in respect of which I considered that it is necessary to make some general comment for the purposes which I have already indicated is the Honduran tactic of playing with the names of administrative institutions such as, for example, the "Alcaldía Mayor de Minas", created in the Province of Honduras in 1580; Honduras in its written pleadings little by little, without giving any explanation therefor, changes the name attributed to this administrative institution, calling it indiscriminately at times the "Alcaldía Mayor de Minas de Tegucigalpa" and at times the "Alcaldía Mayor de Tegucigalpa".

This change of names has a quite extraordinary importance for the lines of argument pursued by Honduras to such an extent that, with the exposure and consequentially discrediting of this tactic, the whole of these arguments collapse completely. This comprises the vertebral column of the entire position of Honduras in respect of the dispute as to the islands. Honduras plays a similar game, as will also be shown at the appropriate moment, by assimilating the "Gobernación" of Guatemala with the "Real Audiencia" of Guatemala.

On the subject of tactics, Mr. President, Professor Sánchez Rodríguez yesterday afternoon made a damaging accusation that El Salvador had in its written pleadings attempted to deceive the Chamber by subtle changes in translations of original Spanish documents. I wholly repudiate and reject this accusation. It is of course possible that, due to the inexperience of some translator, an erroneous translation of some individual document annexed may have been produced. But I wish formally to deny that El Salvador has ever followed any policy of making intentional alterations in translation. What is more, El Salvador, unlike the country whom Professor Sánchez Rodríguez is representing in these proceedings, has at least never extracted a document in such a way as to change its meaning completely.

I shall take as my starting-point of the analysis of the problem concerning the islands a particular date which relates to a particular system of administrative organization in respect of which there is agreement between the Parties, and I will subsequently study the later changes introduced by the competent Spanish colonial authorities.

The system of administrative organization in question is that which was established by virtue of the "Reales Cédulas" of 1563 and 1564 as to whose existence and juridical value there exists agreement between El Salvador and Honduras. However, for Honduras, this system only operated for five years since, according to the arguments of Honduras, these "Reales Cédulas" were repealed by a "Real Cédula" of 1568.

If Honduras is thus alleging that the earlier "Reales Cédulas" of 1563 and 1564 were repealed by the later "Real Cédula" of 1568, Honduras must necessarily implicitly recognize that the earlier "Reales Cédulas" were valid until 1568. It will be my task to consider whether they were really repealed in the manner affirmed by Honduras.

As a result of my taking as my starting point the system of administrative organization established by these "Reales Cédulas", all systems of administrative organization which predated their promulgation is necessarily completely irrelevant for the purposes of these present proceedings; for this reason it is totally irrelevant to discuss precisely who discovered the islands since, subsequent to their discovery, modifications as to their administrative organization were validly brought into effect by the appropriate Spanish authorities.

It is obvious that no matter whether the islands were discovered by Gil González Dávila, as Honduras alleges, or by Pedrarías Davila or by Pedro de Alvarado, the right of sovereignty over the islands was in any event obtained by Spain. It would of course have been different if the islands had first been discovered by a person of a different nationality, since in that case that discovery, accompanied by effective possession of the islands, would have caused the right of sovereignty thereto to be acquired by his own country.

It is for these reasons that El Salvador did not refer in its Memorial and Counter-Memorial to the discovery of the islands since this was for El Salvador an irrelevant matter; however, since

Honduras, giving this question an importance which it clearly does not have, has alleged that the discovery of the islands provides Honduras with a basis with which to prove that it enjoys the right of sovereignty over the islands, El Salvador had to refer to this matter in its Reply (in paras. 5.4 *et seq*. at pp. 122 *et seq*.) in order to demonstrate that, for the reasons set out therein, El Salvador still has preferential rights over the islands by virtue of the manner of their discovery. El Salvador does not propose to discuss this matter in this oral stage of the proceedings but is content to rest its case on what was stated in its Reply.

I will not either repeat or try to synthesize all the arguments and proofs presented in the Memorial, the Counter-Memorial, and the Reply of El Salvador; instead I shall be selective with the intention of considering in greater detail and depth the essential points of the arguments of El Salvador as well as the most significant arguments presented by Honduras; for this reason, I would like to place on record that in the Reply of El Salvador (at pp. 136 *et seq*.) there is a succinct and chronological list of the majority of the abundant documentary evidence presented by El Salvador as proof of its historical title to and its sovereignty over the islands of the Gulf of Fonseca. In accordance with Article 60 of the Rules of Court, my argument will be directed to the issues on which there are still differences of opinion between the Parties.

III. THE ADMINISTRATIVE ORGANIZATION ESTABLISHED BY THE "REALES CEDULAS" OF 1563 AND 1564

The first issue on which there are still differences of opinion between the Parties, Mr. President, concerns the "Reales Cédulas" of 1563 and 1564. I will first deal with the system of administrative organization established by these "Reales Cédulas". Two consequences follow from this choice of a starting-point. First, as I said the system of administrative organization which predated and was different from what was established in these "Reales Cédulas" does not have the slightest relevance to these proceedings. Secondly, and the most important, any modification to this system of administrative organization made subsequent to 1563 and 1564 has to be proved by means of documentary evidence of equal or superior probative force to that of the two "Reales Cédulas".

(A) A Preliminary Question

There is a preliminary question of particular importance. This question arises out of the fact that there exist two "Reales Cédulas" dated 8 September 1563 and both promulgated in the City of Zaragoza.

Honduras has very cleverly taken advantage of this fact in its written pleadings in order to introduce considerable confusion into the question of the consideration of the consequences produced by these "Reales Cédulas".

However, one of the two "Reales Cédulas" of 1563 had as its objective to divide the "Real Audiencia de los Confines" and to indicate which colonial provinces would be annexed to the "Real Audiencia de Nueva España" and which to the "Real Audiencia de Tierra Firme". The other "Real Cédula" of 1563, on the other hand, had among other objectives that of indicating the boundaries of the "Gobernación" of Guatemala and the appointment of the Governor thereof.

In order to make it clear which one of these "Reales Cédulas" I am referring to, I will call the "Real Cédula" which divided the "Real Audiencia de los Confines" the "Real Cédula Audiencia" and I will call the "Real Cédula" which indicated the boundaries of the "Gobernación" of Guatemala the "Real Cédula Gobernación". Needless to say, that these names are for the sole purpose of differentiating one "Real Cédula" from the other in my exposition.

There is a great difference between a "Real Audiencia" and a "Gobernación". Nevertheless, Honduras tries to confuse these two organizations and even goes so far as to deny the existence of the "Gobernación" of Guatemala.

(B) The "Real Cédula Audiencia" of 1563

I will first consider the "Real Cédula Audiencia" of 1563.

The relevant part of this "Real Cédula" is as follows:

> "El Rey - Presidente y Oidores de nuestra Audiencia Real que reside en la ciudad de Mexico de la nueva España sabed que nos entendiendo que asi cumple a nuestro servicio

> avemos acordado de mudar la nuestra audiencia real que reside en la ciudad de Santiago de la Provincia de Guatemala a la ciudad de Panamá que es la provincia de Tierra Firme y abemos mandado que nuestro presidente y oyedores de la dicha ciudad de Guatemala se pasan luego a la dicha ciudad de Panamá y les habremos señalado por limites y distrito."

Translated into English:

> "The King - 'Presidente' and 'Oidores' of our 'Real Audiencia' which resides in the city of Mexico in Nueva España know that, understanding that thus it complies with our service. we have agreed to move our 'Real Audiencia' which resides in the city of Santiago of the Province of Guatemala to the city of Panamá which is the Province of Tierra Firme and we have ordered that our 'Presidente' and 'Oidores' of the said city of Guatemala now transfer to the said city of Panamá and we have indicated to them boundaries and districts."

In accordance with this "Real Cédula Audiencia", the area of the original "Real Audiencia de los Confines" was divided up in the following way. The Provinces of Guatemala, Chiapas, and Verapaz, together with that part of the Province of Honduras which was to the West of the Ulúa River, the western part of the Sub-Province of Choluteca and "the Bay of Fonseca inclusive", were incorporated into the "Real Audiencia de Nueva España" with its seat in Mexico. On the other hand, the Province of Nicaragua, that part of the Province of Honduras to the east of the Ulúa River, and the eastern part of the Sub-Province of Choluteca or Xevez de la Frontera, were annexed to the "Real Audiencia de Tierra Firme" with its seat in Panamá.

This "Real Cédula" of 1563, which I am calling the "Real Cédula Audiencia", fixed the boundaries of the subdivisions of the "Real Audiencia de los Confines"; jurisdiction over part of Central America, including the Golfo de Fonseca, was given to the "Real Audiencia de Nueva España" based in Mexico while jurisdiction over the other part of Central America was given to the "Real Audiencia de Tierra Firme" based in Panamá.

(C) The "Real Cédula Gobernación" of 1563

I now turn to the "Real Cédula Gobernación" of 1563.

The relevant part of this "Real Cédula" (to be found in Annex 3 to Chapter 12 of the Memorial of El Salvador) is as follows:

> "Por cuanto nos hemos acordado de mudar la Audiencia Real que reside en la Ciudad de Santiago de la Provincia de Guatemala a la ciudad de Panamá que es en la Provincia de Tierra Firme y que Luis de Guzmán nuestro gobernador de la dicha Provincia de Tierra Firme

> se pase a la dicha Provincia de Guatemala a tener en ella la gobernación de dicha provincia y porque es bien y conviene *que se sepa el distrito y los límites que ha de tener la dicha gobernación de Guatemal*a, por la presente es nuestra merced y voluntad de lo declarar - por esta nuestra carta. Por ende declaramos y mandamos *que la dicha gobernación de Guatemala tenga por límites y distrito desde la Bahía de Fonseca inclusive* y del rio Ulúa inclusive con los pueblos de San Gil Buenavista y la Villa de Gracias a Dios y la Provincia de Verapaz y Chiapas ..." (Emphasis added.)

Translated into English:

> "By virtue of the fact that we have agreed to move the 'Real Audiencia' which resides in the city of Santiago of the Province of Guatemala to the city of Panamá which is in the Province of Tierra Firme and that Luis de Guzmán our Governor of the said Province of Tierra Firme should transfer to the said Province of Guatemala to hold there the 'gobernación' of the said province and because it is good and fitting that *the area and the boundaries which the said 'gobernación' of Guatemala has to have should be known*, for the present it is our order and will to declare this by means of this our letter. Consequently, we declare and we provide *that the said 'gobernación' of Guatemala should have for boundaries and for area from the Bay of Fonseca inclusive* and from the Ulúa River inclusive with the townships of San Gil Buenavista and the Villa of Gracias a Dios and the Province of Verapaz and Chiapas ..." (Emphases added.)

This quotation shows very clearly that this "Real Cédula" which I am calling the "Real Cédula Gobernación", contains three points. First, it referred to the transfer of the "Real Audiencia" of Guatemala to the city of Panamá. Secondly, it transferred Luis de Guzmán, Governor of the Province of Tierra Firme, to the Province of Guatemala as its Governor. Thirdly, it indicated the boundaries of *the "Gobernación" of Guatemala* and stated with total clarity and precision that these boundaries were *from the Bay of Fonseca inclusive*.

No further analysis is necessary in order to be convinced that there is a considerable difference between the "Real Cédula Audiencia" of 1563 and the "Real Cédula Gobernación" of 1563. The two refer to quite distinct questions, the former to the boundaries of the "Real Audiencias" of Nueva España and of Tierra Firme and the latter to the boundaries of the "Gobernación" of Guatemala.

(D) The "Real Cédula" of 1564

I now turn to the "Real Cédula" of 1564.

