



INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING THE LAND, ISLAND AND
MARITIME FRONTIER DISPUTE**

(EL SALVADOR/HONDURAS)

MEMORIAL OF THE REPUBLIC OF EL SALVADOR

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TABLE OF CONTENTS

PART I

GENERAL

INTRODUCTION

- Chapter 1 The Objectives of the Litigation.
- Chapter 2 General Descriptions of El Salvador
and Honduras.

PART II

DELIMITATION OF THE LAND FRONTIER

- Chapter 3 The Law Applicable to the
Delimitation of the Disputed
Land Frontier.
- Chapter 4 General Considerations as to
the Validity and Conclusive
Character of formal Title Deeds
to Commons ("Títulos Ejidales").
- Chapter 5 Tierras Realengas (Crown Lands).
- Chapter 6 The Disputed Areas
- a. Tecpanguisir Mountain
 - b. Las Pilas or Cayaguanca
 - c. Arcatao or Zazalapa
 - d. Perquín, Sabanetas or Nahuaterique.
 - e. Monteca or Dolores
 - f. The Estuary of the Goascorán
 - g. Conclusion
- Chapter 7 Arguments of a Human Nature
presented by El Salvador in
support of its Frontier Rights
(Efectivittés)

PART III
JURIDICAL STATUS OF THE
ISLANDS AND OF THE MARITIME SPACES

SECTION A

GENERAL ASPECTS

- Chapter 8 The Task of the Court
- Chapter 9 The Geography of the Islands
and Maritime Areas.

SECTION B

THE LEGAL POSITION OF THE ISLANDS

- Chapter 10 The Law Applicable to the
Determination of the Status
of the Islands.
- Chapter 11 The Display of State Sovereignty
by El Salvador.
- Chapter 12 The Historic Title of El Salvador
to all the Islands in Dispute.

SECTION C

THE LEGAL POSITION OF THE MARITIME AREAS

- Chapter 13 The Position within the Gulf
of Fonseca.
- Chapter 14 The Position in the Pacific
Ocean outside the closing line
of the Gulf of Fonseca.

SUBMISSIONS

List of Sketches and Maps included in the present
Volume.

List of Annexes in Volume II.

PART I

INTRODUCTION

This is the Memorial of El Salvador, filed pursuant to the Order of the Court on 27th May, 1987.

The Memorial consists of three parts:

Part I - Contains the present Introduction and Chapters 1 and 2. These Chapters cover the objectives of the litigation (Chapter 1) and the general description of El Salvador and Honduras (Chapter 2).

Part II - Consists of five Chapters covering the Law Applicable to the Boundary Delimitation in these areas (Chapter 3); the validity and conclusive character of the "Títulos Ejidales" (Titles to Commons) (Chapter 4); The Claims of El Salvador to Crown Lands (Tierras Realengas) (Chapter 5); the disputed areas

and the technical description of the disputed areas (Chapter 6) and The Human Arguments, (Effectivités) (Chapter 7).

PART III - deals with the second question referred to the Court, namely the legal position of the islands and the maritime areas. It is divided into three sections:

Section A, General Considerations consisting of Chapter 8. The Task of the Court and Chapter 9, the Geography of the Islands and the Maritime Areas.

Section B. The Legal Position of the Islands consisting of Chapter 10, the Principles and Rules of Law Applicable to the Determination of the States of the Islands; Chapter 11, Display of the State Sovereignty by El Salvador, and Chapter 12, Historic Title of El Salvador with respect to all the islands in Dispute,

and,

Section C, the Legal Position of the Maritime Areas, consisting of Chapters 13, The Position within the Gulf of Fonseca, and Chapter 14, the Position in the Pacific Coast outside the closing line of the Gulf of Fonseca.

CHAPTER 1

THE OBJECTIVES OF THE LITIGATION

- 1.1 Article 2 of the Special Agreement which forms the basis of the jurisdiction of the Court, under the heading "Objectives of the Litigation", defines in clear and precise terms the dual objectives of the present litigation in two separate paragraphs, which read as follows:

OBJECTIVES OF THE LITIGATION

"The Parties request the Chamber:

"I. That it delimit the line of the frontier in the zones or sectors not described in Article 16 of the Tratado General de Paz (General Peace Treaty) of 30th October 1980.

"II. That it determine the juridical status of the islands and of the maritime spaces".

- 1.2 This provision establishes a clear-cut distinction between, on the one hand, the delimitation of boundaries and, on the other hand, the determination of the juridical status; the former applies to the land frontier; the latter applies both to the islands and to the maritime spaces. It is easy to define what is meant by the "determination of the juridical status of the islands". this evidently involves the determination

of whether some or all of the islands whose sovereignty is disputed belong to El Salvador or to Honduras. The resolution of this question does not involve delimitation. It is equally clear that the Special Agreement defining the objectives of the litigation does not require the Chamber to carry out any delimitation of the maritime spaces.

- 1.3 It is useful to compare the terms of the present Special Agreement with those of other Special Agreements that have brought before the Court disputes concerning maritime areas.

In the North Sea Continental Shelf case in 1969, the Court, as in the present case, was not asked to carry out any delimitation or to fix any boundary line but instead to decide "What principle and rules of international law are applicable to the delimitation as between the Parties of the areas of the continental shelf in the North Sea which appertain to each of them".

The parties reserved to themselves the power to "delimit the continental shelf as between their countries by agreement" (Article 1 of the Compromise)(1).

The Court did not go beyond what the parties had asked and limited itself to indicating that equidistance was not obligatory, to formulating certain general principles, such as the delimita-

(1) ICJ Reports 1969 p.6

tion is to be effected by agreement in accordance with equitable principles and to indicating to the Parties certain criteria and factors which should be taken into account in the course of their negotiations in respect of delimitation.

- 1.4 In the Tunisia -Libya Continental Shelf case in 1982, the Court was similarly not asked to carry out a delimitation. The Special Agreement asked the Court to deliver a judgement on the question of "what are the principles and rules of international law which may be applied for the delimitation of the area of the continental shelf". (Article 1). However this Special Agreement went a step further than the Agreement in the North Sea case in that it stated, in the second paragraph of the same Article 1, that "also, the Court is further requested to specify precisely the practical way in which the aforesaid principles and rules apply in this particular situation so as to enable the experts of the two countries to delimit these areas without any difficulties" (2). The Court observed that this case "would seem to lie between the North Sea Continental Shelf cases of 1969, in which the Court was asked only to indicate what principles and rules of international law were applicable to the delimitation, and the Franco-British Arbitration on the Delimitation of the Continental Shelf of 1977, in which the Court of Arbitration was requested to decide what was the course of the bound

(2) ICJ Reports 1982 p.21

dary between the portions of the continental shelf appertaining to each of the Parties in the relevant area" (3). Further, in the operative part of the judgement in the Tunisia-Libya case, the Court did not proceed to a delimitation but merely established the principles and rules applicable to the delimitation, which was to be carried out by agreement in implementation of the judgement (Paragraph A), specified the relevant circumstances of the case (Paragraph B) and indicated to the parties "the practical method for the application of the principles and rules of International Law to the present case" (Paragraph C).

1.5 In the Gulf of Maine case in 1982, the Chamber of the Court was requested to decide " [w]hat is the course of the single maritime boundary that divides the continental shelf and fisheries zones of Canada and the United States?" (4). The Chamber, in response to the terms of the Special Agreement, defined the course of the "single maritime boundary" dividing the continental shelf and fisheries zones of the Parties. (5)

1.6 In the Libya-Malta continental shelf case in 1985, the Special Agreement requested the Court to decide the following question: "What principles and rules of international law are applicable to the delimitation of the area of the continental shelf which appertains to the Republic of Malta and the area of continental shelf which appertains to the Libyan Arab Republic, and how in practice -

(3) Ibid p.38 para. 25

(4) ICJ Reports 1984, p253

(5) Ibid p.345

such principles and rules can be applied by the two Parties in this particular case in order that they may without difficulty delimit such areas by an agreement as provided in Article III" (6). The Court, after defining the applicable principles and rules of law, considered "[t]hat the terms of the Special Agreement also make it its duty to define as precisely as possible a method of delimitation which should enable both parties to delimit their respective areas of continental shelf 'without difficulty', following the Court's decision in the case" (7). The Court indicated a corrected equidistance line, adding that "it will be for the parties and their experts to determine the exact position of the line" (8).

1.7 The following conclusions may be drawn from this comparative review of the terms of these other Special Agreements which have brought before the Court disputes concerning maritime areas.

I. The Court performs its functions very strictly, exercising its jurisdiction to its full extent but never exceeding it, in complete accord with the terms of the Special Agreement in the case in question.

II. The terms of these Special Agreements demonstrate the existence of an ascending scale,

(6) ICJ Reports 1985 p.16

(7) Ibid p.55

(8) Ibid pp.52-53

the form of each Agreement being clearly influenced by the previous one. The terms of the Agreements range from, at one extreme, asking the Court merely to indicate the principles and rules of law applicable to a delimitation to, at the other extreme, asking the Court actually to fix a boundary, passing through the intermediate stage of asking the Court to specify the practical ways to apply the principles and rules of law so that the parties may agree on a delimitation "without difficulties".

III. In contrast with all the above-mentioned Special Agreements, the Special Agreement in the present case stands apart because the term "delimitation" while used in the paragraphs I of Article 2 in relation to, the land frontier, has been carefully avoided in Paragraph II in relation to the juridical status of the islands and the maritime spaces.

IV, In this respect the Special Agreement in this case is even more restrictive than the Agreement in the North Sea Case, where the parties expressly, envisaged proceeding to a delimitation by way of subsequent agreement, something which is not contemplated in the Special Agreement in this case.

1.8

Consequently, the objective of the present litigation is, in relation to the maritime areas, merely the determination of the juridical status of the islands and the maritime spaces and nothing else. This signifies that the Chamber, is requested

merely to specify the principles and rules of international law which are applicable to these maritime areas, these principles and rules of law may or may not lead the parties to make in the future a further agreement to delimit the whole or a part of these maritime areas; this will depend on the conclusions reached by the Chamber as to the juridical status of these areas. But it is clearly beyond dispute that the Chamber has been directly precluded from carrying out any delimitation, not only by virtue of the natural and ordinary meaning of the terms utilized in the Special Agreement, but also as a matter of logic since it is not possible to delimit a juridical status.

1.9 The above interpretation of Paragraph II of Article 2 is confirmed by the Preamble to the Special Agreement which refers to the fact that "no direct settlement has been reached either in relation to the frontiers of the remaining land areas in dispute or in relation to the juridical status of the islands and maritime spaces" (emphasis added). This formulation carefully distinguishes the dispute in relation to the land areas, which is a frontier or delimitation dispute, from the dispute, "in relation to the juridical status of the islands and the maritime spaces".

1.10 The above interpretation is further confirmed by the remaining provisions of the Special Agreement, Article 6, which deals with the Execution of the Judgement of the Court, referring

to the Special Commission of Demarcation established by the Agreement of 11th February 1986 which will initiate "the demarcation of the frontier" not later than three months after whatever to any demarcation of the maritime areas. Further it is well established that a delimitation must inevitably produce a subsequent demarcation - as Professor Bardonet states: "demarquer consiste a reporter sur le terrain les termes d'une délimitation établie" (9).