The relevant part of this "Real Cédula" (to be found in Annex 4 to Chapter 12 of the Memorial of El Salvador) is as follows:

> "Por cuanto nos habemos acordado de mudar la Audiencia Real que reside en la ciudad de Santiago de la Provincia de Guatemala a la ciudad de Panamá que es en la provincia de

> Tierra Firme, y es Juan de Busto de Villega nuestro gobernador de la dicha provincia de Tierra Firme se pase a la dicha provincia de Guatemala a tener en la gobernación de la dicha provincia y porque es bien y conviene que se sepa el distrito y los limites que ha de tener la dicha gobernación de Guatemala por la presente es nuestra merced y voluntad de declarar por esta nuestra carta. Por ende declaramos y mandamos que la dicha gobernación de Guatemala tenga por límites y distrito desde la Bahía de Fonseca inclusive hasta la provincia de Honduras exclusive por línea recta y que por la parte que confina con la provincia de Honduras se quede por los términos que hasta aquí ha tenido y las provincias de Verapaz y Chiapas..."
>
> "By virtue of the fact that we had agreed to move the 'Real Audiencia' which resides in the city of Santiago of the Province of Guatemala to the city of Panamá which is in the Province of Tierra Firme and Juan de Busto de Villega is our governor of the said Province of Tierra Firme let him be transferred to the said Province of Guatemala to hold the 'gobernación' of the said Province and because it is good and fitting that the area and boundaries which the said 'gobernación' of Guatemala has to have should be known, for the present it is our order and will to declare [this] by means of this our letter. Consequently, we declare and we provide that the said 'gobernación' of Guatemala should have for boundaries and for area from the Bay of Fonseca inclusive as far as the Province of Honduras exclusive in a straight line and that the part which has a common boundary with the Province of Honduras should remain with the boundaries which it has had up to now and the Provinces of Verapaz and Chiapas..."

This quotation from the "Real Cédula" of 1564 shows that it contains the following three points. First, it confirmed the transfer of the "Real Audiencia" of Guatemala to the city of Panamá. Secondly, it transferred Juan de Busto de Villega, Governor of the Province of Tierra Firme, to become Governor of the Province of Guatemala. Thirdly, it confirmed the indication by the "Real Cédula Gobernación" of 1563 that the boundaries of the "Gobernación" of Guatemala were "from the Bay of Fonseca inclusive" and added the phrase "as far as the Province of Honduras exclusive".

(E) A comparative analysis of the "Real Cédula Gobernación" of 1563 and the "Real Cédula" of 1564

A comparative analysis of the two "Reales Cédulas" mentioned above indicates that both had the objective of *inter alia* establishing the boundaries of the "Gobernación" of Guatemala and of nominating its Governor; further, that in relation to the establishment of these boundaries, both "Reales Cédulas" stated that the Bay of Fonseca was included within the "Gobernación" of Guatemala, the only difference between the "Real Cédula Gobernación" of 1563 and the "Real Cédula" of 1564 in this part of Central America being that the latter indicated that the boundaries of the "Gobernación" of Guatemala extended as far as the Province of Honduras. In this respect the "Real Cédula Gobernación" of 1563 was modified by the "Real Cédula" of 1564, but it nevertheless could not have been clearer that the Golfo de Fonseca never formed part of the Province of

Honduras. The effect of the "Real Cédula" of 1564 was therefore to reincorporate the whole of the Province of Choluteca into the "Gobernación" of Guatemala, just as had been the case before the "Real Cédula Gobernación" of 1563.

It also should be made clear that, just like the "Real Cédula Gobernación" of 1563, the "Real Cédula" of 1564 is very different from the "Real Cédula Audiencia" of 1563. As has already been stated, the latter dealt with the boundaries of the "Reales Audiencias" of Nueva España and Tierra Firme. The "Real Cédula" of 1564 dealt with the wholly different issue of the boundaries of the "Gobernación" of Guatemala.

(F) The "Real Cédula" of 1568

I now turn to the "Real Cédula" of 1568.

Honduras in its Reply states: "Las Cédulas Reales de 1563 et 1564 ont été abrogées par la Cédula Real du 28 juin 1568." (RH, p. 930, para. 32.)

This affirmation that a "Real Cédula" of 1568 repealed the "Reales Cédulas" of 1563 and 1564 appears for the first time in the Reply of Honduras. Indeed, during the Mediation of the State Department of the United States of America in the boundary dispute between Honduras and Guatemala in 1918-1919, the representative of Honduras before the Mediator not only made no mention whatsoever of the Real Cédula of 1568 but also, faced with the impossibility of denying the validity of the "Reales Cédulas" of 1563 and 1564, made these comments thereon:

> *"I do not wish to desist from examining the boundaries of Honduras on the Pacific side in relation to the provisions of the already cited Royal 'Cédula' of 1564, although this is not the subject of the present question."*
>
> It is not strange that the King has left the Golfo de Fonseca included in the Province of Guatemala, since at that time and for a long time thereafter, Guatemala extended so far as to connect with the Province of Nicaragua, comprising the territory which today forms the Republic of El Salvador and a strip of the territory of Honduras on the Golfo. This was shown by maps until the Eighteenth Century and even by some later maps erroneously. Many ancient documents confirm this, among others the document with the title of 'Demarcation and Division of the Indies'..." (MES, Chap. 12, Ann. 6, emphasis added.)

To the above statement of the representative of Honduras, the representative of Guatemala replied as follows:

> "The confession of the High Counterparty in this respect relieves Guatemala from having to proceed with the proof rendered to the effect that its rights extend as far as there, and Honduras remains obliged to prove, not by means of suppositions nor by means of the opinions of commentators but by means of Royal 'Cédulas' of the Spanish Monarch subsequent to the Eighteenth Century, that all that territory and the Gulf of Fonseca was adjudicated to Honduras by taking it away from Guatemala. As long as these Royal 'Cédulas' are not presented, the rights of Guatemala remain immovable." (MES, Chap. 12, Ann. 7.)

In complete contrast with what was said by the representative of Honduras in the passage which I have just cited, Hoduras stated in its Memorial (at p. 523) that:

> "Le Honduras fut une entité coloniale qui s'étendait depuis l'océan Atlantique (mer des Caraïbes) jusqu'à l'océan Pacifique (alors appelé Mer du Sud). Depuis le début, étaient comprises dans son territoire les îles adjacentes à ses côtes sur les deux océans." (MES, Chap. 12, Ann. 7.)

I have two questions, Mr. President. First, how can Honduras thus affirm that its territory extended as far as the Pacific Ocean when it is proven, and Honduras has recognized, that Choluteca and Nacaome formed part of the jurisdiction of the "Gobernación" of Guatemala and were placed between the "Gobernación" of Honduras and the Golfo de Fonseca? Secondly, how can Honduras thus affirm that, from the beginning of the colonial period, the islands of the Golfo de Fonseca adjacent to its coasts were included within its territory, when its territory did not actually extend as far as the Golfo de Fonseca, due to the interposition of Choluteca and Nacaome, part of the jurisdiction of the "Gobernación" of Guatemala?

Honduras has been unable to present any documents which prove that either the Golfo de Fonseca or the territory on its shores, meaning of course Choluteca or Nacaome, was ever adjudicated to Honduras. For this reason, Honduras has now brought forward the "Real Cédula" of 1568 to support the strange argument that this "Real Cédula" repealed the "Reales Cédulas" of 1563 and 1564. This is a blatant contradiction of the position adopted by Honduras in its boundary dispute with Guatemala in 1918-1919 to which reference has already been made.

Honduras states (RH, p. 930, para. 32): "Les Cédulas Reales de 1563 et 1564 ont été abrogées par la Cédula Real de 28 Juin 1568."

This affirmation is erroneous and, what is more, ambiguous.

It is ambiguous because it does not establish which of the two "Reales Cédulas" of 1563 was

repealed.

It has already been shown that there were two "Reales Cédulas" in 1563 which, for the purposes of identification, I have been calling the "Real Cédula Audiencia" and the "Real Cédula Gobernación".

The affirmation of Honduras is erroneous simply because there is no way that the "Real Cédula" of 1568 can possibly have repealed the "Real Cédula" of 1564; this is because the two referred to completely different questions.

The "Real Cédula" of 1568 referred to the reunification of the former Provinces of the "Real Audiencia de los Confines" in order to create the new "Real Audiencia de Guatemala", while the "Real Cédula" of 1564 establsihed the boundaries of the "Gobernación" of Guatemala as extending from the Bay of Fonseca inclusive to the Province of Honduras exclusive.

Honduras in its Reply (p. 930), after affirming that the "Real Cédula" of 8 September 1563 (to which Honduras wrongly attributes the date of 17 September 1563) divided the "Real Audiencia de los Confines" into two parts (Nueva España and Tierra Firme), then goes on to state that the "Real Cédula" of 1568 re-established the situation which had existed before this division. El Salvador is totally in agreement with this affirmation, but cannot agree that the "Real Cédula" of 1568 repealed the "Reales Cédulas" of 1563 and 1564.

On 8 September 1563 in the city of Zaragoza two "Reales Cédulas" were promulgated. One of these, which I have been calling the "Real Cédula Audiencia", divided the "Real Audiencia de los Confines" into two parts. The other, which I have called the "Real Audiencia Gobernación", indicated the boundaries of the "Gobernación" de Guatemala. The "Real Cédula" of 1563 which was repealed by the "Real Cédula" of 1568 was the "Real Cédula Audiencia" of 1563, not the "Real Cédula Gobernación" of 1563 and certainly on no account the "Real Cédula" of 1564.

Honduras has cleverly manipulated the coincidence of dates of the two "Reales Cédulas" of 1563 in an attempt to deprive of validity the "Real Cédula Gobernación" which established that the Golfo de Fonseca belonged to the "Gobernación" of Guatemala. In reality what was modified by the "Real Cédula" of 1568 was the "Real Cédula Audiencia" of 1563; there was no modification either

of the "Real Cédula Gobernación" of 1563 or of the "Real Cédula" of 1564.

Honduras then twists the truth and describes synonymously what are in reality quite distinct institutions. Thus Honduras states in its Reply (p. 931):

> "deuxièmement, qu'en réalité l'Audiencia de Guatemala ne fut pas à proprement parler une 'Gobernación', mais un groupement de 'corregimientos' et d"Alcaldías Mayores' ...".

Note the play of words in the attempt to confuse "Audiencia de Guatemala" with "Gobernación de Guatemala"; this is despite the general awareness at the most elementary level of the fact that the "Real Audiencia" of Guatemala comprised the "Gobernaciones" of Guatemala, Honduras and Nicaragua, while the "Gobernación" of Guatemala was of a lesser administrative order and comprised the "Alcaldías Mayores" of Sonsonate, San Salvador, San Miguel and Choluteca - the Golfo de Fonseca and its islands being a dependant part of the "Alcaldía Mayor" of San Miguel.

Not content with attempting to confuse "Audiencia" with "Gobernación", Honduras also seeks to eliminate completely the "Gobernación" of Guatemala. In its Reply (p. 932), it cites a work of Flavio J. Quezada and makes reference to the Annexes (Ann. VII.7, p. 395). This Annex is an extract which Honduras would like to use to prove the non-existence of the "Gobernación" of Guatemala. Yet, in the "Reales Cédulas" of 1563 and 1564 the King of Spain himself stated that one of the objects of the exercise was to establish once and for all the boundaries of the *"Gobernación"* of Guatemala in which he included the Golfo de Fonseca and the Sub-Province of Choluteca. Neither expressly nor implicitly could the "Real Cédula" of 1568 have repealed one single word of these "Reales Cédulas" of 1563 and 1564.

(G) Conclusions

The following conclusions can be drawn in this part.

First, the "Real Cédula Gobernación" of 1563 and the "Real Cédula" of 1564 constitute the original colonial title which is the foundation of the claim of El Salvador to the sovereignty of all the islands of the Golfo de Fonseca.

Secondly, El Salvador has not proclaimed itself the sole successor to the "Real Audiencia" of Guatemala, since the "Real Cédula Gobernación" of 1563 and the "Real Cédula of 1564" placed the Golfo de Fonseca within the jurisdiction of the Province and the "Gobernación" of Guatemala, of which El Salvador formed part, and excluded the said area from the jurisdiction of the Province of Honduras.

Thirdly, the "Real Cédula" of 1568 did not repeal the "Real Cédula" of 1564, which left the Golfo de Fonseca within the jurisdiction of the Province and the "Gobernación" of Guatemala, exactly as El Salvador has always maintained.

IV. ANALYSIS OF THE ECCLESIASTICAL AND CIVIL JURISDICTION OVER CHOLUTECA AND NACAOME

I now turn to another important question on which there are still differences of opinion between the Parties, namely precisely who had ecclesiastical and civil jurisdiction over Choluteca and Nacaome in the colonial period.

To remove any possible confusion about where Choluteca and Nacaome actually were, Mr. President, and what is their significance in these proceedings, I propose to start with a very brief geographical description of colonial Central America. After the promulgation of the "Reales Cédulas" to which I have just referred, there were in the area which is at present under discussion three "Gobernaciones", those of Guatemala, Honduras and Nicaragua. The territory and jurisdiction of the "Gobernación" of Honduras did not at that time extend as far as the Golfo de Fonseca. Consequently, the territory which today forms the coast of the Republic of Honduras on the Golfo de Fonseca formed part of the "Gobernación" of Guatemala and was known as Choluteca and Nacaome. Nacaome had boundaries on the Golfo de Fonseca with, to the north, what is now the Republic of El Salvador, and with, to the south, Choluteca, which in turn had a boundary on the Golfo de Fonseca to the south with the "Gobernación" of Nicaragua.

Both Parties are in agreement that initially the ecclesiastical jurisdiction over Choluteca and Nacaome was vested in the Bishopric of Guatemala, while the civil jurisdiction was vested in the "Gobernación" of Guatemala. The Parties, that means Honduras and El Salvador, do not, however, agree on the extent to which this situation later changed. This is of fundamental importance because the only possible foundation for any claim by Honduras to the islands of the Golfo de Fonseca is if Honduras can demonstrate that it had jurisdiction over Choluteca and Nacaome at the appropriate time.

(A) The ecclesiastical jurisdiction over Choluteca

I will first consider the ecclesiastical jurisdiction over Choluteca.

I have already said that both Parties are in agreement as to the fact that the ecclesiastical jurisdiction over Choluteca was originally vested in the Bishopric of Guatemala; both Parties also

agree that, at the petition of the Bishop of Comayagua, this ecclesiastical jurisdiction was transferred to the Bishopric of Comayagua and Honduras by a "Real Cédula" of 1672.

The fact that a "Real Cédula" was necessary to carry out this transfer of jurisdiction was for the simple reason that before 1672 the ecclesiastical jurisdiction over Choluteca was vested in the Bishopric of Guatemala. On this question there neither is nor can be the slightest doubt since both Parties have stated this in their respective Memorials relying on the same documents. Nevertheless, the problem which arises and which has to be resolved is whether the transfer of Choluteca to the ecclesiastical jurisdiction of Comayagua also conferred on Comayagua ecclesiastical jurisdiction over the islands of the Golfo de Fonseca. I shall return to this point in due course.

(B) The ecclesiastical jurisdiction over Nacaome

I shall now turn to the ecclesiastical jurisdiction over Nacaome.

The ecclesiastical jurisdiction over Nacaome was, as in the case of Choluteca, originally vested in the Bishopric of Guatemala. However, when the Bishop of Honduras petitioned the Spanish Crown that, in the same manner as in the case of Choluteca, the ecclesiastical jurisdiction over Nacaome should be transferred to Honduras, the King of Spain refused to accede to this petition. Consequently, Nacaome remained subject to the jurisdiction of the Bishopric of Guatemala.

I will now examine what Honduras said in this respect in its Memorial (p. 540, para. 14):

> "Des motivations semblables à celles que l'on invoqua pour rechercher l'assignation de Choluteca à Comayagua avaient amené en 1675 l'Evêque de Comayagua, Martín de Espinoza Monzón, à solliciter l'assignation de la Guardania franciscaine de Nacaóme à son Evêché. Cependant, la question se compliquait à cause de recouvrement de la dime et le Roi, après avoir étudié la question, ne prit pas de décision favorable à ce sujet."

The final part of this passage, which states "et le Roi, après avoir étudié la question, ne prit pas de décision favorable à ce sujet", is an erroneous description of what the King of Spain actually did.

The reality is that the King of Spain denied the petition of the Bishop of Honduras and ordered that Nacaome should continue to form part of the jurisdiction of the Bishopric of Guatemala. Honduras has not been able to present any documentation subsequent to this decision of the Spanish

Crown in 1675 relating to any transfer of the ecclesiastical jurisdiction over Nacaome to the jurisdiction of the Bishopric of Comayagua nor even the date of any such transfer in the event that there had been one.

All Honduras has been able to do has been to have recourse to lengthy and confused historical narratives with no juridical validity. There is no evidence. Unless and until Honduras presents evidence to the contrary, the only conclusion can be that Nacaome continued to be subject to the jurisdiction of the Bishopric of Guatemala.

El Salvador, in contrast, bases its position on relevant and conclusive documentary evidence. Yesterday you said that we have no documents. From among the considerable quantity of evidence which El Salvador has presented in its written pleadings, I select two documents, each of which alone is sufficient to destroy completely the position adopted by Honduras.

The first document shows that in 1713 (therefore near the beginning of the Eighteenth century, some 41 years after the transfer of Choluteca to the ecclesiastical jurisdiction of the Bishopric of Comayagua), Nacaome still formed part of the Bishopric of Guatemala. In this "Real Cédula" of 25 January 1713 (CMES, Annexes, Vol. VIII, p. 103), Friar José Cordero of the Franciscan Order was nominated parish priest of Nacaome. The relevant part of this document is as follows:

> "Don Felipe por la gracia de Dios, Rey de Castilla, etc. Por cuanto habiendo vacado la Doctrina del Partido de Nacaome, *de la Provincia de San Miguel* de la administracion de la religión de San Francisco de la Provincia del Santisimo Nombre de Jesus de ella." (Emphasis added.)

Translated into English:

> "Philip by the Grace of God King of Castilla etcetera. Because there has occurred a vacancy in the Parish of the District of Nacaome, *of the Province of San Miguel*, under the Administration of the Order of Saint Francis of the Province of the Holy Name of Jesus of the same." (Emphasis added.)

The Chamber will thus note that in 1713 the King of Spain clearly declared that the Parish of the District of Nacaome formed part of the Province of San Miguel, and therefore part of Guatemala.

The second document shows that at the later date of 1791, neither Nacaome nor Choluteca had any ecclesiastical jurisdiction over the islands of the Golfo de Fonseca. This document was

produced in the course of the pleadings before this Court in the case concerning the *Arbitral Award Made by the King of Spain* (see MH, Annexes, p. 17). It contains a list of the curacies and parishes which, according to the General Administration of the Bishopric of Comayagua, comprised that bishopric, with the names of all the towns and the hamlets which constituted each curacy and parish. This document was sent on 20 October 1791 to the King of Spain by Brother Fernando de Cardinaños, Bishop of Comayagua. In the list there duly appear both the Parish of Choluteca and the Parish of Nacaome, without there being in either case any mention whatever of any curacy or town in any of the islands of the Golfo de Fonseca.

In respect of this second document, I must mention that the Tribunal of Arbitration presided over by Chief Justice Hughes which decided the dispute between Guatemala and Honduras attached special significance to the fact that this list sent by the Bishop of Comayagua to the King did not contain any mention of Golfo Dulce or Santo Tomas. This omission was in fact the basis of the judgment of the Tribunal. I submit that exactly the same reasoning must now be applied *mutatis mutandis* to the omission of any mention of the islands of the Golfo de Fonseca. Surely the Bishop of Comayagua was by far the best person to have known whether or not Choluteca and/or Nacaome had ecclesiastical jurisdiction over the islands of the Golfo de Fonseca.

It is illuminating to examine the Honduran arguments with care.

First, in the Memorial of Honduras (pp. 539-542, paras. 13-16), Honduras, after a lengthy, as usual very lengthy, historical narrative, makes (p. 539, para. 13) the following statement:

> "Le second, également appelé 'Guardanía de Nacaóme' dépendit par la suite de l'évêché du Honduras en tant que cure séculière après quelques vicissitudes à la fin du XVII^{e} siècle." (Ann. XIII.2.12, p. 2294.)

However, the words "à la fin du XVII^{e} siècle" constitute an imprecise date which cannot be accepted as the basis of a juridical argument. It only shows that Honduras does not know exactly when the Guardanía de Nacaome was transferred. The "Real Cédula" which constitutes the justification for this supposed change of jurisdiction has not ever been cited, much less presented to the Chamber.

Secondly, Honduras states in its Memorial (p. 542, para. 16):

> "Dans la structuration progressive de l'Evêché du Honduras, pour le Honduras les documents examinés prouvent pleinement l'intégration dans celui-ci, au XVII^{e} siècle, de Choluteca et de Nacaome avec les îles en dépendant."

This affirmation of Honduras is careless and inexact. It is careless because, as my earlier discussion has already shown, the documents to which I have referred prove only the integration of Choluteca to the ecclesiastical jurisdiction of Honduras and not the integration thereto of Nacaome. It was refused by the King. It is inexact because the list sent in 1791 by the Bishop of Honduras, Brother Fernando de Cardinaños, to the King of Spain clearly states that the islands of the Golfo de Fonseca did not appear among the curacies of Choluteca or of Nacaome. Pleading errors of this level of seriousness can only underscore the relatively complete absence of documentary evidence.

The Memorial of Honduras (pp. 22-23, para. 14) states that in 1574 the President of the "Real Audiencia" of Guatemala ordered Brother Bernardino Pérez to found in Nacaome the Franciscan Convent of San Andrés and that there were attributed thereto a series of townships "et les îles du Golfe de Fonseca".

I have already proved that at this time Nacaome did not belong to the ecclesiastical jurisdiction of the Bishopric of Honduras and that in 1675 the Bishop of Honduras asked, unsuccessfully, that the ecclesiastical jurisdiction over Nacaome should be transferred to his bishopric. The transfer was not carried out because this petition was denied by the King of Spain and Honduras has not been able to prove the existence of any such transfer nor even its date in the event that such a transfer had existed.

Most striking of all, Honduras recognizes in its Memorial the fact that in 1574 the ecclesiastical jurisdiction over the islands of the Golfo de Fonseca was attributed to Nacaome. Although initially this affirmation might at first appear to favour El Salvador, on the grounds that at that time Nacaome was subject to the ecclesiastical jurisdiction of the Bishopric of Guatemala, it has not been proven and El Salvador cannot accept it. This is because any such acceptance would enable Honduras to argue that any subsequent transfer of the ecclesiastical jurisdiction over Nacaome *ipso facto* must have carried with it the transfer of jurisdiction over the islands. El Salvador is unable to accept that any such event ever occurred. For the position of Honduras

to have a sound juridical basis, it is necessary that Honduras proves first the adjudication of the ecclesiastical jurisdiction over the islands of the Golfo de Fonseca to Nacaome and, secondly, the transfer of the ecclesiastical jurisdiction over Nacaome to the Bishopric of Honduras.

Lamentably, Honduras bases its affirmations on the comments of the Honduran historian, Vallejo, an interested party, and of no credibility at all.

The Reply of El Salvador, on the other hand, refers (p. 136) to direct documentary proof which shows that in 1673 the islands of the Golfo de Fonseca actually formed part of the jurisdiction of the Convento de las Nieves of Amapala. This was within the jurisdiction of San Miguel in the Bishopric of Guatemala. In the list of convents and parishes of the Bishopric of Guatemala set out in the Annexes to the Counter-Memorial of El Salvador (Vol. VII, Ann. IX, p. 27), appear La Meanguera, La Conchagua and La Teca. This evidence is abundant, clear and unadulterated.

(C) The civil jurisdiction over Choluteca and Nacaome

Having considered the question of the ecclesiastical jurisdiction over Choluteca and Nacaome, it is now necessary to consider the civil jurisdiction over these townships. This is an important and delicate question in respect of which particular care needs to be taken. Honduras has introduced confusion, obscurity and error into its pleadings on the subject.

The fundamental premise on which the position of Honduras is based is set out in its Memorial (p. 23) as follows:

> "A cet égard, il convient de souligner que Choluteca et Nacaome, bien qu'intégrées sur le plan politique depuis 1580 à la Alcaldía Mayor de Tegucigalpa, faisaient partie sur le plan religieux de l'evêché de Guatemala."