- 1.11 The Special Agreement constitutes the formal instrument defining in Article 2 thereof the subject matter of the dispute and, consequently, the function sought from the Chamber. The clear terms of this Agreement cannot be altered as a result of the English translation of a joint letter dated 11th December 1986 where the word "frontier" has been displaced from its position in the original Spanish text, thus making it appear to apply not only to the land dispute but also to the dispute over the islands and maritime space. In the original Spanish text of the letter, as in the Spanish title of the Special Agreement, the word "fronteriza" appears at the beginning of the phrase and applies only to the land dispute. The use of a comma in the Spanish Title of the Special Agreement after the Spanish word "terrestre", confirms that the word "fronteriza" was not intended to apply to the dispute over the islands and --

(9) Recueil des Cours de L'Académie: Tome 153, 1976 Vol. V p.24

and maritime spaces. A further confirmation that the word "frontier" should be understood as a matter of logic, to apply only to the land dispute in the fact that, that word should be meaningless in relation to the dispute over the islands, where sovereignty over the whole of an island is to be attributed to one of the other of the parties -as is clearly the case in this litigation, there can be no question of any frontiers in the islands. Only in relation to islands subject to the sovereignty of more than one state, as is the case of the island La Hispaniola which is divided between Haiti and the Dominican Republic, can any frontier disputes arise.

1.12 It would be a far fetched interpretation to conclude that, by virtue of the formulation of the title of an instrument, the parties thereto had inadvertently made a radical alteration to what was clearly and specifically provided for and stipulated in the all-important provision of the text which defines the objectives of the litigation. In any event, the use of the word "frontier", even in the incorrect position in which it was placed in the English translation of the Spanish title of the Special Agreement, cannot by itself introduce a delimitation function for the Chamber that is clearly excluded by Article 2 of the Special Agreement. For this reason the Court was wise to decide by virtue of

its Order on 8th May 1987 (10) that the English title of the case would not prejudice the interpretation of the provision of the Special Agreement defining the subject matter of the dispute.

CHAPTER 2
GENERAL DESCRIPTIONS OF
EL SALVADOR AND HONDURAS

I. INTRODUCTION

- 2.1. El Salvador and Honduras are Central American Republics which have a common frontier of approximately 405 kilometres in length. El Salvador is situated to the South West of Honduras; it has an area of 21,049.70 square kilometres with a total population of 5,500,000 persons with a consequential population density of 240 persons per square kilometre. The reduced size of its territory, of which only one tenth is capable of being utilised for agriculture and pasture, together with its high birth rate (42.2 births per 1,000 population, which constitutes a typical example of a population explosion) have produced in this part of Central America a nation of workers. Each Salvadoreñan loves dearly every square centimetre on the unproductive land which he laboriously cultivates and exploits but has never maintained any acquisitive pretensions towards the territories of other states.
- 2.2. Honduras is situated to the North East of El Salvador; it has an area of 120,000 square kilometres with a total population of 2,500,000 persons with a consequential population density

of 21 inhabitants per square kilometre. The substantial size of its territory (six times that of El Salvador) which contains beautiful and luscious plains of fertile soil, imposing mountains covered with the whispering pines, and a sub-soil, which contains deposits of gold, silver, iron and (possibly) oil, together with its relatively small population density have produced a nation which enjoys prodigious natural resources and hours of justified leisure. More than 50% of its substantial territory is still uninhabited and unproductive consisting of tropical forests.

- 2.3 Honduras has 1,033 kilometres of coasts of which 880 kilometres are located on the Atlantic Ocean, or Caribbean Sea or the Antilles, and 153 kilometres on the Gulf of Fonseca, the Atlantic coast is low and sandy its adjacent lands are rich in animal husbandry and general agriculture exploitation, and is located between the Motaguillo branch of the Motagua River and the mouth of the river Wans-Coco or Segovia which is the reef limit with Nicaragua Large peninsulas shelter important ports. Punta Caballo where Puerto Cortés is found: Punta Sal or Salsipuedes, which shelters the port of Tela; Punta Cangrejal to the orient of Puerto de La Ceiba, El Cabo Camarón to the Orient of Port Iriona over all the extension of the Atlantic Coast many safe anchorages protected by nature are found.

2.4 El Salvador has only a coast on the Pacific Ocean, its length is of 350 kilometres, including the coast on the Gulf of Fonseca and is located between the mouth of the Paz River which is the limit with the Republic of Guatemala and the old mouth of the Goascoran River which flows into the Gulf of Fonseca. The Ports of Acajutla and La Libertad were built on the waters of the Pacific Ocean and has no natural protection.

The Port La Libertad is no longer a port for international commercial navigation and is now an artesanal port. The Port of La Unión built on the Gulf of Fonseca is the only port protected by nature, and is situated in the most extremely East part of the Republic.

2.5 Almost two thirds of the boundary between El Salvador and Honduras has always been clearly established and was indeed recognised as such by both these Central American States in the Tratado General de Paz (General Peace Treaty) signed in Lima, Peru, on 30th October 1980.

II. THE GEOGRAPHICAL DESCRIPTION OF THE AREAS
IN WHICH THE LAND BOUNDARY BETWEEN EL SALVADOR
AND HONDURAS IS DISPUTED.

2.6 The land boundary between the Republics of El Salvador and the Republic of Honduras which has not yet been settled comprises six distinct sectors of that boundary all of which are situated in the area between, on the one hand the boundary marker known as El Trifinio which divides the Republic of Guatemala, the Republic of Honduras, and the Republic of El Salvador and, on the other hand, the estuary of the River Goascoran in the Golfo de Fonseca. The disputed territories have a combined area of 432.6 square kilometres and are known by the following individual names: (1) Tecpanquisir Mountain; (2) Las Pilas or Cayaguanca; (3) Arcatao or Zazalapa; (4) Perquin, Sabanetas or Nahuaterique; (5) Monteca or Poloros; and (6) the Estuary of the River Goascoran. A more adequate understanding of these individual sectors is provided by the following descriptions of each of them.

A. Tecpanquisir Mountain

2.7 This sector is located between, on the one hand

the boundary marker known as El Trifinio, to which reference has already been made, and, on the other hand, the peak known as El Zapotal or Chiporro which constitutes respectively the western and eastern limits of the sector. It has an area of 69.6 square kilometres and comprises part of the Municipalities of Metapan and Citala which belong respectively to the Departments of the Republic of El Salvador known as Santa Ana and Chalatenango. This sector is characterised by its broken landscape which contains peaks ranging from 900 metres to 2,400 metres above sea level. It forms part of the geomorphological unit known as Sierra Alotepeque Metapan. It includes within its Municipalities the peaks known as Redondo, Chivo, Guamilar, Los Papales, Peña de Tecpanguisir, San Silvestre, Aguacatillo, Las Cruces and El Chaparrón and the hillside known as El Malcotal, La Cuestona and Masala or Las Talpujas together with the peaks known as El Zapotal, Piedra Menuda and Montecristo which are agreed boundary markers with Honduras. The sector is irrigated by the waters of the gorges known as Pomola, del Macotal, del Cedron, Ciprésales, La Chicotera, de Polcho, de los Planes, La Lima or Shushula, La Cebadilla, El Cedro, Santa Inés or Lagunetas, Las Cruces, La Mina, Tishan and Masala and by the Rivers known as San Miguel Ingenio, Pomola and Shushula. The sector constitutes the major part of the area of the Municipality of Citala in the Department of Chalatenango, containing five of the eight districts which form this municipality. The yearly agricultural productivi

ty of the sector is moderate. Certain parts of the sector consist of permanent forests. The sector contains mineral deposits of copper and iron which have in the past been exploited but are not at present under exploitation.

2.8

B. Las Pilas or Cayaguanca

This sector contains the highest peak found within the territory of El Salvador, the mountain of El Pital which rises some 2,730 metres above sea level. The sector is in the form of a triangle whose vertices are formed by the confluence of the gorge known as Oscura or Chiquita with the River Sumpul and the Peña de Cayaguanca which is located at the summit of the peak of the same name. Geomorphological speaking the sector contains the mountain of El Pital and its supporting peaks, the most important of which are known as La Cima and Las Cumbres or Las Granadillas. Between these peaks flow the streams known as Las Lajas, El Salto, Las Aradas, de las Pilas, Honda, Las Granadillas, de los Aguilar, Oscura or Chiquita, de las Mojarras, El Aguacate and El Botoncillal together with the rivers known as Jupula or El Rosario, Chiquito and Sumpul. The sector comprises the districts known as El Centro, Las Pilas and Rio Chiquito of the Municipality of San Ignacio of the Republic of El Salvador and the district known as La Palma of the Municipality of Chalatenango of the Republic of El Salvador. The peaks within the sector range from 1,700 metres to 2,730 metres above

sea level. Its yearly agricultural productivity is moderate, being used, due to its steep slopes, for crops and vegetation of a permanent nature.

C. Arcatao or Zazalapa

2.9

This sector of 49.9 square kilometres comprises part of the Municipalities of Arcatao and Nombre de Jesus in the Department of Chalatenango. It is located between the boundary marker known as El Pacacio and the boundary marker known as Poza del Cajón situated on the river known as Guayquiquín or Gualcuquín or El Amatillo. The sector has an elongated form La Pintal, Tecolote, De la Cueva, El Fraile, La Montañita or La Cañada, El Caracol, El Sapo, El Cerrón, Lagunetas y Pitahaya and Las Lomas Altas, El Terrero, Rancho Quemado, Palo Verde, El Cajón, and Plan de los Morros. Its peaks range from 300 metres to 1,000 metres above sea level. The sector is irrigated by the rivers known as Pacacio, Gualsinga, Zazalapa, Guayquiquín or Gualcuquín or El Amatillo, and the streams known as Grande (2), San Pablo, El Zapote, Los Apantes, Piedra Grande, Las Marías or Palo Verde, De León y la Montañita and El Hoyo. A substantial part of the Municipality of Arcatao is situated in this disputed zone, which comprises part of the districts known as Zazalapa, Los Pilos and Gualcimaca with many of their villages, together with a part of the Municipality of Nombre de Jesus. Its soil is able to be irrigated and its inhabitants cultivate grain and pasture cattle.

D. PERQUIN, SABANETAS OR NAHUATERIQUE

2.10 This sector is the largest of those in dispute, consisting of 161.5 square kilometres and forms part of the Municipalities of Carolina and San Antonio in the Department of San Miguel of the Republic of El Salvador and part of the Municipalities of San Fernando, Perquin and Arambala in the Department of Morazan of the Republic of El Salvador. The sector extends from the source of the stream known as La Orilla in the west to the Mal Paso de Similaton in the east. It contains part of the mountain range known as the Cordillera de Nahuaterique whose peaks range from 600 metres above sea level on the banks of the river known as Negro or El Palmar to 1900 metres above sea level in the neighbourhood of the Montaña de la Isla, El Zancudo or Sabanetas. The lower part of the sector is a very narrow strip lying between the course of the river known as Las Cañas and the mountain range on its left bank. This section has a height above sea level of between 400 metres and 900 metres. The sector as a whole is almost entirely broken hill country with many important peaks, among which the most notable are Chagualaca or Marquezote, El Alumbrador, La Ardilla and Montaña de la Isla on the northern side and La Campaña, Masula, Audiencia, El Mono, El Zancudo, El Desecho, Llano Verde, El Cerrón, El Aguila, La Mina and Ojo de Agua. Beside these and the remaining peaks flow the streams known as De Los Pinales, De

Agua, Barrabás or El Diablo, El Mal Paso, El Pacayal, El Mono, El Injertal, El Huatalón, La Mina, La Golondrina, El Caimán, El Puente, Puente de Piedra, El Barrancón and Tierra Colorada and the rivers known as Negro or El Palmar, La Presa, Las Flores, or Pichigual and Las Cañas. In spite of being a mountainous area, the sector is densely inhabited, this being sufficiently evidenced by mentioning that it contains the following large villages or small towns: in the district known as Nahuaterique the villages of El Paraiso, El Mono, Las Aradas, El Moral, Las Vegas, El Borbollón, El Naranjo, Volcan de Agua and San Juan and in the district known as El Carrizal the villages of El Guachipilín. El Huatalón and Barrancon, both these districts being in the Municipality of Arambala; in the district known as Las Trojas the villages of El Cedral, El Rincón, Los Amates, El Granadillo, Las Trojas, Llano Verde and El Aguacate, and in the district known as Sabanetas the villages of La Galera, Sabanetas, el Palmar, El Zancudo, Palo Blanco, Los Chagüites, Los Patios, Cueva de Monte, Loma de Enmedio and La Joya, both these districts being in the Municipality of Perquín; in the district known as Azacualpa the village of Platanares and in the district known as Agua Zarca the village of El Copinol both these districts being in the Municipality of Torola; and in the district known as La Ceiba in the Municipality of Carolina the village of Portillo Blanco. Although the soil in this sector is not known from an agricultural point of view particularly fertile,

it nevertheless represents a very valuable natural resource since a considerable proportion of the population of the sector is economically dependant on the land.

E. Monteca or Poloros

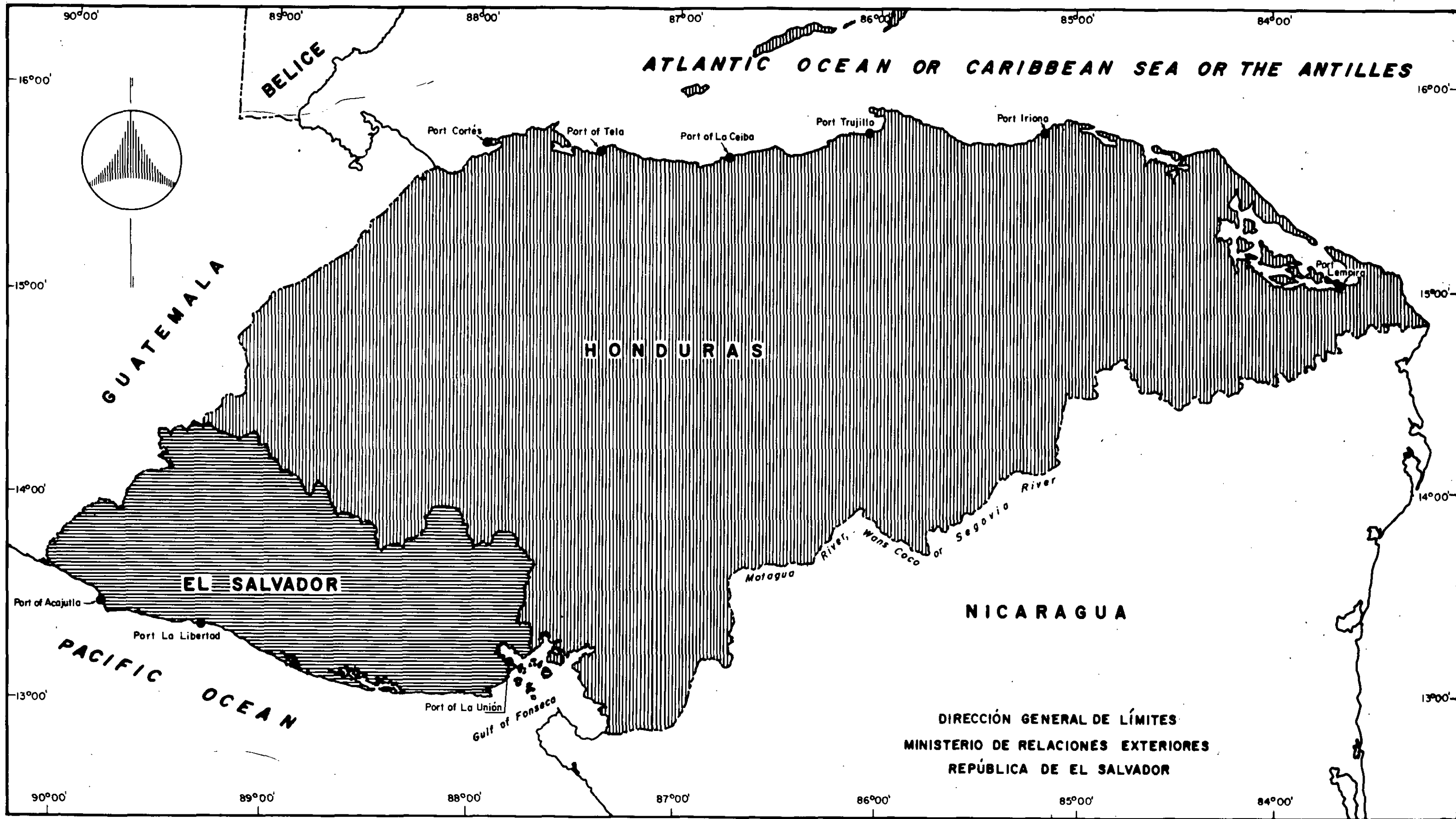
2.11 This, the fifth sector in dispute, consists of 56 square kilometres all within the Municipality of Poloros. The sector extends from the confluence of the streams known as Mansupucagua with the River Torola to the Paso de Unire on the River known as Unire, Guajiniquil or Pescado, which constitutes respectively the western and eastern limits of the sector. The sector in dispute lies to the north of the River Torola during the first kilometres of its course, which in this section is also known as River Lajitas, and extends up to the peaks known as López and Ribita. Between the course of the River Torola and the above mentioned peaks, the 56 square kilometres of the sector consist of a series of ridges around which flow several streams among which are those known as Piedra Parada, Las Ventas, El Manzano, Plan Verde, La Tranca, Los Ranchos del Aceituno, El Naranjo, Guanacaste and Lajitas, together with these known as Río Venado or Ocote Manchón, La Chucha, San Juan, Agua Caliente, Colorado and Mesetas in the area of the Peñas Guanacaste. In this sector there are several large villages or small towns, all in the Municipality of Poloros, amongst which

should be mentioned the villages of Galera, Guacamaya Lajitas, Guanacastillo, Cerro de Peñas, Mesetas, San Juan and the well known villages of Hacienda Dolores which has been referred to so often in the boundary disputes of the past. Even though the annual agricultural productivity of the sector is moderate, it is used for the production of grain, for pasture and for the exploitation of the timber of its forests.

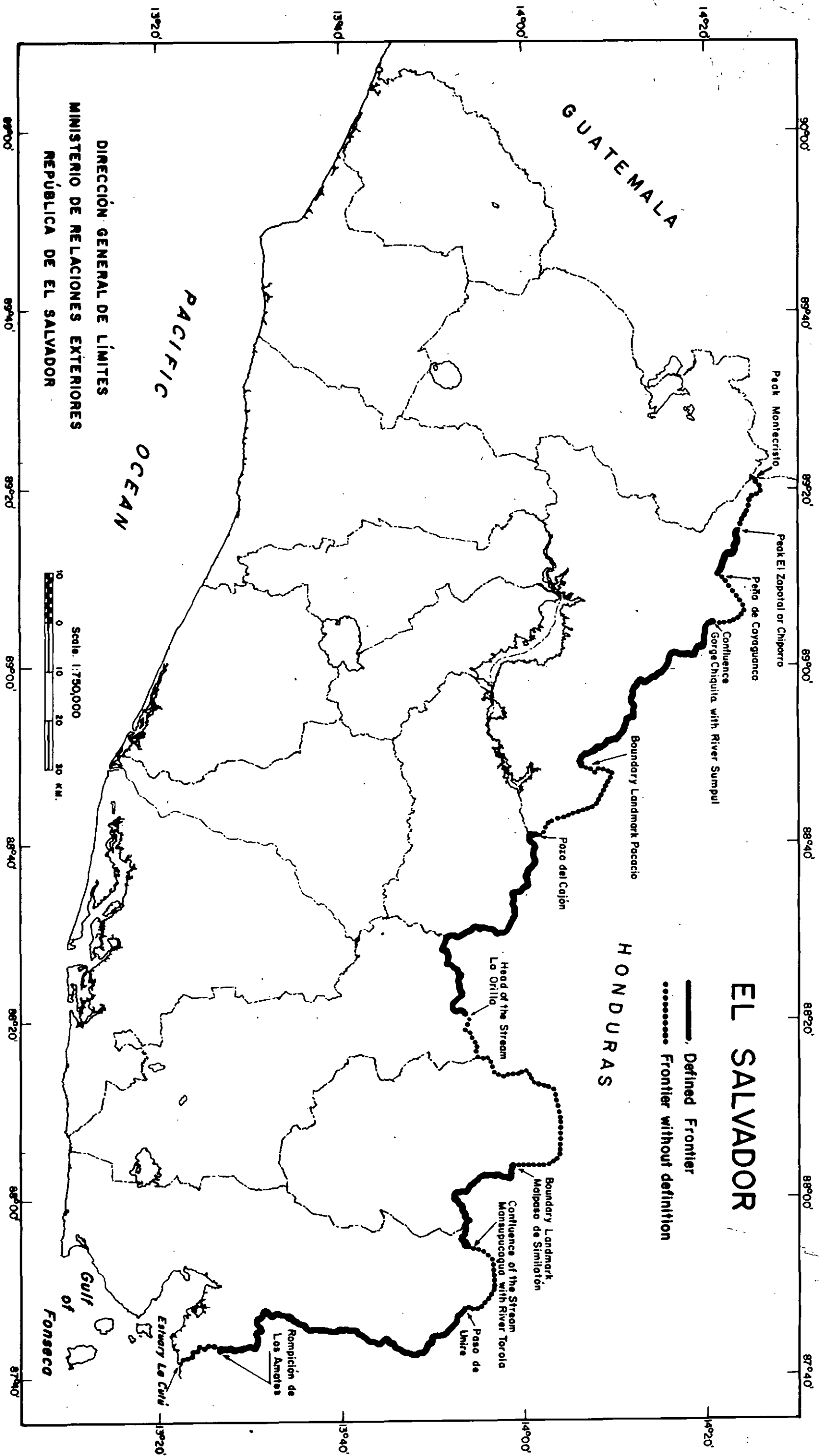
F. The Estuary of the River Goascoran

2.12

This is the last of the sectors in dispute and the main problem consists in determining which is the course of the River Goascoran that can be considered as the frontier between El Salvador and Honduras. The position of the Government of El Salvador is that the frontier with Honduras is the old and most eastward branch of the Goascoran River which flows in a north-south direction from the site known as Los Amates to the estuary known as La Cutú in the Gulf of Fonseca. The River has been prevented from returning to its former course as the result of the construction of a wall by Honduras in the place called Rompimiento de los Amates. It is this fact that constitutes the key to the frontier dispute.