This paragraph contains two affirmations: first, that in 1580 Choluteca and Nacaome were still subject to the ecclesiastical jurisdiction of the Bishopric of Guatemala; and, secondly, that as from 1580 Choluteca and Nacaome were subject to the civil jurisdiction of the "Alcaldía Mayor" of Tegucigalpa. The first of these affirmations is of course correct, as has been shown by the study of ecclesiastical jurisdiction which has just been carried out. The second affirmation is false, totally false, as I shall now proceed to demonstrate.

In 1580, there was no such institution as an "Alcaldía Mayor" of Tegucigalpa. It did not

exist. What was created in 1580 was an "Alcaldía Mayor" of Mines of the Province of Honduras, not an "Alcaldía Mayor" of Tegucigalpa. Thus the passage from the Memorial of Honduras which I have just read is misleading in three distinct ways: first, as to the nature of the "Alcaldía Mayor" created; secondly, as to its name; and, thirdly, as to the extent of its territory and jurisdiction.

I will now proceed to examine the "Real Provisión" of 1580 (note that this is not a "Real Cédula, but I will not make any comment in that respect). Its relevant part states (once again I shall read the English translation, the Spanish is still here).

> "A vos Juan Cisneros de Reynoso, salud y gracia, sabed: que os hemos proveído por nuestro Alcalde Mayor de Minas de toda la Provincia de Honduras ..."

Translated into English:

> "To you Juan Cisneros de Reynoso, health and favour, be informed that we have provided for you to be our 'Alcalde Mayor' of Mines of all the Province of Honduras ..."

It does not mention the "Alcaldía Mayor" of Tegucigalpa. It says "our Alcalde Mayor of Mines of all the Province of Honduras".

Comparing the nomenclature used in this "Real Provisión" with that used by Honduras in its Memorial, it is immediately obvious that the "Real Provisión" does indeed create an "Alcaldía Mayor" of Mines of the Province of Honduras rather than, as stated by the Memorial of Honduras, an "Alcaldía Mayor" of Tegucigalpa.

This was an appointment to a position or office, that is to say of an "Alcalde Mayor" of Mines of the Province of Honduras. It was not the creation of an administrative division distinct from those already in existence. The jurisdiction conferred was limited *ratione materiae*, that is to say limited to the particular materia of mines. It was to be exercised within a territory which comprised townships belonging to different administrative divisions. The "Real Provisión" mentioned Choluteca and San Miguel, both of which were subject to the "Gobernación" of Guatemala and other townships which belonged to the "Gobernación" of Honduras.

Honduras is wrong in asserting that, by virtue of this "Real Provisión", Choluteca was incorporated into any "Alcaldía Mayor" which could have removed it from the Province of Guatemala, of which it formed part. This is because the jurisdiction of this "Alcaldía Mayor" of

Mines was determined by reference to its subject-matter, that is to say mines. All that can be said is that the "Alcalde Mayor" of Mines, Juan Cisneros de Reynoso, was given jurisdiction over mining questions arising in the townships and districts mentioned in the "Real Provisión". The basic administrative division to which these various townships and districts belonged was not affected in any way.

This last point can be verified simply by reading the forms of appointment of the "Alcaldes Mayores" of Mines of the Province of Honduras and the "Alcaldes Mayores" of San Salvador.

The form of appointment of the "Alcaldes Mayores" of Mines of the Province of Honduras is described by Honduras in its Memorial (pp. 533-534, para. 7):

> "La juridiction des Alcaldes Mayores de Tegucigalpa sur Choluteca est confirmée par les nominations des successeurs de Cisneros de Reynoso. Ces Alcaldes se voient conférer la juridiction effective sur Choluteca bien que, dans les documents initiaux, comme celui de la nomination de Sebastian de Alcega en 1601, on fasse *encore usage de la mention générique selon laquelle Choluteca correspond à la Province de Guatemala.* Cet usage va progressivement disparaître car il y a une intention manifeste de doter l'Alcalde Mayor de tous les attributs du contrôle administratif pour un meilleur gouvernement des territoires sous sa jurisdiction." (Emphasis added.)

However, the argument based on a "usage de la mention générique" so as to explain the attribution of Choluteca to the civil jurisdiction of Guatemala is flatly contradicted by subsequent appointments. In addition, it is impossible to believe that, in the 21-year period between 1680 and 1701, the King of Spain would not have corrected this "usage de la mention générique". Nor is there any basis for the "intention manifeste" referred to in the quotation.

In the "Real Cédula" of Villacastin of 28 March 1608, mentioned by Honduras as a document ratifying the "Real Provisión" of 1580, Juan Lobato was appointed as "Alcalde Mayor" of Mines and of the Registries of Mines in the Province of Honduras and on this occasion Choluteca was again mentioned as a province forming part of Guatemala.

In the "Real Cédula" promulgated in Madrid on 22 January 1618 Juan Espinoza de Pedruja was appointed, in substitution for Juan Lobato, as "Alcalde Mayor" of Mines and of the Registries of Mines in the Province of Honduras. Once again, Choluteca was mentioned as a province forming part of the "Gobernación" of Guatemala.

Subsequently, on 29 November 1634 and 12 June 1652 José de Orosco and Juan de Alvarado were respectively appointed as "Alcalde Mayor" of Mines and of its Registries in the Province of Honduras, and *of the Villa of Choluteca of the Province of Guatemala* (emphasis added) (CMES, Annexes, Vol. VII, pp. 107 *et seq*.).

Seventy-two years had passed between 1580 and 1652. In all that time Choluteca continued to be mentioned as belonging to the "Gobernación" of Guatemala.

In the absence of direct authority, it is not possible to believe that the King of Spain and the Spanish colonial authorities were so inattentive or inefficient that, during this whole period, Choluteca was mentioned in the deeds of appointment of the "Alcaldes Mayores" of Mines of Honduras as forming part of the "Gobernación" of Guatemala, without actually being subject thereto.

I will now consider the forms of appointment of some of the "Alcaldes Mayores" of San Salvador.

First, a document dated 12 October 1586 - so this document is after 1580 when they say that Choluteca passed to the Alcaldía de Tegucigalpa - establishes that Captain Lucas Pinto was appointed by the King of Spain as "Alcalde Mayor" of the cities of San Salvador, San Miguel and *the Villa of Xuluteca and its jurisdiction.*

Secondly, by a "Real Cédula" of 5 November 1588, following the death of Captain Lucas Pinto, Diego de Paz Quiñonez was appointed his successor as "Alcalde Mayor" of San Salvador, San Miguel and Choluteca.

Thirdly, by a "Real Cédula" of 28 February 1590 Pedro Girón de Alvarado was appointed his successor as "'Alcalde Mayor' of the cities of San Salvador, San Miguel and the Villa of Choluteca and their districts and jurisdictions" (CMES, p. 175, and Annexes, Vol. VII, p. 66).

Fourthly, by a "Real Cédula" of 16 January 1593, Luis Fuentes y de la Cerna was appointed "our 'Alcalde Mayor' of the city of San Salvador, San Miguel, and Choluteca and its jurisdiction" in succession to Pedro Girón de Alvarado.

Fifthly, from 1596 to 1603 Francisco Osorio y Avalos succeeded Luis Fuentes y de la Cerna

with the formal title of "'Alcalde Mayor' of the cities of San Salvador, San Miguel and Choluteca".

Twenty-three years had passed between 1580 and 1603. All the appointments as "Alcalde Mayor" of Choluteca had been made in favour of the same officer who had also been appointed as "Alcalde Mayor" of San Salvador and San Miguel. Choluteca could not possibly have formed part of any civil jurisdiction other than that of which San Salvador and San Miguel formed part.

The appointments of the "Alcaldes Mayores" of Mines and of their Registries in the Province of Honduras and the appointments of "Alcaldes Mayores" of San Salvador, all coincide perfectly. They illustrate that Choluteca continued to form part of the jurisdiction of the "Gobernación" of Guatemala after 1580 and that it was not in any way subject to the civil jurisdiction of Honduras *other than in matters concerned with mines*.

I think that it will also be helpful for me to explain the difference between an "Alcaldía Mayor" of Mines and an "Alcaldía" of a Province.

Honduras states in its Memorial (I like to use the Honduran Memorial):

> "D'autre part, on ne peut nier que, surtout au début de l'époque coloniale, il existe des compétences qui parfois sont réservées à *des autorités distinctes de celles qui exercent la juridiction territoriale proprement dite, et que cela occasionne des litiges et des conflits relatifs à l'activité à laquelle se réfère ladite compétence."* (MH, p. 534, para. 8 (emphasis added).)

El Salvador is in agreement with the contents of the passage which I have just cited. It accords with the treatment given to its subject-matter in the *Recopilación de Indias*, in which "Alcaldías Mayores" of Provinces and "Alcaldías Mayores" of Mines are dealt with separately. The former are regulated in Book 1, Title 2, and the latter in Book 4, Title 21. A *recopilación* of the index is here in the library of the Court, and can be consulted at any time.

This distinction is confirmed by the provisions of the *Ordenanzas de Virrey de Toledo*, the contents of which relate to the discovery, exploitation, methods of security, working, abandonment, and so forth of mines. The most relevant part of these "Ordenanzas" states:

> "I order and I command that the said 'Alcalde' and no other judge whatever shall make the said Registers and shall try all the legal proceedings and associated matters concerning the said mines."

A most illustrative example is the case of Juan de Vera, Governor of the Province of Honduras and Commander of the Military Forces of the Coast from Yucatán as far as the Cape of Gracias a Dios. In its boundary dispute with Guatemala in 1933, Honduras referred to the matter of Juan de Vera and argued that, by virtue of his appointment as Commander of the Military Forces from Yucatán to the Cape of Gracías a Dios, he had been granted jurisdiction over this area. However, the Tribunal of Arbitration presided over by Chief Justice Hughes decided that this appointment could not be regarded *as an attribution of jurisdiction, but simply as a specific appointment relating to the military defence of the area.*

Mutatis mutandis this case is identical to that of an "Alcalde Mayor" of Mines, whose appointment cannot be considered as an attribution of provincial jurisdiction but simply as a specific or specialized appointment relating to mines in the territories indicated in his appointment, which could indeed be, as was the case of the "Alcaldía Mayor" of Mines of the Province of Honduras, in more than one provincial jurisdiction.

Finally, but not for that reason of any less importance, is the fact that Nacaome is not even mentioned in the "Real Provisión" of 1580: Nacaome has never been mentioned in the "Provisión" of 1580, despite the fact that Honduras constantly said that Choluteca and Nacaome were cited, Nacaome has never been mentioned. This carefree inclusion of Nacaome is surely misleading and is, in any event, not supported by the evidence.

(D) Conclusion

The following conclusions can be drawn.

First, the "Alcaldía Mayor" of Mines of the Province of Honduras did not constitute an "Alcaldía" of a Province.

Secondly, the "Alcaldía Mayor" of the Province of Honduras only had jurisdiction over matters concerning mines.

Thirdly, the affirmation of Honduras that Choluteca and Nacaome were for all practical purposes integrated into this "Alcaldía Mayor" of Mines as from 1580 is erroneous, since the same officer was "Alcalde Mayor" of San Salvador, of San Miguel and of Choluteca for more than 25

years after 1580.

Fourthly, the ecclesiastical and civil jurisdiction over Choluteca and Nacaome was originally vested respectively in the Bishopric and "Gobernación" of Guatemala.

Fifthly, the ecclesiastical and civil jurisdiction over the islands of the Golfo de Fonseca was originally exercised respectively through the Convent of Las Nieves in Amapala and by the "Alcaldía Mayor" of San Miguel. Abundant supplementary proof of this is presented in the Reply of El Salvador (at pp. 136 *et seq*.).

Sixthly, the ecclesiastical jurisdiction over Choluteca was transferred to the Bishopric of Comayagua, but there is no evidence that the ecclesiastical jurisdiction over Nacaome was ever so transferred.