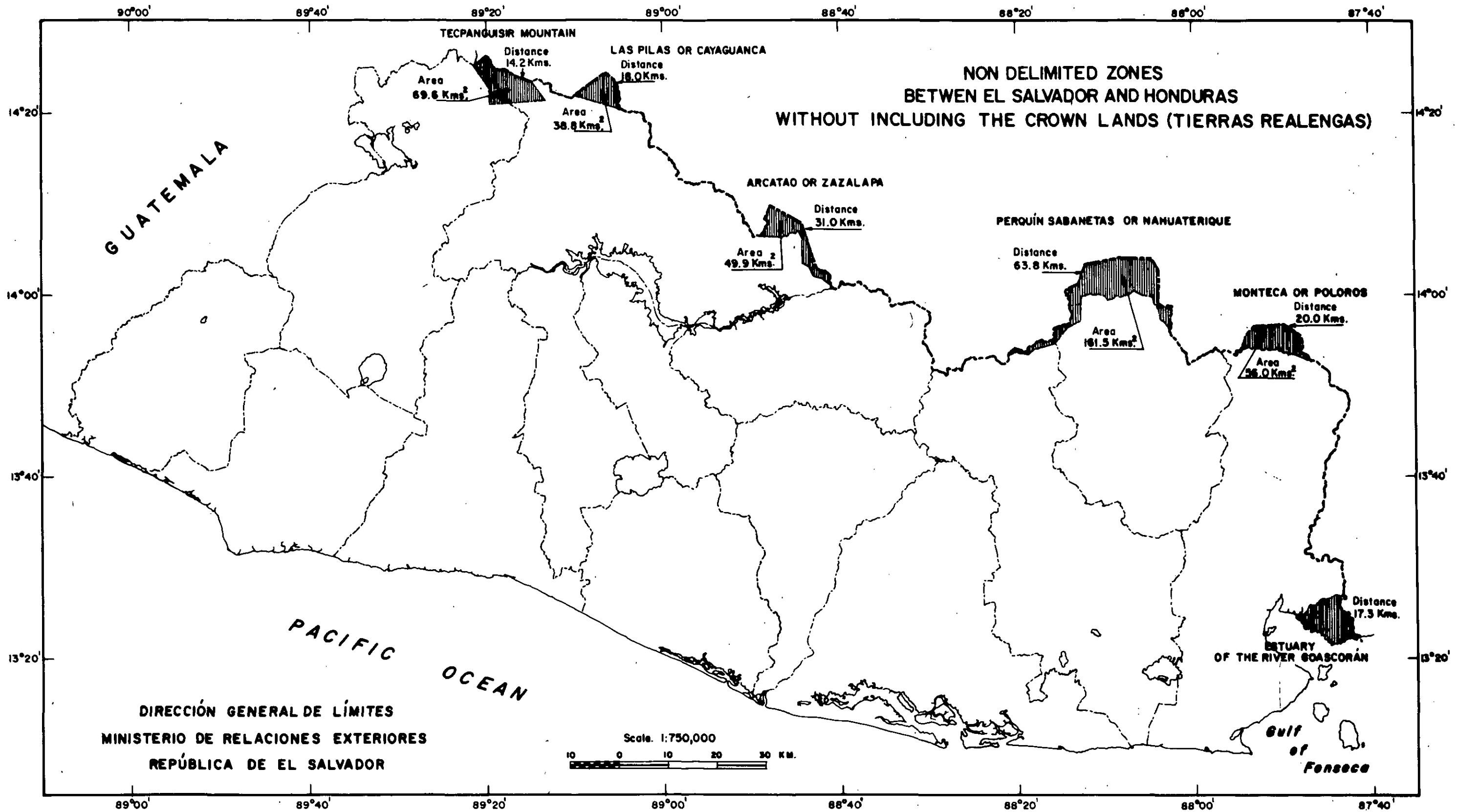


CHAPTER II-I Relative Position between Honduras and El Salvador.



DIRECCION GENERAL DE LÍMITES
 MINISTERIO DE RELACIONES EXTERIORES
 REPÚBLICA DE EL SALVADOR

CHAPTER II-II Joint Vision of the border line El Salvador - Honduras,
 according to the General Peace Treaty of October 1980



CHAPTER II-III Joint Vision of the non delimited Zones

PART II
DELIMITATION OF THE LAND FRONTIER

CHAPTER 3

THE LAW APPLICABLE TO
THE DELIMITATION OF THE DISPUTED LAND FRONTIER

3.1 The starting point in the consideration of what law is applicable to the case before the Court is Article 5 of the Special Agreement which is indeed titled "Applicable Law", and provides that:

"Within the framework of Paragraph 1 of Article 38 of the Statute of the International Court of Justice, the Chamber, in delivering its judgement, shall take into account the norms of International Law Applicable between the parties, including, in so far as they are pertinent, the provisions of the Tratado General de Paz."

3.2 The Court, in thus obliged to operate within the framework of Paragraph 1 of Article 38 of the Statute of the International Court of Justice, which provides that:

"The Court, whose function is to decide in accordance with International Law such disputes as are submitted to it, shall apply;

(a) International Conventions whether general or particular, establishing rules expressly recognised by the contesting States;

(b) International Custom, as evidence of a general practice accepted as Law;

(c) the general principles of Law recognised by civilised nations;

(d) subject to the provisions of Article 59, judicial decisions and the teachings of the most qualified publicists of the various nations, as subsidiary means for the delimitation of rules of Law".

3.3 Further the Court is to take into account the pertinent provisions of the Tratado General de Paz of 1980. The provision of this Treaty applicable to the delimitation of the disputed land frontier is Article 26, which provides that:

"for the delimitation of the boundary line in the disputed area, the Joint Boundary Commission shall take as its basis the documents issued by the Spanish Crown or by any other Spanish authority, civil or ecclesiastical, during the colonial period which indicate the jurisdictions or boundaries of territories or towns. Account shall equally be taken of other means of proof and arguments and reasons of a juridical, historical, or human nature or of any other kind which may be adduced by the parties and which are admissible under International Law."

3.4 The first sentence of Article 26 thus establishes clearly and categorically that the principle of UTIS POSSIDETIS IURIS" is the fundamental norm for the basis of the delimitation of the disputed land frontier. This principle would in fact have applied even in the absence of such an express provision because of Paragraph 1 of Article 38 of the Statute of the International Court of Justice; between Latin American States of Spanish origin, this principle is an "International custom, as evidence of a general practice accepted as law", as well as a "general principle of law", applicable to any boundary delimitation between states which have become independent after a period of subjection to the same colonial power. (This principle is not, on the other hand, applicable to boundary delimitations between countries which have been subject to different colonial powers, as would be the case as between Brazil,

a former Portuguese Colony, and its former Spanish Colonial neighbours.)

- 3.5 In the Burkina Faso-Mali Case, the Chamber of the Court after pointing out that the principle of "Utis Possidetis Iuris" is a firmly established principle of International Law in relation to decolonization, emphasised in the following terms what it described as the "general scope" of this principle.

"The principle of utis possidetis seems to have been first invoked and applied in Spanish America, inasmuch as this was the continent which first witnessed the phenomenon of decolonization involving the formation of a number of sovereign states on territory formerly belonging to a single Metropolitan State. Nevertheless the principle is not a special rule which pertains only to one specific system of international law. It is a general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs." (1)

- 3.6 In this same judgement, the Chamber pointed out various aspects of the principle, one of which is that:

"The essence of the principle lies in its primary aim of securing respect for the territorial boundaries at the moment when independence is obtained." (2)

- 3.7 It follows that any specific application of the principle has as a prerequisite the determination, if necessary by the Court, of the precise date when colonial sovereignty ended and independence occurred. This is an obvious consequence of the undisputed fact

(1) (1980) I.C.J. Reports p. 565

(2) Ibid p. 566 (emphasis added).

that under the Spanish Colonial regime all territorial rights were vested in the Spanish Crown and, consequently, that the only rights which individuals or communities could exercise in relation to specific areas of land derived necessarily from the Spanish Crown. Given that such rights could be altered at will at any moment by the Spanish Crown in the exercise of its exclusive right of dominion over its colonial possessions, the crucial date is thus clearly the date when independence actually occurred.

3.8 In Central America independence from the Spanish Crown took place in 1821. This means that any alleged delimitations carried out subsequent to that date (unless these delimitations were based on Title Deeds issued by the Spanish authorities before 1821) have no probative value as against delimitations carried out prior to the end of the colonial regime. Similarly, in the event of discrepancies between different documents emanating from the Spanish Crown and/or other Spanish authorities, those documents latest in date must clearly prevail provided always that they are prior to the date of independence. As the Chamber of the Court stated in the Burkina Faso-Mali Case, the principle of "utis possidetis iuris".

"applies to the States as it is, i.e. to the "photograph" of the territorial situation then existing. The principle of "utis possidetis" freezes the territorial title; it stops the clock but does not put back the hands" (3)

3.9 Article 26 authorises the Court to base its decision only on documents which enjoy two distinct characteristics, one in respect of origin and the other in respect of object and purpose. The documents must, firstly, have been issued by the Spanish Crown or by some other Spanish Civil or ecclesiastical authority and must, secondly, indicate the extent of jurisdictions or the boundaries of territories or towns ("poblaciones" in the original Spanish text). This reference to "towns" ("poblaciones") is intended to refer to the formal Title Deeds to commons (in Spanish "Títulos Ejidales") which constitute the main part of the documentation relied upon by the Republic of El Salvador.

3.10 The specific application of the principle of "utis possidetis iuris" to the case of an extended frontier has caused some practical difficulties in past cases of this type due to the predictable insufficiency of the Spanish Colonial documentation in respect of certain sections of the disputed boundary. In order to forestall any possibility of such difficulties arising in the present case, Article 26, having first provided in its opening sentence that the process of delimitation "shall take as its basis" the Spanish colonial documentation, then goes on to provide in its second sentence that "account shall equally be taken" of other means of proof and arguments and reasons of a juridical, historical or human nature or of any other kind admissible under International Law.

3.11 The phrase "arguments and reasons of a ... human nature" found in this second sentence is especially

significant. This phrase conveys the need to take into account what may be described as the political and human geography of the disputed areas - that is to say, a consideration of the situation of the human population living and the human settlements existing in these areas. These, as will be shown in due course, are Salvadoreñan settlements administered from time immemorial by Salvadoreñan authorities. The Salvadoreñan population owns the lands in the disputed areas and they farm these lands for agriculture and for livestock. Their produce is sold to consumer markets in El Salvador - inevitably since there is a total lack of roads or other means of communication with Honduras. Their health is cared for the Salvadoreñan health centres and hospitals; their children attend Salvadoreñan schools; they receive their electrical power from Salvadoreñan power stations. In short, any change of State jurisdiction would consequently adversely affect the lives, the weel-being, the property rights and the economic activities of the human population.

3,12 In the Burkina Faso-Mali Case, the Chamber of the Court examined in a very profound manner the relationship between documentary titles and what it described as "effectivité", using that term to signify the effective exercise of of territorial administration and jurisdiction over disputed areas. The Chamber stated that:

"In general terms, what legal relationship exists between such acts and the title on which the implementation of the principle of utis possidetis is

grounded. For this purpose, a distinction must be drawn amongst several eventualities. Where the act corresponds exactly to law, where effective administration is additional to the utis possidetis juris, the only role of effectivité is to confirm the exercise of the right derived from a legal title. Where the act does not correspond to the law where the territory which is the subject of the dispute is effectively administered by a State other than the one possessing the legal title, preference should be given to the holder of the title. In the event that the effectivité does not co-exist with any legal title, it must invariably be taken into consideration. Finally, there are cases where the legal title is not capable of showing exactly the territorial expanse to which it relates. The effectivité can then play an essential role in showing how the title is interpreted in practice." (4)

(4) (1980) I.C.J. Reports pp. 565-587.

CHAPTER 4

GENERAL CONSIDERATIONS AS TO THE VALIDITY AND CONCLUSIVE CHARACTER OF FORMAL TITLE DEEDS TO COMMONS ("TITULOS EJIDALES")

- 4.1 The decisive importance of formal Title Deeds to Commons (in Spanish "Títulos Ejidales") in the delimitation of the land frontier line in the present case in the areas where the frontier between El Salvador and Honduras is in dispute necessitates the formulation of certain considerations of a general nature as to the validity and conclusive character of such formal Title Deeds.