Seventhly, the transfer of the ecclesiastical jurisdiction over Choluteca to the Bishopric of Comayagua did not affect the ecclesiastical and civil jurisdiction which was exercised over the islands of the Golfo de Fonseca by, respectively, the Convent of Las Nieves in Amapala and the "Alcaldía Mayor" of San Miguel (CMES, Annexes, Vol. VII, Ann. IX, p. 7).

Mr. President, I have still a few pages to read. Perhaps it would be convenient to take a break now?

The PRESIDENT: I thank Professor Lima. We shall now take a short break of 15 minutes.

The Chamber adjourned from 10.50 to 11.10 a.m.

The PRESIDENT: The sitting is resumed and I give the floor again to Professor Lima.

Mr. LIMA: Thank you, Mr. President. So far I have spoken about two important issues, the "cédulas reales" of 1563-1564 and of the ecclesiastical and civil jurisdiction over Nacaome and Choluteca. Now, I will deal with two other very important issues which are reflected on the ownership of the jurisdiction of the islands on behalf of El Salvador.

V. THE JUDGMENT OF THE "JUEZ PRIVATIVO DE TIERRAS" OF THE "REAL AUDIENCIA" OF GUATEMALA

Another important question on which there are still differences of opinion between the Parties is the "Lorenzo de Irala Case". The relevant documents have been presented both by El Salvador and by Honduras in their respective written pleadings. There is a fundamental difference between the documents presented by the two Parties. Honduras has only presented a part of these proceedings, leaving the matter in the form in which it was resolved by the judgment of the judge of San Miguel. El Salvador, on the other hand, has additionally presented the judgment of the "Juez Privativo de Tierras" of the "Real Audiencia" of Guatemala, the judicial superior of the judge of San Miguel.

In 1766, Lorenzo de Irala brought proceedings before the Sub-Delegate Land Judge of the City of San Miguel with a view to obtaining the property of an island situated between the Isla de Tigre and the Isla de Zacate Grande (also then known as the Isla de Ganado). The judge of San Miguel stated in his judgment that he was not sure whether the island which was the subject-matter of the proceedings formed part of the jurisdiction of San Miguel, or of the jurisdiction of Tegucigalpa, and declared that the most appropriate course of action for the claimant to follow would be to direct himself to the "Juez Privativo de Tierras" of the "Real Audiencia" of Guatemala, his judicial superior, so that the latter could determine whether jurisdiction over the island belonged to San Miguel or to Tegucigalpa.

Honduras, in its Memorial (p. 553) states with reference to these proceedings that:

> "Le Juge, ayant vu la requête, décida :
> 'Qu'il n'est pas certain qu'elle appartienne à cette juridiction de San Miguel ou à celle de Tegucigalpa, et afin de ne donner l'occasion à un litige de juridiction et pour ne pas faire d'errreur, que la partie dénonçant se dirige au Juge Principal du Droit Royal des Terres.'"

The documentation presented by Honduras ends with the above-mentioned decision of the judge of San Miguel, in which the case was dubious as far as which jurisdiction the island belonged to.

However, this is not the whole story. Lorenzo de Irala through his attorney appeared before the "Juez Privativo de Tierras" of the "Real Audiencia" of Guatemala, as ordered by the judgment of the judge of San Miguel, and the "Juez Privativo de Tierras" decided as follows:

> "That there be sent a despatch of assignment to the *sub-delegate Judge of the jurisdiction of San Miguel, in order that he should put into practice all the procedures* which it is appropriate to carry out in Crown lands in respect of which no person will cause him impediment or any embarrassment." (Emphasis added.) (MES, Annexes, Ann. I, Chap. II; CMES, pp. 190-191.)

This decision, in which the highest judicial authority of the "Real Audiencia" of Guatemala recognized the jurisdiction of the judge of San Miguel over the islands of the Golfo de Fonseca, is one of the utmost importance and must be taken into account by the Chamber. It destroys totally the alleged sovereignty of Honduras over the islands of the Golfo de Fonseca which Honduras has tried to justify by means of confused and extensive historical narratives.

The plain fact is that the "Juez Privativo de Tierras" of the "Real Audiencia" of Guatemala, faced with the doubts of the judge of San Miguel as to whether jurisdiction over one of the islands of the Golfo de Fonseca was vested in San Miguel or in Tegucigalpa, categorically recognized the jurisdiction of the judge of San Miguel over the matter. If, additionally, note is taken of the fact that the island in question was one of those closest to the coast of Honduras, it is not possible to see how Honduras can then claim historical jurisdiction over other islands much further away from the coast of Honduras, such as the Isla El Tigre, the Isla de Meanguera, and the Isla de Meanguerita.

Honduras in its Reply attempted to dilute the importance of this decision by emphasizing a question which is in fact wholly irrelevant. Honduras argued that the disagreement overt this judgment which exists between El Salvador and Honduras is over the identity of the island, that is to say whether it was the Isla de Exposición, as claimed by El Salvador, or the Isla de Zacate Grande, as claimed by Honduras. This question is irrelevant to the real issue. Whether the island in question was the Isla de Exposición or the Isla de Zacate Grande is not important. What is important is that

there were doubts as to precisely who had jurisdiction over an island in the Golfo de Fonseca close to the coast of Honduras and that the "Juez Privativo de Tierras" of the "Real Audiencia" de Guatemala decided that jurisdiction was vested in San Miguel and not in Tegucigalpa.

Consequently, in this manner the jurisdiction of San Miguel over the islands of the Golfo de Fonseca was clearly established more than 50 years before the independence of Central America.

I will deal now with another case.

VI. THE CASE OF THE "JUECES REFORMADORES DE MILPAS" (REFORMING JUDGES OF THE CULTURE OF MAIZE)

This matter has received an ample treatment in the written pleadings of El Salvador but due to the misrepresentations of and alterations to the crucial "Real Provisión" of 1667 in which Honduras has engaged, I find myself obliged to amplify at this oral stage the arguments already expressed in these written pleadings.

I will begin my exposition with what Honduras states in its Memorial (in para. 18 at p. 543):

> "Constitue un autre document pertinent émanant de Sa Majesté le Roi d'Espagne, la lettre adressée en juin 1667 (Annexe XIII.2.5, p. 2301) au Juge Réformateur de la culture de maïs de la province de San Miguel et de la Juridiction de la ville de Xeres de Choluteca par laquelle il est déclaré que :
>
> 'La nomination du Juge de la culture du maïs de la Province de San Miguel ne doit pas s'entendre comme englobant les villages des Iles de Conchagua, Teca, Miangola, et les autres se trouvant dans cette mer et il n'y aura pas juridiction sur eux.'"

In my earlier remarks, I have already mentioned the strategy of Honduras of engaging in half truths, making citations out of context, changing the names of institutions, and so forth. However, this is the best, or worst, example of all.

The passage from the Memorial of Honduras which I have just read contains a reference to a letter sent in June 1667 which appears in the Annexes to that Memorial. This letter is presented in the form of an extract, by Honduras, and this extract has suppressed certain paragraphs from the original which completely changes the sense of the letter.

El Salvador has presented in the Annexes to its Counter-Memorial (CMES, Vol. VIII, Ann. X.3, p. 15) the complete text of this letter in its original palaeography, with a transcription and an English translation. By comparing the extract presented by Honduras with the full text presented

by El Salvador, the extent to which the meaning has been altered becomes very apparent.

The following section of the letter (page 10 thereof) is found in the Annexes to the Counter-Memorial of El Salvador and not in the Annexes to the Memorial of Honduras (I will once again read only the translation into English):

> "Muy Poderoso Señor: Sebastián Vicente Lucas de los Reyes y Lázaro Hernández, indios Alcaldes de las Islas de la Conchagua, Teca y Miangola, *en la jurisdicción de la Alcaldia Mayor de la Ciudad de San Salvador y San Migue*l, como más lugar haya, decimos que como parece de la Real Provisión que presentamos con el Juramento necesario por ella está mandado guardar y cumplir el despacho librado por el Gobierno Superior en que se dispone que el Juez Reformador de Milpas de la Provincia de San Miguel y *Villa de la Choluteca* no entren en dichas Islas a usar este oficio *por las razones que en dicho despacho se contienen* y por que sin embargo de lo referido José de Ledesma y Vargas que el presente lo es en dicha Provincia entró en dichas Islas pretende ejercer en ellos el dicho oficio." (Emphasis added.)

(Translated into English)

> "Our most powerful lord: Sebastián Vicente Lucas de los Reyes and Lázaro Hernández, Indian Alcaldes of the Islands of Conchagua, Teca, and Miangola [Miangola is Meanguera] *in the jurisdiction of the 'Alcaldia Mayor' of the City of San Salvador and San Migue*l; [Two Indians who attach themselves to the King suggested and said that their islands on which they live and of which they are the Alcaldes are in the jurisdiction of the Alcaldia Mayor of the City of San Salvador and San Miguel.] To be more explicit, we continue to say, we declare that as it appears from the 'Real Provisión' which we presented with the necessary oath, it is ordered to observe and comply with the order issued by the Superior Government in which it is provided that the 'Juez Reformador de Milpas' of the Province of San Miguel and *Villa de la Choluteca* should enter into these islands to carry out his functions *for the reasons contained in the said despatch* and because in spite of what has been referred to José de Ledesma y Vargas who is at present such [judge] in the said Province entered in the said islands and is attempting to perform in them his said official function." (Emphasis added.)

As can be appreciated from this passage which I have just read, Honduras has therefore omitted in its extract the part of the letter referring to the request of the Indian "Alcaldes" of the Islas de Conchagua, Teca and Miangola (Meanguera) requesting that the "Juez Reformador de Milpas", José A. Ledesma, should not enter their islands to perform his official functions, since on an earlier occasion he had been prohibited from entering for the reasons contained in the letter. These reasons alleged by the petitioning Indians were that their townships were so poor and small that there were scarcely enough Indians to satisfy the obligations and responsibilities which they had.

It is very significant, and I must emphasize, that the prohibition referred to in the passage which I read from the Memorial of Honduras was not sent only to the Judge of San Miguel but also to the Judge of Choluteca since, as the passage which I have just read from the Annexes to the

Counter-Memorial of El Salvador reveals, the same person held the position of "Juez Reformador de Milpas" in both San Miguel and Choluteca. The same person. The omission of the reference to Choluteca obviously suited Honduras very well.

The omission by Honduras of the passage which I read out from the Annexes to the Counter-Memorial of Honduras is most significant because it gives a totally different impression as to the reasons why the "Jueces Reformadores de Milpas" were prohibited from entering the islands in question. By omitting these paragraphs, Honduras has cunningly omitted the part in which the petitioning Indians declared that the islands of which they were "Alcaldes" were situated within the jurisdiction of the "Alcaldia Mayor" of San Salvador and San Miguel.

However, this is not all. Immediately following the passage which I have already read, the Memorial of Honduras continues:

> "Les habitants des deux îles Conchagua et Meangola eux-mêmes avaient un certain intérêt à ce que le juge de la culture de maïs assume la juridiction, mais la démarche qu'ils effectuent est rejetée par le Roi."

This statement can only be described as totally false. The Indian "Alcaldes" requested that the "Juez Reformador de Milpas" should not enter their islands to perform his official functions because their townships were very poor. The "Real Audiencia" indeed granted their petition. The text of the decision of the "Real Audiencia" is as follows:

> "Y vistos los autos se proveyo el que sigue: En la Ciudad de Santiago de Guatemala en veinte y un dias del mes de junio de mil seiscientos y sesenta y siete años los Señores Presidentes Oidores de esta Real Audiencia ... Habiendo visto lo pedido por los indios de las Islas de Conchagua, Teca y Miangola sobre que se les libre carta para que ... no entren en dichas islas los Jueces Reformadores de Milpas de la Provincia de San Miguel y Villa de la Choluteca ... Dijeron que mandaban carta para que José de Ledesma, Juez de Milpas de la Provincia de San Miguel, ni los demás que fueren al Juzgado de Milpas de este distrito no entren a vistar con pretexto alguno estas Islas de Conchagua, Teca y Miangola por estar declarado no ser comprendidas en su jurisdicción."
>
> (Translated into English)
>
> "And having heard the proceedings, it was provided as follows: In the City of Santiago de Guatemala on 21 June 1677 the 'Presidentes Oidores' of this 'Real Audiencia' ... having examined what was sought by the Indians of the Islands of Conchagua, Teca, and Miangola namely that a letter be issued to them so that ... there should not enter into the said islands the 'Jueces Reformadores de Milpas' of the Province of San Miguel and the Villa of La Choluteca

> ... They declared that they were sending a letter in order that José de Ledesma, 'Juez de Milpas' of the Province of San Miguel, and the others who are at the Court of 'Milpas' of that district do not enter to visit under any pretext these Islands of Conchagua, Teca and Miangola on being declared not to be included within their jurisdiction."