I. THE ORIGINAL NATURE AND LEGAL SIGNIFICANCE OF COMMONS ("EJIDOS") IN SPAIN

- 4.2 Spanish law has at all stages in its development recognised the existence of commons (in Spanish "ejidos"). Such areas were situated outside towns and were intended as an area where all the inhabitants could pasture their livestock - for this reason any type of construction in such areas was prohibited. The Spanish Academy Dictionary defines "ejido" as "the land adjoining a town which is the common property of all its inhabitants which land is not cultivated but is normally used for the pasture of livestock or for the threshing of crops".
- 4.3. This common land was normally situated in the outskirts of a Spanish town (as indeed is indicated by the Spanish word "ejido") and was measured out by

drawing a line in the direction North South one league in the length through the centre of the town and a second line also one league in length perpendicular to the first one. The limits of the common land were determined by joining the extreme points of these two lines.

- 4.4 The "Partidas" of King Alfonso El Sabio defined the nature of the "ejido" and established its legal regime. Law XXIII, Title XXXII, of the Third "Partida" provided that "no man shall build houses or any other construction" in an "ejido"; Law IX, Title XXVIII of the same Third "Partida" established the legal regime of "ejidos" by classifying them, together with fountains, squares, and other public property, as assets "which can be utilised by anyone"; Law XIII, Title IX, of the Sixth "Partida", provided that "ejidos were not transmissible by way of succession, and Law VII, Title XXIX, of the Third "Partida", provided that title to land within an "ejido" could not be acquired by long possessions thereof. These provisions clearly established that land within an "ejido" was not capable of individual ownership.

II. THE ADAPTATION OF THE "EJIDO" TO INDIAN TOWNSHIPS IN AMERICA

- 4.5 The Spanish "ejido" was transplanted to the Spanish possessions in America since "right from the initial period of the discovery, conquest and colonization (of America), the Spanish Monarchs were particularly interested in ensuring that new cities, towns and

other places in the Indies were substantially endowed with lands of common use" (1)

4.6 However, the adaptation of the Spanish "ejido" to America had to embrace certain different features since the colonizers encountered native Indian communities with a high level of demographic growth which were dedicated to communal agricultural exploitation. Consequently, the Spanish colonizers had to adapt the traditional nature of the "ejido" so as to embrace within this institution the phenomenon of communal agricultural exploitation which it encountered in many of the native populations of the New World, particularly in Central America. Ots Capdegui observes in this respect that "at the time (of the conquest) the lands of Indian towns or settlements ("reducciones" in the original Spanish text) were utilised in common and were exploited collectively by the Indian communities" (2).

4.7 The "Ordenanzas de Descubrimiento y Nueva Población" of 1573 (3), in laying down the procedure to be followed for the establishment of new towns, required that care should be taken not to prejudice "any Spanish or Indian towns which were already populated" and prohibited any confiscation of property which already "belonged to the Indians".

4.8 For this reason, this "Ordenanza" of 1573 altered the rule which was traditional in Spain to the effect

1. Jose Maria Ots Capdegui: Historia del Derecho Español en América y del Derecho Indiano" pp.239-240

2. España en América: el régimen de tierras en la época colonial" (México. 1959) p.85

3. The full text of this "Ordenanza" is published in Diego de Encina: Cedulaario Indiano: Vol.IV p.243.

that the "ejido" should have an extension of not more than a league and instead provided that in the cases of Spanish or Indian towns which were already populated the "ejidos" should have an extension of four leagues "either in a square or a more prolonged form depending on the nature and quality of the land". This provision demonstrates the elastic character of the "ejidos" of Indian towns. Thus, in order to take into account the demographic growth of the population, the ordenanzas insisted that "ejidos" should be marked out "to a sufficient extent that, even if there is much population growth, there will be enough space both for the people and for the livestock without giving rise to any difficulties".

4.9 However, it was not only the physical size of the Spanish "ejido" which was enlarged in America. The "ejidos" were also adapted to permit the communal agricultural exploitation which had been developed by the indigenous population. To this end, the Indian population was exempted from the traditional prohibition on cultivating the land which had been established in the Spanish "ejidos". In line with this objective, the "ejidos" were enlarged as the as the population of the town in question expanded and this adjudication of additional areas of land to the Indian communities had two special features: cultivation of the land was permitted and the additional areas were adjudicated either without payment or for half the amount of the normal payment.

4.10 The "Recopilación de Leyes de Indias" of 1680 incorpo

rated Law XIV, Title XII, Book IV, a Royal "Cédula" of 1591 in which the Spanish Crown instructed its delegate authorities to "distribute to the indians the lands which they will need for cultivation and for carrying out their sowing and breeding in the light of the lands which they already possess, giving to them whatever is necessary".

III. THE PROCEDURES FOR THE ENLARGEMENT OF "EJIDOS"

- 4.11 These different characteristics of the "ejido" in Indian towns in America which have been considered above made it necessary for the Spanish Crown to establish what authorities should oversee any necessary enlargements of "ejidos" and to lay down the procedures to be followed in such cases. This was particularly necessary in order to protect and guarantee the rights of neighbouring towns and population that might find themselves adversely affected by the enlargement of the "ejido" in question.
- 4.12 It is first of all necessary to establish what authorities had to oversee the process. Section II of Royal Decree of 15th October 1754 required those Judges and Ministers who had jurisdiction over the sale of lands belonging to the Crown (such lands were known as "tierras realengas") to "proceed with suavity, temperance and moderation in the oral and other judicial proceedings relating to the lands possessed by the Indians and to the lands which they might need for their labour, their cultivation and for the breeding of livestock. In respect of the lands granted to their towns for pasture and as

common land, no changes shall be made, such lands being maintained in their possession; further, the lands which have been usurped shall be returned to them and enlarged areas of land shall be granted to them in the light of their population requirements". The effect of this Royal Decree was to place the protection and enlargement of "ejidos" under the control of the highest Spanish judicial authority in Central America, the "Real Audiencia" of Guatemala, the supreme civil authority in the Kingdom of Guatemala, the supreme civil authority in the Kingdom of Guatemala. The "Real Audiencia" and the subordinate officials in its various sub-jurisdictions (collectively known as "Jueces de Tierras") had jurisdictions over the sale and distribution of lands belonging to the Crown (the already mentioned "tierras realengas"). Thus the formal Title Deeds to Commons ("Títulos Ejidales") constitutes documents issued by the Spanish Civil Authorities during the colonial period which indicate the jurisdictions or boundaries of territories or towns and thus fall within the terms of Article 26 of the Tratado General de Paz of 1980 as documents forming the basis of the process of delimitation.

- 4.13 Turning now to the procedures which had to be followed by the "Real Audiencia" and its subordinate officials, the "Jueces de Tierras", in connection with the adjudication and enlargement of "ejidos", these can be illustrated by summarizing, as an example, the procedures that were followed in respect of the Tecpanguisir Mountain (one of the sectors which are

still in dispute). In February 1776 the Indian inhabitants of the Salvadoreñan town of Citalá petitioned the judicial authorities of Chalatenango in the then Province of San Salvador for a measurement of the Mountain in order to enlarge their "ejidos" , since their existing common land was insufficient. This petition was sent to the "Real Audiencia" of Guatemala, whose President and principal "Juez de Tierras" directed the subordinate "Juez de Tierra" based in Chalatenango to carry out the necessary measurement and demarcation and, additionally, directed him to give notice of these proceedings to the "Juez de Tierras" based in Gracias a Dios, since the matter might adversely affect the Indians of Ocotepeque (now part of Honduras). The Judge appointed one person to defend the interests of the Indians of Citalá and another person to defend the interests of the Indians of Ocotepeque. He first carried out a survey and then a measurement and demarcation "in the presence of the native population of Citalá and Ocotepeque". The Decree signed by the Judge stated that the Indians of Ocotepeque had declared that "they were not prejudiced by the proceedings since their boundary remained a long distance away and so would withdraw to their town". The following day the Judge certified that the "measurement was terminated, concluded and finished without any opposition" and his decree to this effect was countersigned by the persons appointed to defend the interests of both towns. The record of the proceedings was then sent back to the President of the "Real Audiencia" of Guatemala who, after reviewing

the opinion of the "Fiscal" (the local Law Officer of the Spanish Crown), "adjudicated to the native population of the town of San Francisco de Citalá in the Province of San Salvador" the area included within the measurement and demarcation that had been carried out. At the same time, the President of the "Real Audiencia" directed the subordinate "Juez de Tierras" based in Chalatenango to give possessions of the land in question to the native population of Citalá and this adjudication was duly carried into effect on 2nd. August 1776. The Indians of Ocotepeque were once again notified that this would take place but they answered that, since they were not prejudiced thereby, they would not appear.

IV, THE RELIANCE BY HONDURAS ON THE CONCLUSIVE CHARACTER OF FORMAL TITLE DEEDS TO COMMONS ("TITULOS EJIDALES") IN ITS BOUNDARY DISPUTES WITH GUATEMALA.

- 4.14 It is understandable that a title obtained after complying with all these procedural guarantees should constitute conclusive evidence as to the territorial rights of the State of which the town in question, in the above case, Citalá, forms part. The conclusive character of "Títulos Ejidales" was decisively accepted by the Arbitration Tribunal which by its Award of 23rd January 1933 established the boundary between Honduras and Guatemala. The President of the Tribunal was Charles Evans Hughes, a former Judge of the Permanent Court of International Justice and President of the Supreme Court of the United States of America, and its members were two distinguished Latin-American Jurists, Emilio Bello Codesido of Chile and Luis Castro Ureña from Costa Rica.

- 4.15 The Award of the Tribunal contains the following statement relating to "Títulos Ejidales":

"Deliberate and formal assertion of civil authority is shown in the making of grants of the public domain. The high significance of these grants as public instruments evidencing the exercise of civil jurisdiction is apparent from the character of the official procedure pertaining to their execution. The title to the public domain was in the Spanish King, and the land grants could be made only with the Royal Authority. After the middle of the Eighteenth Century, surveys of lands in the Kingdom of Guatemala were made by sub-delegates or special land judges, who were appointed by the Captain General to serve in the several provinces, and these surveys were subject to confirmation by the Audiencia on behalf of the Central Government of the Kingdom. It appears to have been the practice that the person desiring to acquire title to public land presented a petition to the local sub-delegate, or land Judge in the province in which the land was deemed to be situated. An official survey was then made under the supervision of the local Judge and the land was measured and marked. Opposing claims were heard and pertinent questions were decided by the Judge subject to appeal to the Audiencia. The price was paid into the Royal Treasury and the dossier was sent to the Audiencia which entered its adjudication after hearing the fiscal (Attorney General). In the circumstances of the times, it is difficult to see what procedure could have afforded more ample opportunity for examining and determining questions of territorial jurisdiction. Through these land grants it is possible to trace the area in which each of these colonial entities and the States which succeeded them, asserted administrative control" (4).

- 4.16 These considerations apply not only to land grants made infavour of private individuals but a fortiori also to grants of "ejidos" to the inhabitants of towns where the same elaborate procedure was followed. This is indeed confirmed by the fact that the Tribunal fixed the boundary between Honduras and Guatemala

(4) Guatemala-Honduras Special Boundary Tribunal (Washington D.C. (1933): Opinion and Award: pp.53-54

in certain disputed sectors on the basis of "Títulos Ejidales". The first such decision was made in favour of Honduras in the sector between Cerro Oscuro and the parallel of the town of Copán. After asserting that the area known as Tixiban, surveyed in 1817, belonged to Guatemala, the Tribunal stated:

"But to the east and northeast of the Tixiban grant lands were set aside for the inhabitants of the Indian village of Pueblo Nuevo.... These Indians had requested the authorities of the Province of Comayagua to grant lands for their village Commons. In the proceedings, which took place in 1817, it is stated that Pueblo Nuevo was situated "in the mountain of the Merendon district of Sensenti, Subdelegation of Gracias a Dios, in the Intendency of Comayagua". On reference of the petition to the Judge of the Special Land Court at Guatemala City, an order was issued directing the Governor of Comayagua to arrange that the surveyor of the district should "measure and delimit a league of the best lands" for the service of the Indians." (5)

After referring to these and other land grants the Tribunal concluded:

"Considering the land grants made prior to independence as evidencing the extent of the recognised provincial jurisdiction, it appears that the line of utis possidetis of 1821 may be deemed to be established from a point on the Copán River in a southeasterly direction to and along the eastern limits of the Tixiban grant." (6)

Thus the Tribunal recognised the "Título Ejidal" of Pueblo Nuevo as determining the utis possidetis in favour of Honduras.

4.17 The Tribunal also recognised "Títulos Ejidales" in favour of Guatemala in respect of the sector between the parallel of the town of Copán and Amates-Quirigua on the Motagua River, stating:

(5) Ibid: pp.60-61

(6) Ibid: p.64

"The record shows clearly, as contended by Guatemala, that the commons of San Juan Camotan, lying to the west of Chaguites, were in Chiquimula".(7)

4.18 Honduras thus invoked in the proceedings against Guatemala "Títulos ejidales" as a conclusive basis for delimitation of the frontier and succeeded in its claims based thereon in respect of Pueblo Nuevo. Consequently it is now estopped from denying the relevance and conclusive effect of the "Títulos Ejidales" being invoked by El Salvador. Furthermore, in the course of the mediation carried out by the State Department of the United States of America in 1918-1919 in relation to the dispute with Guatemala, Honduras also asserted the general validity of "Títulos Ejidales" in the following terms:

"The titles issued before 1821, which were approved by the Real Audiencia, after measurements carried out by public officials called sub-delegates, are undoubtedly public documents of unquestionable faith, since they declare the jurisdiction in which the measured land was situated and the bordering lands belonging to the same or different Provinces, after in many cases notice being given to the neighbouring towns of foreign jurisdiction. They must serve as the basis to determine how far extended the territory of each Province before 1821".

V. RELIANCE ON THE CONCLUSIVE CHARACTER OF FORMAL TITLE DEEDS TO COMMONS ("TITULOS EJIDALES") IN THE BOUNDARY DISPUTES BETWEEN EL SALVADOR AND HONDURAS.

4.19 As is illustrated by the discussion of History of the Boundary Disputes between El Salvador and Honduras set out in Chapter III of this Memorial, both El Salvador and Honduras, not only in the various unsuccessful negotiations held at different times by the Commissioners of the Joint Boundary Commissions which have been set up by the two states but also

in the negotiations which have reached a positive conclusion in respect of the areas in which the boundary is now settled, have consistently recognised that the delimitation of their respective territories must be based on "Titulos Ejidales". As an example of this recognition, it is relevant to mention the statements made before the Hondureñan Congress by Doctor Francisco Cruz the Representative and Commissioner of Honduras in the Cruz Letona Convention of 1884.

4.20 On the 7th February 1885 by virtue of Decree Number 7 the Hondureñan Congress disapproved the Convention that had been concluded between El Salvador and Honduras determining the boundary line between the two states, attempting to justify this posture by denying the validity of the powers granted to its delegation, accusing doctor Francisco Cruz of being a traitor and dubbing as a mercenary Mr. A.F. Byrne, the Canadian Engineer, who had been engaged by Honduras to carry out the technical work.

4.21 Doctor Don Francisco Cruz, the Representative and Commissioner of Honduras, was motivated by this serious accusation to appear before the Congress of his country where he contradicted the assertions of the Legislative Commission of Honduras and at the same time explained the bases of the frontier line determined by the Joint Boundary Commission, which he considered to be in accordance both with the instructions which he had received from the President of Honduras and with the Title Deeds produced by El Salvador, which, in the opinion of his delegation, were irrefutable.

The defense presented to the Congress of Honduras is set in full in Annex (1). The most significant were as follows:

"The persons who is at present governing Honduras, wishing for peace with the neighbouring Republic, anxious to put an end to the troubles and misfortunes of the settlements which are in conflict, and having been approached by the Government of El Salvador to settle once and for all the frontier and the problems arising out of the colonial Title Deeds, nominated me as Boundary Commissioners and gave me instructions that I, paying attention to what just, should conclude with the Commissioner of the Salvadoreñan Government, a definitive agreement. With this objective and, given that the negotiations at Saco had broken down, with the intention that justice should prevail in the further negotiations, we the Commissioners established the basis that, in the appraisal of the Titles and other proofs produced by one another, we would give preference to the oldest authentic evidence.

"Having thus established the basis of the negotiations, I could not sustain in those meetings the Titles recently granted by Dr. Soto in favour of Opatoro and Santa Elena as against the extremely old Titles of Poloros, Arambala and Perquin (settlements of El Salvador) which are conclusively opposed to the former ones, not only because they establish permanent landholdings of traditional accuracy but also because of the lack of any evidence that Honduras has exercised jurisdiction in these areas".

4.22 In relation to the maps prepared by the Joint Boundary Commission, the Hondureñan Commissioner, Doctor Frnacisco Cruz made in his exposition the following categoric statement:

"The surveyor Lazo, without either knowing or having inspected the disputed boundary line, drew up, or rather copied on his desk, the sketch or small map on which the Commission has founded its powerful arguments against the Boundary Agreement. This is equivalent to - drawing a map of a country using only historical references. No. The exact map of the boundary line in question, the truly scientific map, is the one which for the honour of science has been drawn up in all its admirable detail by the engineer Byrne; a map which, if

it is preserved, will illuminate the future. Byrne, throwing rope over rope, and using excellent geometrical instruments, calculated all his work with scientific precision."

CHAPTER 5

TIERRAS REALENGAS (CROWN LANDS)

- 5.1 The government of El Salvador considers that in the determination of the land frontier in some of the disputed areas, the "tierras realengas" must be taken into consideration by the Chamber of the Court, due to the fact that the measurements which were carried out in accordance with the "títulos ejidales", do not exhaust the territorial rights possessed by El Salvador.
- 5.2 These "tierras realengas" are an institution of the spanish colonial period based on the consideration of the Spanish Crown that all the territories in America were "res nullius" and consequently, by the right of conquest, these lands were subject of appropriation and thus incorporated into the spanish crown becoming the property of the King as "crown lands".
- 5.3 Gradually, as the process of colonization progressed, the spanish crown, through the competent authorities, granted to the 'conquistadores' and other private persons, as well as to the indian communities, part of these lands. These adjudications had to be executed by the "Juez de Tierras" with jurisdiction over the town of population which was mentioned in the "título ejidal".
- 5.4 The manner in which the adjudication of the "ejido" was made, left on many occasions, between the neighbouring communities, extensions of land which was

not adjudicated to one or the other community and remained as "tierra realenga" not covered by the "título ejidal" of the respective town or community. This fact has been the main cause of the frontier conflicts and has made very difficult a precise delimitation of the land boundaries in most parts of Latin America.

- 5.5 Consequently, under the doctrine established by the arbitral award rendered in the case between Guatemala and Honduras, those "tierras realengas" belong to El Salvador, up to the point where Honduras may produce a title comparable to its legal force and effect to those which are presented by the Republic of El Salvador.

CHAPTER 6

THE DISPUTED AREAS

A). TECPANGUISIR MOUNTAIN.

6.1 The first sector whose boundary has not yet been fixed is the sector known as Tecpanguisir Mountain, which is located between the Cerro de Montecristo (the tripartite boundary marker which divides the Republic of Guatemala, the Republic of Honduras, and the Republic of El Salvador) and the peak known as El Zapotal which constitutes respectively the western and eastern limits of this sector.

6.2 The second sector whose boundary was settled by the Tratado General de Paz, signed in Lima, Perú, in 1980 is described in the following way in Article 16 of that Treaty.

"From the summit of the peak known as El Zapotal to the source of the stream known as Gualcho and from there to the confluence of said stream with the river known as Lempa. From there, downstream along the Lempa, until the confluence with the stream known as Poy, Pacaya, de los Marines or Guardarraya. From this point upstream along the said stream until its source. From there in a straight line to the peak known as Cayaguanca."

This second sector is delimited by Article 16 of the Tratado General de Paz of 1980 as before mentioned because some of the litigation that is going on, is to be referred to commons partially included in this articles' second section which are partly situated in this same sector. The boundary of this boundary of this sector was fixed on the basis of

formal Title Deeds to Commons executed by the Spanish authorities in favour of the Salvadoreñan settlement* of Citalá and whose validity and effect were finally accepted by Honduras when this sector was delimited in accordance with these Deeds. These same Deeds are very closely connected with the first sector whose boundary has not yet been fixed, Tecpanguisir Mountain.

6.3 The as yet undelimited sector has been inhabited and cultivated since time immemorial by the people of San Francisco Citalá of the Spanish Colonial Province of San Salvador. It has been clearly demonstrated in the litigation between the inhabitants of Citalá in El Salvador and of Ocotepeque in Honduras over the commons situated to the East of the River Lempa that the lands to the West of the said River Lempa, that is to say Tecpanguisir Mountain, belonged to the Crown and had always been cultivated by the Indian population of Citalá. These lands were marked out in 1742 and the definitive measurement and adjudication was carried out in 1776 by the subordinate "Juez de Tierras" based in the judicial district of Chalatenango in the Spanish Colonial Province of San Salvador, Don Lorenzo Jiménez Rubio; at this measurement the indigenous population of San Andrés Ocotepeque in the Province of Honduras was present; they appeared with their own formal Title Deed and when the first boundary marker was placed on top of a mound of small stones the said natives of Ocotepeque declared that they did not feel that they were being prejudiced in any way since their own boundaries were a substantial distance away;

* Means Town

consequently they retired to their own township. Throughout the entire colonial period until independence and also thereafter, no Hondureñan settlement* has disputed that these lands were legitimately possessed by the inhabitants of Citalá. It is as recently as 1935 that Honduras officially presented a proposal to the Government of El Salvador showing a frontier line which differed to the extent of approximately 7 Square Kilometres from the boundary line indicated by the formal Title Deed to the Commons of Tecpanquisir.

I. THE LITIGATION BETWEEN CITALÁ AND OCOTEPEQUE

6.4 Since ancient times the Indians of Ocotepeque in the Province of Honduras had wished to deprive of their commons the population of Citalá in the Province of San Salvador. This was expounded by the inhabitants of Citalá in the dispatch which they presented to the "Alcalde Ordinario" and Lieutenant of the "Alcalde Mayor" of San Salvador on 23rd November 1658, in which it was stated that the inhabitants of Citalá had been in possession of these disputed Commons since the founding of the said township and that these lands were within the boundaries and the jurisdiction of the Province of San Salvador.

6.5 The first proceeding of a litigious nature between these two townships dates from 1702, in which it is recorded that, having gone through the appropriate procedures and proofs, the matter was resolved in favour of the inhabitants of Citalá who were seeking to protect their rights so as to ensure that they were not dispossessed either from the said lands or from any part of them.

* Means Town

6.6 Notwithstanding the protection of this Royal Decree in favour of the inhabitants of San Francisco Citalá, the inhabitants of Ocotepeque persisted with their hostile activities in the desire to snatch away these lands. Consequently once again Citalá sought protection and its titles were confirmed in the year 1740 by Don Pedro Díaz del Castillo, the subordinate "Juez de Tierras" of the Province of San Salvador. Having concluded the proceedings, the Judge sent the record of the proceedings up to the "Juzgado Privativo de Tierras" (Private Land Court) having notified the matter to "Abogado Fiscal" of the "Real Audiencia" (the Law Officer of the Spanish Crown in Guatemala) whose response included the following remarks:

"It is necessary to inform your Excellency that a formal Title Deed of Adjudication of the land measured should be issued to the inhabitants of Citalá containing a reference to the boundary fixing which according to the record has been carried out in favour of the inhabitants of Ocotepeque; and that along with this Title a dispatch should be issued so that the said subordinate Judge of the Province of San Salvador indicates and marks out Commons in favour of the inhabitants of Ocotepeque in accordance with the Ordinance in force, directing him that he warn them to remain within their own boundaries and not in any manner either exceed those boundaries or enter into the territory of the Province of San Salvador, given that they are before the boundary line of two jurisdictions."