This part of the letter, which is also omitted from the extract in the Annexes to the Memorial of Honduras, completely destroys the affirmation by Honduras contained in the passage from its Memorial which I have just read that the petition of the Indians was denied. The passage which I have just read from the Annexes to the Counter-Memorial of El Salvador shows clearly that it was accepted.

One more illustration. At the bottom of the same page of the Memorial of Honduras from which the two passages which I have already read are taken, Honduras states (*ibid*.):

> "Dans le document royal, les îles sont réputées dépendantes de la ville de Xeres de Choluteca qui, déjà à cette époque, malgré une certaine confusion dans les dénominations des autorités, était, par disposition d'ordre général, tombée sous la dépendance de la Alcaldia Mayor de Tegucigalpa, laquelle exerce sur elle la juridiction territoriale correspondante."

This statement is also totally false. There is not one single royal document in which the islands are stated to be dependents of the villa de Xeres de Choluteca. To the contrary, as has already been shown in the passages cited from the full version of the letter in the Counter-Memorial of El Salvador, the Indian "Alcaldes" stated in their petition to the "Real Audiencia" of Guatemala that the islands of which they were "Alcaldes" were within the jurisdiction of the "Alcadia Mayor" of San Salvador and San Miguel. A further and separate point is that in my earlier discussion of the "Alcadia Mayor" of Mines of the Province of Honduras, that institution whose name is changed so often, I showed that every time that there was a mention of Choluteca it was stated to be within the jurisdiction of Guatemala, not, as the passage which I have just read from the Memorial of Honduras states, within the jurisdiction of the "Alcaldia Mayor" of Tegucigalpa.

I must ask your indulgence, Mr. President, for the time which I have spent on this last question. However, it was necessary to show the lengths to which the Government of Honduras has been prepared to go in the written pleadings to try to make up for the lack of documentary proof in relation to the jurisdiction of Honduras over the islands of the Golfo de Fonseca.

I have not discussed any title presented by Honduras because we have not found any title in which direct jurisdiction is given to Honduras, none at all. Yesterday I heard there was a difference

between *de titre utile* and *de titre non-utile* but in this case it is *de titre non-existant.*

VII. CONCLUSIONS

The following conclusions can be drawn from this statement.

Firstly, it has been fully proven that the Golfo de Fonseca as from 1563 belonged to the jurisdiction of the "Gobernación" of Guatemala and not to the "Gobernación" of Honduras.

Secondly, Honduras has not presented any evidence of any modification of the boundaries established for the "Gobernación" of Guatemala in the "Reales Cédulas" of 1563 and 1564, given that the "Cédula Real" of 1568 referred not to the "Gobernación" de Guatemala but to the "Real Audiencia" of Guatemala.

Thirdly, the ecclesiastical and civil jurisdiction over Choluteca and Nacaome originally was vested in the Bishopric and "Gobernación" of Guatemala respectively.

Fourthly, the ecclesiastical jurisdiction over Choluteca was transferred to the Bishopric of Comayagua in 1672. However, there is no proof that the ecclesiastical jurisdiction over the Islands of the Golfo de Fonseca ever passed to the Bishopric of Comayagua. On the contrary, there is abundant proof that the ecclesiastical jurisdiction over the islands remained vested in the Convent of Las Nieves of Amapala, in the jurisdiction of San Miguel.

Fifthly, there is no conclusive proof as to the date on which the ecclesiastical jurisdiction over Nacaome was transferred to the Bishopric of Comayagua in the said 17th century.

Sixthly, there is no proof that the civil jurisdiction over Choluteca and Nacaome was ever transferred to the "Gobernación" of Honduras, since the fact that the jurisdiction as to mines in Choluteca was transferred in 1580 to the "Alcaldía Mayor" of Mines of the Province of Honduras did not separate Choluteca and Nacaome from the jurisdiction of the "Gobernación" of Guatemala.

Seventhly, throughout the period that jurisdiction as to mines in Choluteca was vested in the "Alcaldía Mayor" of Mines of the Province of Honduras, that is the correct name, there was also a provincial "Alcalde Mayor" of Choluteca, always the same person who was "Alcalde Mayor" of San Miguel and San Salvador.

Eighthly, the "Gobernación", not the "Audiencia", of Honduras could not have had jurisdiction over the islands because of the interposition of Choluteca and Nacaome, part of the jurisdiction of the Gobernación of Guatemala, between Honduras and the Golfo de Fonseca.

Ninthly, the jurisdiction of San Salvador over the islands of the Golfo de Fonseca is above all demonstrated by, first, the "Lorenzo de Irala" case, in which the judgment of the "Juez Privativo de Tierras" of the "Real Audiencia" of Guatemala recognizing the jurisdiction of San Miguel over an island close to the coast of Honduras and, secondly, the case of the "Jueces Reformadores de Maiz", in which the Indian "Alcaldes" of Conchagua, Teca and Miangola (Meanguera) declared in their petition that their islands were within the jurisdiction of San Miguel in the "Gobernación" of Guatemala.

Tenthly, the evidence presented by El Salvador in its written and oral pleadings clearly confirm the historical title of El Salvador over all the islands of the Golfo de Fonseca in dispute in this case; in comparison, the evidence presented by Honduras is distorted by misrepresentations and half-truths.

In conclusion, Mr. President, Honduras has to prove its claim, not merely cast doubts on the claim of El Salvador.

That brings to an end my first statement on the islands of the Golfo de Fonseca. I would like to thank you, Mr. President, for the attention and courtesy which you and the other distinguished Members of the Chamber have followed my exposition. I now ask you, Mr. President, to call upon Professor Keith Highet, who will continue the oral pleadings of El Salvador with an analysis of the situation as from the date of the independence of Central America to the present day. Thank you, sir.

The PRESIDENT: I thank Professor Lima and I give the floor to Professor Keith Highet.

Mr. HIGHET:

I. INTRODUCTION

Thank you Mr. President, Members of the Chamber. It is again a great pleasure for me to be

able to appear before this Chamber on behalf of the Republic of El Salvador. Mr. President, we have run into somewhat of an administrative problem with the witness this afternoon and with the translator and so forth which does not require a decision now but I would propose, if I might, to stop my pleading just before 12.30 p.m. at a point where I hope I won't be myself confused when I resume tomorrow morning. Probably the witness would be presented by El Salvador this afternoon with our interpreter starting at 4 o'clock. We will go on as long as necessary, including of course time for yourselves and the other side, and if I must resume again this afternoon in a *plaidoirie*, I would be more than prepared to but in any event, under these circumstances, I will have to go over into tomorrow morning. Thank you, sir.

It is my task to present our case concerning the continuous and peaceful display of territorial sovereignty by El Salvador over its islands in the Gulf of Fonseca.

There is a problem in pleading this point: Honduras has said again and again that the principles of uti possidetis alone govern the question of the islands. It cannot be right. Such an assertion is narrow on its face - unrealistic - and impossible to meet without showing some signs of stress.

But with this background, to speak of evidence, as I must do, concerning the continuous and peaceful exercise and display of territorial sovereignty makes one almost feel like a legal Don Quixote tilting at windmills. I am to address myself, Mr. President, to arguments that Honduras says are not needed, and presumably will not heed, and certainly has not answered. It is clever of Honduras to take that position - indeed it is the only one she can take, since she has no case at all on the effective exercise of control over any of the Salvadorian islands.

My colleague Dr. Lima has just dealt with the historical titles that govern the islands, and has shown that if the decision in the case is taken on the basis of historical titles alone, then all the islands of the Gulf of Fonseca, with the possible exception of Zacate Grande, would be Salvadorian.

What I wish to demonstrate is that even if the historical evidence were not as strong as Dr. Lima as demonstrated, El Salvador can demonstrate conclusively that it has for years exercised "the continuous and peaceful display of the functions of State"[1] in respect of the islands claimed by it and

occupied by it.

To all of this Honduras simply makes denial, since it cannot produce any actual evidence. Her legal theory is therefore affected by the absence of evidence and the absence of facts which she can present. It gives counsel a lonely feeling. It is nevertheless my duty to continue, like the sound of one hand clapping, to make these arguments on behalf of El Salvador which, even if Dr. Lima's case had never been made, would be conclusive as a matter of law on the sovereignty of El Salvador over its islands.

Mr. President, I am most mindful of the requirements on counsel of Article 60 of the Rules, and I will address myself as carefully as I can to the issues that still divide the Parties. As I see it, there are three main legal issues that do so and we will come later to the issues of fact, with the exception of the interposition of the witness this afternoon. The three main legal issues are: (1) the applicable law; (2) the scope of the dispute; and I think (3) the relevance of facts after a given date.

After discussing these three points, I will turn to the issues of fact that still divide the Parties in relation to the Gulf.

II. LEGAL ISSUES THAT STILL DIVIDE THE PARTIES

(1) The applicable law

As a preliminary issue, Mr. President, the Chamber must examine whether it is merely to apply to the islands the principles of the Latin American *uti possidetis juris* that it applied in the first part of the case concerning the land frontier disputes or whether other legal standards are to be used.

As you know, the Special Agreement simply requests the Chamber to take into account "the rules of international law applicable between the Parties" and includes, but only "where pertinent, the provisions of the General Peace Treaty". This does not mean that the Peace Treaty will govern willy-nilly. It is only where the Chamber considers it to be "pertinent".

Article 26 of the Treaty of Peace clearly applies principally and exclusively to the segment of the case that we have just completed: the land frontier. Indeed it begins with the phrase "For the delimitation of *the* frontier in *the* zones in controversy ..." This cannot apply to the islands in the

Gulf. How could it? Is there a "frontier" being delimited in the Gulf? Are there "zones"? Of course not.

Moreover, as our Agent, and Professor Prosper Weil, and President Jiminéz de Aréchaga have each noted, even in the context of the land boundaries the General Peace Treaty was careful to balance the application of Spanish colonial titles with more modern concepts, stating that there should be

> "equally ... taken into account ... other probatory means and arguments of a juridical, historical, or human nature, or of whatever other character, admitted under international law, that the Parties may produce".

Mr. President, Honduras has signed the General Peace Treaty. Honduras is bound by this provision of Article 26. Honduras cannot now cut its cloth to fit its particular narrow case, and deny the applicability of the treaty that brought the case about. The *compromis* is clear. It refers to a General Peace Treaty that is clear. And yet one of the two Parties to this case merely turns a blind eye to both of these instruments, and denies their plain and simple meaning in the face of all argument.

The Chamber would be bound, Mr. President, in our submission, to apply the modern law of the acquisition of territory. This includes taking into account the actual facts relating to the peaceful and continuous exercise of sovereignty and control over territory, as well as paper titles or colonial deeds, in particular, I would submit, those of considerable antiquity. The exception, not the rule, will be situations such as the *Burkina Faso/Mali* case where the Parties had expressly stipulated in the Special Agreement that the rule of uti possidetis was to be followed. The compromis had requested the decision to be "... based in particular on respect for the principle of the intangibility of frontiers inherited from colonization ..."[2]. (The references, Mr. President, are in my text.) The law has steadily developed, and become more emphatic, ever since the *Island of Las Palmas* case[3] in 1928 and the *Minquiers and Ecrehos* case in 1953[4].

There is another reason, derived perhaps from common sense, why tests of actual control and exercise of authority are appropriate and fitting in the case of islands.

In the context of land boundaries, such as were present in the *Frontier Land* case[5], the *Temple*

of Preah Vihear case[6], or the *Burkina Faso/Mali* case[7], the boundary line is found, or moved, or adjusted, or confirmed. This is not really the case with islands. Islands are separate, integral; they are entire unto themselves. It is no good "moving" a boundary line halfway up an island, or two-thirds of the way across it. In only a few known instances are islands divided: I think here of the Cyprus problem or of Santo Domingo and Haiti. These are special cases. Most islands in the world will fall into one sovereignty or another. There will be no green line across them.

In addition, it is far easier for a judge to determine the exercise of sovereignty on an island than it is for him in respect of land territory. Why? A State is either on the island or it is not. Certain things are either done on the island, or they are not. But when one deals with a *land* boundary, the question of what is done by which State to whom, exactly where, and under what conditions, can be difficult to resolve. Thus, in the *Frontier Land case*, the Court stated that "The difficulties confronting Belgium in detecting encroachments upon, and in exercising, its sovereignty over these two plots, surrounded as they were by Netherlands territory, are manifest[8]."

In the case of islands, their mere separation from the mainland, from the main territory of a State, makes it easier to note the continuous and peaceful display of sovereignty, and individual acts taken by one or another State, as occurred in the *Minquiers and Ecrehos* case[9]. One can know with relative simplicity that the French flag, for example, was not raised on Clipperton Island, or that the United States and the Mexican flags were subsequently raised, and can draw the appropriate conclusions[10].

It was easier to determine that individual acts did or did not take place showing the exercise of "state functions in respect of both groups of islands" in the *Minquiers and Ecrehos* group[11] than it was in the case of land frontiers, whether they be Belgian-Dutch or Burkinabe-Malian, or Argentine-Chilean.

One can readily determine whether people went ashore, and whether visits were paid, to the island of Las Palmas or Minquiers, or whether its inhabitants would make yearly presents to the radja of Taruna; or whether the island was or was not visited by government ships, or whether assistance was given to the island after the 1904 typhoon[12].

That is probably the answer right there. With a land boundary dispute, one always has one State on one side of the line and another State on the other. There is always contiguity and overlap. The exercise of cross-boundary administrative power is therefore comparatively hard to discern and may be very difficult to establish, as it was in the case of *Burkina Faso/Mali*.

But on an island - unless, perhaps, one State is working on one end of the island and another State is working on the other - this situation is not presented. It is a lot easier to see. Indeed, I actually live on an island, about two or three times larger than Zacate Grande. Yet what happens at one end is common knowledge at the other end of the island within a day or so. We even have a saying on the island: "What goes around, comes around".

In this case, Mr. President, when one comes to consider the islands dispute, one really can see the legal position of Honduras stripped of all its clothes, like the Emperor in the fairy tale. It is all very well to argue with Honduras about historical title - and I must stress that I am most grateful to Dr. Lima for having done so with such clarity - but when one gets down to the facts on the ground, the landscape suddenly comes into focus and the human - and legal - realities emerge with great clarity.

It is perfectly easy to see that Honduras has never exercised any substantive rights of administration or control whatever, under any circumstances over the islands of Meanguera and Meanguerita, or over any of the other islands that have been historically considered as Salvadorian. Honduras's claim to Meanguera is artificial in the extreme. One might even suspect that it has been warmed up in order to create an illusion that Honduras really has a coastline fronting on the Pacific. It has certainly been built up in the years since the development of more extensive maritime rights in the 1960s.

It may be useful to recall the *Beagle Channel* Arbitration[13]. There, the Tribunal brought evidence of administration and control by Chile to bear upon its interpretation of the boundary treaty, under Part 3, entitled "Acts of jurisdiction considered as confirmatory or corroborating evidence[14]."

The Tribunal held that

> "... evidence of acts of jurisdiction performed by either Party in the disputed area is relevant and legally admissible - not to alter the rights granted by the Treaty or to add to these or create new rights - but in confirmation of the validity of that interpretation of the Treaty which is alleged to have the effect of conferring the rights concerned[15]."

The closest case to the present one is of course *Minquiers and Ecrehos*. Sparsely inhabited, the islets and rocks involved lay offshore the coasts of Jersey and France. Historic titles of great antiquity and great sophistication were at issue, although we would say that the French claim to historic title was infinitely more substantial than is the Honduran claim to historic title in this case. Nevertheless the Court turned to the same kind of evidence that is spelled out in the second sentence of Article 26 of the General Peace Treaty:

> "The Court does not ... feel that it can draw from the historical considerations alone any definitive conclusion as to the sovereignty over the Ecrehos and the Minquiers, since this question must ultimately depend on the evidence which relates directly to the possession of these groups[16]."

The Chamber will have noted that the Court did not say "and". Nor did it say "therefore this question must ultimately depend on the evidence ..." It said "*since* this question must ultimately depend on the evidence". It put it first. The question, said the Court in 1953, must ultimately depend on the evidence of the peaceful and continuous exercise of State functions over the islands - shown by "evidence which relates directly to the possession of these groups", and this evidence took priority over the historical titles at issue.

To do otherwise in the present case would violate the basic human rights of the inhabitants who may have - as have the inhabitants of Meanguera - lived under the existing jurisdiction and control for six or seven generations or more. Surely there is a relationship between the law applicable to the determination of land territory and the people who live there. There must be a connection between the legal principles at issue and other related norms, of self-determination, and of basic human rights.

If the Chamber in *Burkina Faso/Mali* had been requested to decide the facts of the *Minquiers and Ecrehos* case in accordance with legal titles, it could still have applied *effectivités* in its "third category". Moreover, if the Chamber in *Burkina Faso/Mali* had been confronted with a *compromis* such as the one in our case today, its Judgment would have been quite different I think. This is no

criticism of that careful decision, but is only to say that each Judgment of the Court obviously speaks in terms of the jurisdiction conferred and the sources of law if they are specified.

And so our conclusion is that the Chamber in the present case must look at the effective exercise and display of State sovereignty over the islands as well as the historical titles. One cannot ignore what the Court described in *Minquiers and Ecrehos* as the "evidence which relates directly to [their] ... possession", or what Judge Huber referred to in the *Las Palmas* arbitration as "the continuous and peaceful display of territorial sovereignty ... [which] is as good as a title[17]."

Fortunately, Mr. President, in our case El Salvador has both.

(2) THE SCOPE OF THE DISPUTE

The second legal issue which still divides the Parties, Mr. President, is the scope of the dispute. It can be boiled down to two simple questions: Which islands are in dispute? And why?

First, as a preliminary point, we should - with respect - "dispose" of Meanguerita. It is a very small and uninhabited island which lies just offshore Meanguera. The Chamber can see what it looks like I hope from the photographs in the albums that our witness is going to present. It is like a large rock covered by vegetation, I have been there, and it rises out of the sea like a sort of a stunted version of Anacapri. But there are no ruins or emperors on Meanguerita. In fact there is nobody on it. There is nothing but flocks of birds that swoop around in great clouds in the afternoons and in the evenings.

Essentially, since no one lives on Meanguerita, it is really and truly no more than an "appendage" of Meanguera. Honduras has in effect conceded that Meanguerita is a mere adjunct of Meanguera in its pleadings. Where Meanguera goes, Meanguerita will follow. One could say that Meanguerita is to Meanguera as Machlett was to Raytheon in the ELSI case - a point that some Members of the Chamber may perhaps recall.

Indeed, in the maps that are in evidence - and certainly in the significant documents such as the Judgment of the Central American Court of Justice[18], Meanguerita has always accompanied Meanguera in attribution to El Salvador. She has never had a separate personality of her own. Moreover, as the witness will I hope show, Meanguerita is not now habitable and one would think

has never been habitable.

Judge Levi Carneiro put it deftly in his individual opinion in the *Minquiers and Ecrehos* case. He said the following:

> "Just as a State which has occupied the coast or an important part of an island is deemed to have occupied the island as a whole, the occupation of the principal islands of an archipelago must also be deemed to include the occupation of islets and rocks in the same archipelago, which have not been actually occupied by another State[19]."

For this reason, Mr. President, I would propose that we shorten the *plaidoiries* by simply talking about Meanguera on the understanding that we are including, by implication, its little sister.

Turning back to the question - which islands are in dispute? - Honduras is shocked and dismayed that other islands, particular El Tigre, have been drawn into the case. Honduras says that the "dispute" never concerned those other islands, and indeed never concerned any islands other than those which Honduras said it did.

The written pleadings of course show that in 1985 the Minister for Foreign Relations of El Salvador stated unequivocally in a note that "all the islands are in dispute since an undetermined area is involved[20]."

Honduras maintains that it was understood at the meetings of the Joint Frontier Commission that the islands dispute would in effect be limited to Meanguera and her little sister Meanguerita. My friend Dr. Lima has spoken about the appropriate use of anything said in those meetings. Without detracting from his point, however, I would respond on the issue of Meanguera by saying, first, it certainly was not that clear; second, the Special Agreement certainly does not reflect it; and third, it is Honduras' own doing that title to all the islands of the Gulf has been put into question.

Why, why would I say that? It is because it is Honduras' own choice of law that has resulted in the examination of colonial legal titles exclusively, that applies in terms and across the board to all the Gulf islands, and that cannot be limited to those islands selected by Honduras or by El Salvador.

Citing *Mavrommatis*, Honduras reminds us that "A dispute is a disagreement on a point of law or fact, a conflict of legal views ...[21]". As the voluminous written pleadings in this case bear witness, there is most surely "a disagreement on a point of law" between El Salvador and Honduras

on the uti possidetis juris of 1821 as it bears on the islands in the Gulf of Fonseca. The uti possidetis juris of 1821 is not limited to Meanguera and Meanguerita. It applies to the whole area of the Gulf, with all of its islands, without discrimination.

If Honduras insists that only the uti possidetis juris of 1821 governs title - and if Honduras' claim to Meanguera and Meanguerita on that basis is not justified - then Honduras' title to Tigre, to Exposición, even to Zacate Grande, is equally not justified. Honduras cannot blow hot and cold at the same time.

Nor can it depend, as Honduras argues, on whether or not El Salvador has filed a claim on El Tigre or other islands claimed by Honduras. It is simply a result of the relentless application of the logic of the law on the specific legal principles asserted by Honduras. To insist on only applying only historical titles, as Honduras does, is to open the magic bottle and to let the genie out. He cannot be put back in again. And so Honduras is, so to speak, "hoist by her own petard[22]".

Imagine, Mr. President, two neighbouring farms in the countryside. The owner of one farm questions the property of a given piece of woodland that has long been occupied by the other. To support his claim he produces an ancient deed. But it is a deed to his own property that covers not merely the contested woodland but also justifies his ownership of two ponds and a meadow next to the woodland. Now if the case comes to trial and if that deed is proved to be a forgery, and if as a result he cannot get the piece of woodland, would his title to the ponds and the meadow be beyond challenge? Of course not.

For example, take El Tigre. Since Honduras cannot deny that the *uti possidetis juris* of 1821 applies to El Tigre, what she does is to deny that El Tigre is in dispute. Indeed, the Honduran Reply states:

> "It is obvious that the Salvadorian claim to the island of El Tigre is a claim based clearly and precisely on *uti possidetis juris*, i.e., on alleged titles of the colonial era[23]."

Moreover, even though she has also denied the relevance of acts of jurisdiction in respect of El Salvador's peaceful administration and control over Meanguera, in her Reply Honduras cannot refrain from stating:

> "with regard to the premise according to which a comparison of the acts of jurisdiction exercised during the republican era since the 19th century or more recently ... can support the

> Salvadorian claim either to the island of El Tigre or to Meanguera ... the State of Honduras has exercised indisputable and ostensible [sic] sovereignty over the island of El Tigre since the independence from Spain and ... has carried out continuously therein jurisdictional functions ...[24]".

To that we say bravo.

It would most likely be the case that if the Chamber, Mr. President, were to evaluate the exercise and display of State sovereignty as to El Tigre it would reach a different result from the one it would reach merely by applying the *uti possidetis juris* of 1821 to it, since El Salvador makes no pretence to the continuous or peaceful exercise of sovereignty and control over El Tigre. But by the same token - as shall shortly be seen - Honduras can establish no such claim as to Meanguera.