6.7 By reason of the fact that the inhabitants of Ocotepeque persisted in their desire to enter onto territory belonging to San Francisco Citalá in the Province of San Salvador, the inhabitants of the latter

petitioned for a reconfirmation of the boundary markers of their Commons in the section which had a boundary with the township of Ocotepeque in the Province of Honduras. This was carried out by the subordinate Judges Don Pedro Díaz del Castillo on behalf of Citalá and by Don Juan Segundino de Lanusa on behalf of Ocotepeque in the year 1742, the relevant part of which states as follows:

"It being necessary to grant lands to the inhabitants of Citalá in the manner that your Excellency has stated and ordered and that this should be done without prejudice to the inhabitants of Ocotepeque, consequently taking into account all these matters and doing justice in accordance with the instructions of your Excellency, we ought to direct that land be given to them in the surroundings of their township from the River Lempa towards the West leaving free for them the mountain which the inhabitants of Citalá have always cultivated and along with this that the boundary markers of the lands of Jupula be confirmed according to what is established in the formal Royal Title Deed of adjudication which they have"

The possession given to the Indians of the township of Citalá was thus confirmed in the town of Santiago de Esquipulas on 23rd February 1742 by the "Oidor y Alcalde de Corte de la Real Audiencia" of Guatemala, the "Juez Privativo" of the Royal Law governing lands and the visitor of the Kingdom.

II. THE MEASUREMENT OF TECPANGUISIR MOUNTAIN

6.8 In February 1776 the inhabitants of San Francisco Citalá of the Province of San Salvador appeared -----

before Don Lorenzo Jiménez Rubio, subordinate "Juez de Tierras" for the judicial district of Chalatenango, within the jurisdiction of the Province of San Salvador, to ask that he would measure Tecpanguisir Mountain for them in order to complete their Commons on the grounds that the Commons which they already had were poor and insufficient. This request was granted to them and the Spanish authorities issued in their favour a formal Title Deed in respect of the Tecpanguisir Mountain (the procedure involved was described in Chapter IV of this Memorial in paragraph 4.13) The formal Title Deed to the Commons of Tecpanguisir is a precise and decisive document which constitutes complete proof as to what was the competent Provincial jurisdiction over the area which was the subject of this measurement, boundary marking and adjudication.(1) (ANNEX 1) (Book of maps 6.I)

- 6.9 Since there is no dispute about the fact that the township of Citalá belonged to the Province of San Salvador, and since a formal Title Deed to Commons on Tecpanguisir Mountain was granted to that township, the administrative control over that mountain was also necessarily adjudicated to the Province of which the township entitled to the Commons formed part, in this case therefore to the Province of San Salvador, since Commons constitute a political institution which belongs not only to the township to which it belongs but also to the Province of which the township forms part.
- 6.10 El Salvador has always exercised jurisdiction and sovereignty over this area, to such an extent that even the numerous incidents which arose in respect of

(1) Map 6-1 Included in the Text

Commons with the inhabitants of Ocotepeque of Honduras (which is the closest neighbouring township) never produced any incursions onto Tecpanguisir Mountain to measure out royal landholdings between the one township and the other. From the very earliest times the controversies have concerned exclusively the lands to the East of Tecpanguisir Mountain which also formed part of the Commons of Citalá.

- 6.11 As can be seen from the Protocol relating to the series of meetings which took place between Honduras and El Salvador in the town of Concepción de Oriente (formerly known as Saco) as from 15th March 1884, both delegations clearly stated at the seventh of these meetings, which took place in San Miguel of 6th April 1884, that the Title Deeds to Commons which were held by the inhabitants of Citalá had the greater authority and that the lands of Tecpanguisir Mountain had been duly adjudicated to Citalá ever since 1776. In the Cruz-Letona Convention signed by both delegations the boundary line was described as indicated in the seventh meeting in accordance with the formal Title Deed to the Commons of Tecpanguisir. No protest whatever against this description of the boundary in this area was formulated by the Hondureñan Congress or by any Hondureñan township or municipality.

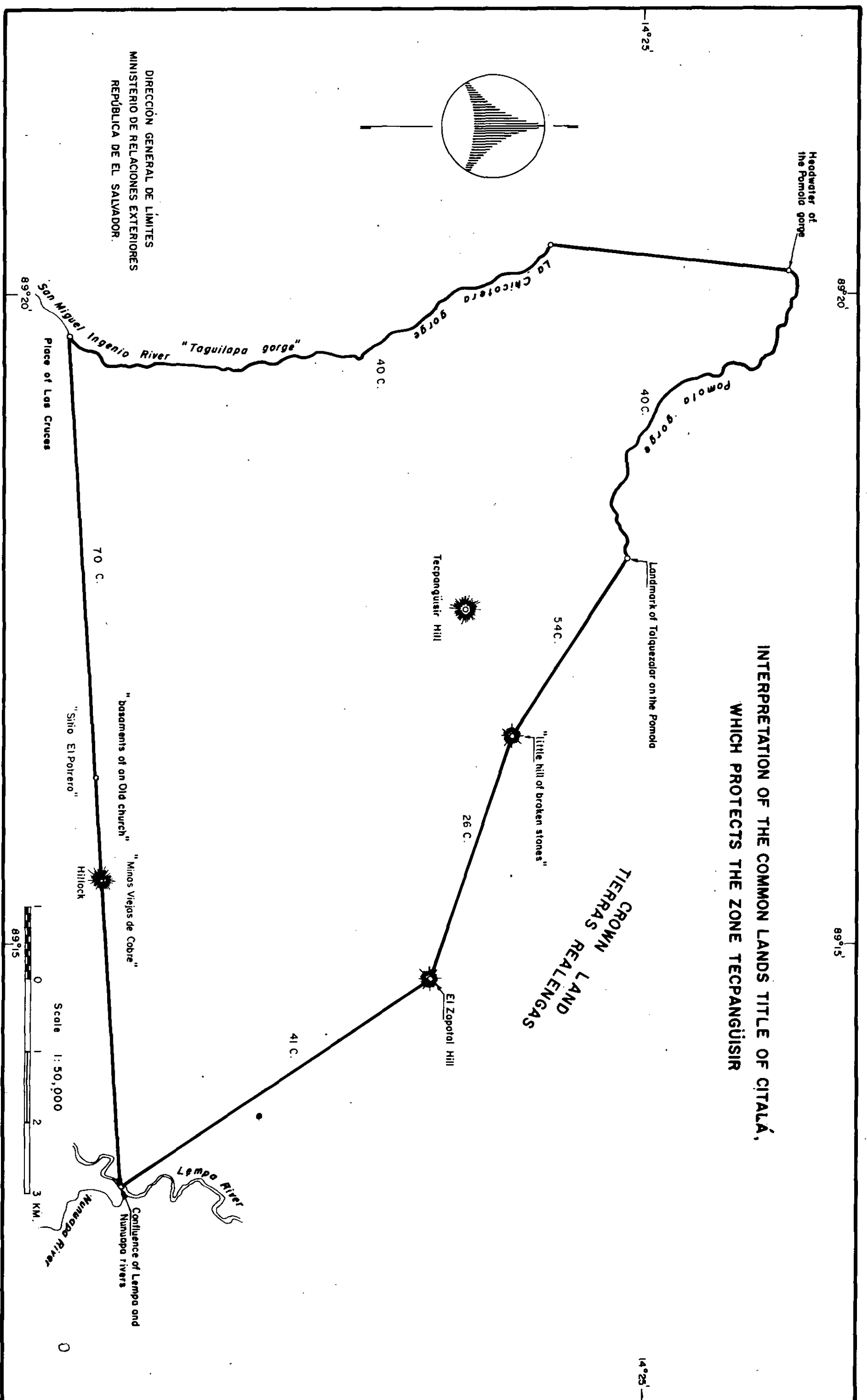
V. CONCLUSION

- 6.12 Consequently the frontier line between El Salvador and Honduras in this sector remains that indicated by the formal Title Deed to the Commons of Tecpanguisir Mountain issued in 1776, which is as follows:

"From the zone or tripartite boundary marker of the Cerro de Montecristo to the summit of the Cerro Oscuro in a straight line towards the north east. From the summit of the Cerro Oscuro to the headwaters of the Quebrada de Pomola taking the most northerly branch of the said stream. From the said branch of the Quebrada de Pomola downstream as far as the boundary stone of Talquezalar. From the boundary stone of Talquezalar to the summit of the Cerro de Piedra Menuda. From the summit of the Cerro de Piedra Menuda to the summit of El Zapotal."

- 6.13 The title proves without any doubt the jurisdiction of Citalá, Department of Chalatenango, Republic of El Salvador over the Mountain of Tecpanguisir, and without prejudice of the rights that El Salvador has over the crown lands situated between the commons of Citalá in El Salvador and the commons of Ocotepeque in Honduras.

INTERPRETATION OF THE COMMON LANDS TITLE OF CITALÁ,
WHICH PROTECTS THE ZONE TECPANGÜSIR



MAP 6.1

B. LAS PILAS OR CAYAGUANCA

6.14 Between the peak known as Cayaguanca, which is the final point of the second sector whose boundary was settled by the Tratado General de Paz of 1980, and the River Alto Sumpul, there is the striking massif known as the Mountains of the River Chiquito or Sesemiles, which has as its outstanding feature the mountain known as Cerro El Pital of some 2,780 metres in height on the sea level. To the north of this region in the Colonial period there were lands belonging to the Spanish Crown by right of conquest which were, administratively speaking, within the almost totally uninhabited judicial district of Tejutla, part of the Province and Intendency of San Salvador. The villagers of this area, some 100 kilometres to the north of the City of San Salvador and under its jurisdiction, began during the Seventeenth Century the colonization of this northern outpost of the judicial district of Tejutla, populating lands which belonged to the Spanish Crown which, as was normally the case with such lands within the Colonial Kingdom of Guatemala, were not subject to any Municipal jurisdiction but which, as a result of their colonization, became subject to the already mentioned administrative, political and judicial jurisdiction of Tejutla.

6.15 From the mountains known as Cerro El Pital of 2,780 metres in height and Cerro Burro of 2,698 metres in height there on the sea level run towards the East streams and brooks which join from the right hand side the River Sumpul which in this its first section flows from North to South. Between these peaks and the course of the River Sumpul, inhabitants of El Salvador founded in the distant past the hamlet known as Sumpul in the "Hacienda" (Country estate) of the same name at some 2,060 metres above sea level. This hamlet is some 10.3 kilometres to the North East of San Ignacio, a town of El Salvador, in jurisdiction of Tejutla of the Republic of El Salvador.

6.16 In one document which exists in the "Archive General of Central America" for the year 1695 states as follows:

"That on 19th January 1689 there was a General Meeting of the Exchequer at which were present the President, Governor and Captain General of the Kingdom of Guatemala, the General of Artillery Jacinto de Barrios, the "Oidores Licenciados" (Qualified Judges) Antonio de Navío Bolaños, Francisco de Valenzuela Banegas and Manuel de Baltadano and the "Contador Juez Oficial Real" (Official Royal Judge Accountant) Captain Felipe de Mais y Lisarraga."