Honduras is moreover, Mr. President, caught on the horns of a very interesting dilemma. To say that the exercise and display of State sovereignty is irrelevant permits her to press historical title alone concerning Meanguera, and thus to avoid the defence of obvious effective ownership and control by El Salvador for 170 years. It makes up for her critical lack of evidence. Yet if she denies such relevance to Meanguera, it cannot be adduced in defence of her title to, say, El Tigre. Thus to try to get Meanguera and lose it will probably also lose El Tigre, unless Honduras contemplates the defence of actual possession and control - which would permit her to keep El Tigre but which would at the same time demolish her pretentious claim to Meanguera.

There is yet another paradox. It is this: sovereignty to an island of El Salvador not "claimed" by Honduras - let us say for example, Conchaguita - must depend either on the same type of historical title as applies to Meanguera, or on the exercise and display of State sovereignty by El Salvador. If Honduras is right, Mr. President, about the exclusive application of uti possidetis and if she can establish better historical title to Meanguera than can El Salvador, will she not then also possess better title to Conchaguita? What then prevents Honduras from claiming her due?

On what basis does Honduras distinguish between one island and the other?

The only explanation could be that she believes that the exercise and display of State sovereignty by El Salvador in Conchaguita is more convincing or substantive than the exercise and display of State sovereignty by El Salvador in Meanguera. But if Honduras believes that, she should tell the Chamber that, and supply reasons for drawing those distinctions.

The only way out is to assert that the Parties never intended to consider any islands other than Meanguera and Meanguerita. But you can not get out that way because it would run afoul of the fundamental rule of treaty interpretation that a special meaning can only be given to a provision if the proponent bears the burden of establishing that meaning successfully[25].

Thus a special meaning would have to be given to the second paragraph of Article 2 of the compromis, so that the words: "the legal situation of the islands" may be read to mean "the legal situation of some of the islands" or "the legal situation of *two* of the islands" or "the legal situation of Meanguera" or "Meanguera and Meanguerita". Indeed, Professor Sánchez Rodríguez suggested yesterday that this meaning for the words, "the islands", should be accepted unless the Parties to the compromis had actually gone to the lengths of specifying "*all* the islands" in the *compromis*. This turns the normal rule of interpretation topsy turvy — on its head.

In summary, Mr. President, the scope of the dispute is all Honduras's doing. If she is not happy with it, she must either now change her case or face the consequences.

(3) The relevance of facts after 1969

I now turn to the relevance of facts after a certain date. A word should be added here about the dates, in particular because of the pleadings of Professor Sánchez Rodríguez yesterday that there was a whole litany, a whole platoon, of dates that Honduras seems to assert are critical, or the cut-off dates for proofs, or for evidence, or for claims, or for status quo. It varies from one to the next.

He was able to give us five different dates - it is a heroic feat. There was of course 1821. A new one suddenly sprang to life - 1854 - I hesitate to say as a deus ex machina, but it has suddenly appeared as obviously a key year in Professor Sánchez Rodríguez's exposition. And I will deal with this later, in context.

He then of course referred to 1969 - the so-called "critical date" of Article 37, with which I will also deal in a moment.

We have also been provided with 1980 - for the date of the General Peace Treaty - and of course 1986, as the date of the Special Agreement. So we have five dates to talk about.

And I am a bit wary, Mr. President, about using or risking misusing the word of art, "critical date", to describe these dates because they are of varied provenance and purpose and in some cases arbitrary in character. I would prefer the term, "cut-off date", or something similar so that the Chamber will surely know what we are talking about.

We cannot dispute first that 1821 has great significance. What about 1969, however? Honduras says that Article 37 of the Treaty requires 1969 as a cut-off date. And in her Reply Honduras said:

> "The construction of buildings and the installation of services by the Government of El Salvador on the island of Meanguera took place after 1969 ... [by the way this is not true, but I will continue the quote] ... and, for that reason, cannot be invoked against Honduras by virtue of Article 37 of the General Peace Treaty which constitutes also a rule applicable to the present dispute under Article 5 of the Special Agreement.[26]"

Mr. President, Article 37 does nothing of the sort.

It is in fact questionable that it applies at all to the islands. It refers in terms to "zones", in the context of the "frontier" to be "delimited". But even if one were to assume that it could apply to the islands, all it does is state a general rule that the two States undertake not to compromise or disturb or alter by way of any deed, act or new situation the state of affairs existing in the zones in controversy before 14 July 1969. It also says that they, the Parties, will take all necessary steps to ensure that the status quo will be maintained and will guarantee at all times the peacefulness of the zones in question, and that political or military agreements that may be reached after 1969 relating to transitional matters on the frontier will be without prejudice to or diminution of the rights that each State possesses in the zones in controversy.

Mr. President, this is my own translation; a very rough one. But I think that it is sufficiently accurate for these purposes. There is no suggestion in Article 37 of a "critical date" or a "cut-off date" for the purposes of litigation.

Far from it. There is only the quite normal and logical prohibition against significant alterations in the status quo, pending a resolution of the dispute. That is obvious. And there is no evidence that El Salvador has made any changes since 1969 that are in any sense a departure from the status quo and its normal administration of Meanguera.

In this context the Chamber will recall the letters from the Foreign Minister of Honduras to the Foreign Minister of El Salvador on 23 and 29 January of this year. They protested the holding of elections on Meanguera and some public works construction on Meanguera and the improvement of the electrical power supply at Meanguera, on the grounds that Article 37 of the General Peace Treaty required maintenance of the status quo. The Chamber will also recall the response of the Minister of Foreign Affairs of El Salvador dated 31 January, to the general effect that this kind of activity very precisely was in fact the status quo in 1969 and for years before that. In order to set the record straight, El Salvador produced a dossier of selected documents that were intended to show, indeed what that status quo was.

This selection of documents was entitled, as you know, "Documentary Annex Containing Materials Illustrating the 'Status Quo' on the Island of Meanguera". It was filed with the Chamber by the letter of El Salvador of 25 March 1991. I will refer to this documentary annex as the "Meanguera Dossier", and I will deal with it later in my plaidoirie.

If one were in search of a critical date then, Mr. President, what would it be? 1821, the year of independence? 1854, the new year selected by Honduras? The year 1969, mentioned in the General Peace Treaty for other reasons? 1980, the date of the General Peace Treaty itself? Or 1986, the date of the *compromis*?

The answer must be 1986. 1821 is applicable only if uti possidetis dominates the field for all purposes. 1969 is not a cut-off date, as I have just described. 1980 does not constitute a cut-off date because under the Treaty there was no certainty at that time that the Parties would have to execute a special agreement and come to Court. If a cut-off date is required, it could only be 1986, the date of the Special Agreement in the case.

Moreover and however - as President Jiménez de Aréchaga has recently reminded us - the provisions of Article 26 of the General Peace Treaty in any event permit a wide and flexible variety of matters to be taken into account.

III. FACTUAL ISSUES THAT STILL DIVIDE THE PARTIES

(1) Specific factual issues in dispute

Mr. President, I find I have just enough pages to run shortly before half-past twelve. If I may, I will now continue with the factual issues that still divide the Parties: the specific factual issues in dispute.

In *Minquiers and Ecrehos* the Court, after studying the mediaeval title-deeds presented to it at such great length, said the following:

> "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[27]."

In addition, then, to our case on colonial titles, I will try to show that the title and sovereignty of El Salvador to Meanguera is equally well justified - and indeed conclusively established - by the continuous and peaceful exercise of sovereignty since colonial times.

We confess that El Salvador cannot pretend that it can show the same factors as to El Tigre or Exposición or Zacate Grande, and I will thus not waste the Chamber's time by seeking to elaborate pointless arguments on that ground.

But El Salvador can most certainly show these factors in relation to Meanguera. And what is equally important, Honduras cannot.

One of the most significant parts of this case, Mr. President, is the fact that there is not a single piece of evidence by Honduras showing the exercise of any sovereign administrative control or sovereign right over Meanguera: not a single piece.

What does the case-law show about contentions of opposing claimants?

In the *Clipperton Island* case, the matter was purely legal, and only flags were symbolically raised. In Las Palmas, Judge Huber expressly found that "no precise element of proof based on historical facts as to the display or even the mere affirmation of sovereignty by Spain over the Island of Palmas have been put forward by the United States[28]." Of course, the United States did not get the island.

In *Eastern Greenland* there were no attempts at the actual exercise and display of State sovereignty by Norway, and Denmark retained the territory. The Court said that "... in many cases

the tribunal has been satisfied with very little in the way of the actual exercise of sovereign rights, provided that the other State could not make out a superior right[29]".

In *Minquiers and Ecrehos*, France claimed only technical acts such as drawing lines on charts to claim the Ecrehos, and certain other acts to establish its possession of the Minquiers, but the Court found that

> "... such acts can hardly be considered as sufficient evidence of the intention of that Government to act as sovereign over the islets; nor are those acts of such a character that they can be considered as involving a manifestation of State authority in respect of the islets[30]".

The United Kingdom, as you will of course know, was awarded both groups.

It is interesting to note, Mr. President, that the acts by French authorities in respect of the Minquiers bore a certain similarity to the desultory acts of Honduran authorities in the present case, and were appropriately dismissed by the Court. These included an application for a concession in 1784, which was not granted perhaps because of "certain fears of creating difficulties with the English Crown[31]".

A hydrographical survey of the Minquiers group was performed by a French national in 1831[32], just as a survey of Meanguera was performed by a Honduran national (and a Belgian national) in 1854.

However, France also claimed that "it has assumed the sole charge of the lighting and buoying of the Minquiers for more than 75 years[33]" without objection or protest from the United Kingdom. That is a good deal more than anything done by Honduras in this case, and a good deal more current. Moreover, there was no protest, whereas in our case there surely has been.

In addition, an official survey was performed by the French Government in 1888 and included the placement of provisional beacons[34]. Finally, the Prime Minister of France and her Air Minister actually went to the Minquiers to inspect the buoys - a step which, again, Honduras has never even come close to taking.

None of this was of any avail in that case. The Court weighed the evidence of the exercise and display of State sovereignty by the United Kingdom - which I will not tax the Chamber with recounting, but which may be readily found in the Judgment at pages 64 to 66 for the Ecrehos, and

pages 69 and 70 for the Minquiers.

This exercise and display of State sovereignty by the United Kingdom over the Minquiers and the Ecrehos was *far less striking* than the sovereignty which El Salvador has exercised and manifested in connection with Meanguera. This may readily be seen by examining the record in both cases - and in particular, by examining the details of the "Meanguera Dossier" to which I have just referred - in spite of the, with respect, inaccurate and misleading criticisms levelled at it yesterday afternoon by Professor Sánchez Rodríguez.

The conclusion is inevitable. Honduras has not shown or demonstrated even a fraction of the limited evidence displayed by France in *Minquiers and Ecrehos*. On the other hand, El Salvador has shown an exercise and display of State sovereignty over Meanguera that is undeniably and obviously many times greater than the manifestations set forth by the United Kingdom in *Minquiers and Ecrehos*.

To use the words of the Permanent Court in *Eastern Greenland*, it is not necessary in the present case that the Chamber be "satisfied with very little". There is a lot, in this case, and it should be taken into account. The conclusion, again paraphrasing the Court in *Eastern Greenland*, is that there is not merely "a superior claim" on the part of El Salvador. There is an overwhelming claim.

There is, really, no legal claim at all by Honduras - outside the uti possidetis - save for one set forth relatively recently in negotiations or in this litigation. Hardly anything ever really happened, as I will show later, to substantiate even the existence of that claim, as a claim by Honduras. And on the other hand, El Salvador has peacefully and continuously exercised and displayed State authority over Meanguera, its people, and its affairs for up to a century-and-a-half.

Mr. President, I have come to a convenient breaking point.

The PRESIDENT: I thank Professor Highet. We will adjourn until 4 o'clock this afternoon.

The Chamber rose at 12.20 p.m.