"In this session there were considered the "General Meetings of the Exchequer of 11th July and 12th September of the previous year (1)687 and the proceedings which were being taken by Juan

Martin, resident of the Valle de Guarrabuqui in the jurisdiction of Tegucigalpa to obtain a declaration of the true value of two "caballerías" of land which he had measured out on the area known as La Concepción and by Antonio de la Portillo, resident of San Salvador concerning the 11 "caballerías" and 17½ "cuerdas" of land which he measured under the instructions of the Supreme Government in the Valle de Sumpul, which proceedings have been sent by petition to His Worship Doctor Pedro de Barreda of the Council of His Majesty." (3)

6.17 In another document which exists in the "Archivo General de Centroamerica" it is stated that Bartolomé Mejía, resident of the Valle del Dorado in the jurisdiction of San Miguel, declared that he had occupied some lands in the Valle de Sumpul and through his "Procurador" Juan Gregorio Vásquez (Court Solicitor) asked that the lands belonging to the Crown in this area, be measured so that he could agree their value with the Crown. The carrying through of the measurement was entrusted to Manuel Pacheco de Espinoza or, failing him, to his brother, José Pacheco, by virtue of a decree issued on 7th January 1718 by the "Juez Privativo de Medidas, Ventas y Composiciones de Tierras del Reino de Guatemala" (the Private Judge of Measurements, Sales and Land Valuations of the Colonial Kingdom of Guatemala) the "Oidor Licenciado" (Qualified Judge) Ignacio de Arana. (4)

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- (3) General Archive of Central America
AGCA Al.24, leg. 1569, exp. 10213, fol.2436
- (4) General Archive of Central America
AGCA Al.57, leg. 669, Exp. 6119

6.18 The lands of the Valle de Sumpul were to the West and South East of the waterfalls and the initial course of the River Sumpul in the jurisdiction of the original "Alcaldía Mayor" and subsequent Intendency of San Salvador, in an area within the judicial district of Tejutla. Its colonizers and subsequent proprietors were always Salvadoreños and the said district, according to the recorded documents, was occupied and civilised by families from the Province of San Salvador. Ever since these remote times the upper course of the River Sumpul has always been the established boundary between what are today the States of El Salvador and Honduras.

THE COMMONS OF LA PALMA

6.19 In the formal Title Deed to the Commons of La Palma there appears the measurement of the lands in the mountain Known as Rio Chiquito or Sesemiles. This measurement was carried out in 1829. Although this Title Deed is subsequent to the date of independence, the proximity of its date to the date of independence permits the ascertainment of precedents prior to independence which corroborate the Salvadoreño Title Deeds in this sector. The presiding Judge sent the documents relating to the measurement and to the valuation of the lands of the mountains of Rio Chiquito and Sesemiles to the Intendencia de Hacienda (Principal Office of the Exchequer), in El Salvador and it was the Mayor and

Councillors of the Salvadoreñan Village of Dulce Nombre de la Palma who executed the necessary powers "in order that in the name and representation of the said settlement" "the proceedings relating to the purchase of 108 "caballerías" of land measured in the Mountain of Rio Chiquito and Sesemiles should be carried out and concluded". Further once the proceedings had been carried out, these lands were adjudicated as Commons for this Salvadoreñan Village.

(Annex 2, pages 11v-14v.) (Book of map 6.II) (2)

6.20 With the survey and chace to buy Common Lands that was granted to salvadoran communities was endowed the Township of Dulce Nombre de la Palma, which since its foundation was integrated to the district of Tejutla. Under the Law of Feb 18th of 1841, Dulce Nombre de La Palma constituted in itself an electoral canton in the State of El Salvador.

Doctor Santiago Ignacio Barberena says the following (1910): "Near 1844 was built in La Palma a national customs house with one guard or employee to avoid smuggling and to collect the Fisical rights on the importations coming from Honduras and Guatemala. Some thirty years ago (around 1880), the house was sold out by superior orders to the office holder".

(2) Map 6.2 included in the text.

By Decree of the Deputies Chamber of February 21th of 1882, the town of La Palma was ranked as a Villa. In 1890 it had 2180 inhabitants (Annex 3)

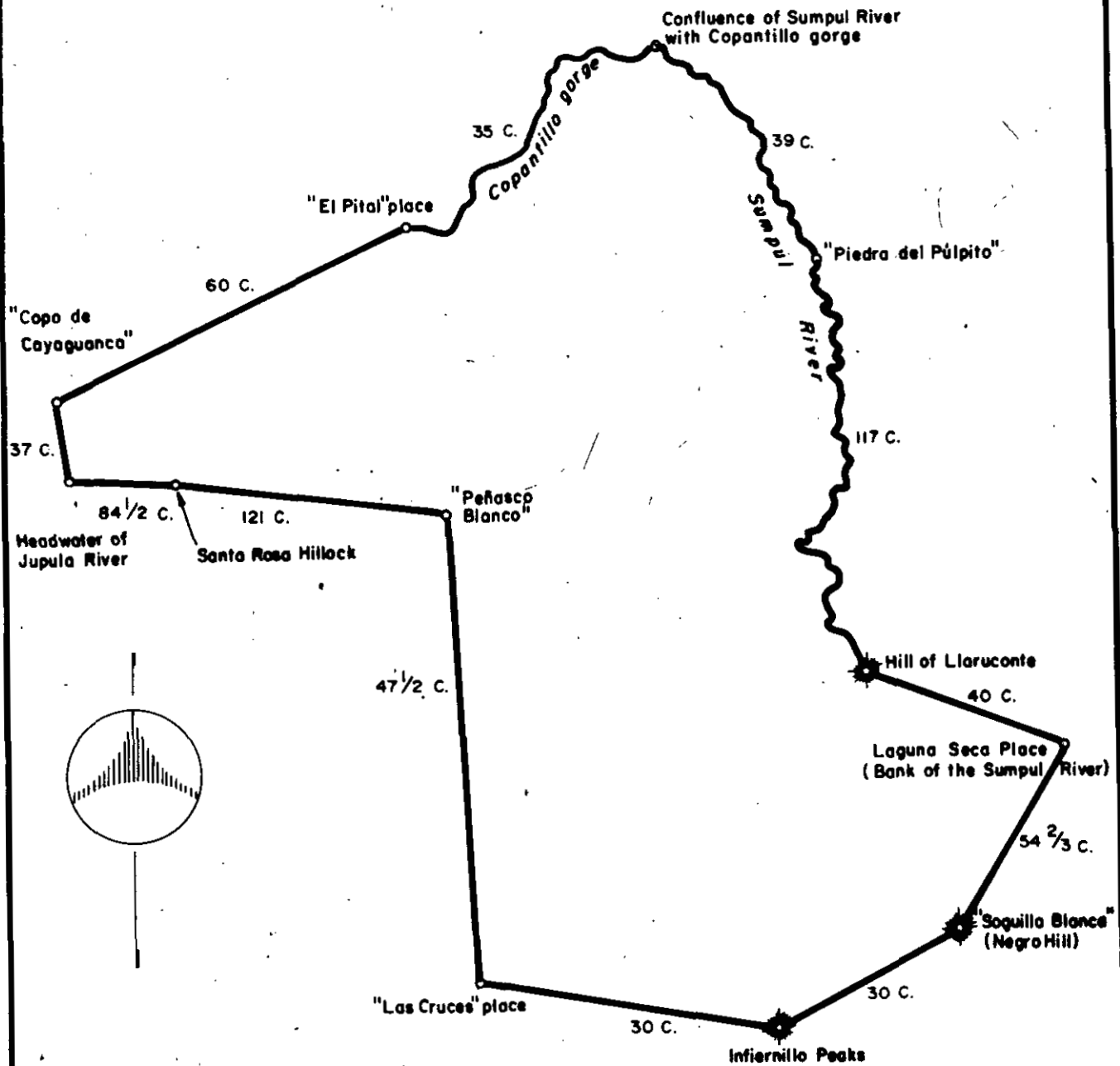
THE HACIENDA OF SUMPUL.

6.21 The Hacienda of Sumpul, within the jurisdiction of the judicial district of Tejutla in El Salvador and containing an ancient settlement, belonged in 1820 to Santiago Valle, being to the North of the Quebrada de Copantillo, to the South West of the source of the River Sumpul and bordering on the West a great part of the mountain Cerro El Pital. Even further to the North of this district there extended Royal landholdings where the hardworking Salvadoreñan people produced and still produce timber and have exercised and continue to exercise acts of civil, criminal and military jurisdiction and other evidence of ownership. It should be pointed out that this sector of the frontier was never disputed last century; thus even when in the proceedings carried out for the purpose of executing the formal Title Deed to the Commons of La Palma in favour of its Salvadoreñan inhabitants. The neighbouring inhabitants of Ocotepeque in Honduras were duly summoned, but at no time did they express any opposition to the measurement which was carried out, nor did

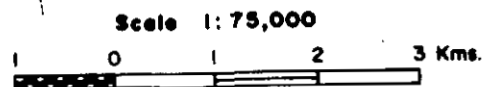
they claim that these lands belonged to Honduras. This claim was formulated for the first time in the Joint Boundary Commission of 1916 but without any documentary evidence being presented to justify this claim. Indeed, even further to the North than frontier line defended by El Salvador there are former Royal landholdings inhabited and possessed by Salvadoreños which El Salvador would have the perfect right to claim and it would then be for Honduras to present the documentation with which to justify its jurisdiction over these lands.

6.22 The salvadoran position before Honduras, in this sector is totally justified by the Commons Title Deeds issued in its behalf, other colonial documents and by the rights corresponding to El Salvador in the Surrounding Royal Land holdings.

INTERPRETATION OF THE COMMON LANDS TITLE OF LA PALMA, WHICH PROTECTS THE ZONE OF LAS PILAS OR CAYAGUANCA



DIRECCIÓN GENERAL DE LÍMITES,
MINISTERIO DE RELACIONES EXTERIORES
REPÚBLICA DE EL SALVADOR



MAP 6.2

C. ARCATAO OR ZAZALAPA

- 6.23 This sector which has an area of 49.9 square kilometres not including the Crown Lands (Tierras Realengas), comprises part of the Municipalities of Arcatao and Nombre de Jesus in the Department of Chalatenango in El Salvador. In terms of its position on the overall frontier with Honduras, it is situated between the boundary stone known as El Pacacio on the river known as Pacacio and the boundary stone known as Poza del Cajón on the River known as Guayquiquín, Gualcuquín or El Amatillo. El Salvador has had possession of this sector through the centuries as a matter of tradition both during the colonial period and subsequent to independence. It is only recently that Honduras has made any claim to this sector, a claim which is not supported by any formal Title Deeds whatsoever.
- 6.24 The sector has an elongated form with a very broken landscape, in which are included the peaks known as La Pintal, Tecolote, De la Cueva, El Fraile, La Montañita or La Cañada, El Caracol, El Sapo, El Cerrón, Lagunetas y Pitahaya and Las Lomas Altas, El Terrero, Rancho Quemado, Palo Verde, El Cajón, and Plan de los Monos. Its peaks range from the 300 metres to 1,000 metres above sea level. The sector is irrigated by the rivers known as Pacacio, Gualsinga, Zazalapa or Guayquiquín or Gualcuquín or El Amatillo and the streams known as Grande (2), San Pablo, El Zapote, Los Apantes, Piedra Grande, Las Marías or Palo Verde, De León y la Montañita and El Hoyo. A substantial part of the Municipality of Arcatao is situated in this disputed zone, which comprises part of the districts known as Zazalapa, Los

Filos and Gualcimaca with many of their villages under El Salvador jurisdictions. The sector also includes a part of the Municipality of Nombre de Jesús, of El Salvador. Its soil is able to be irrigated and its inhabitants cultivate grain and pasture cattle.

II. THE TITLE DEED TO THE COMMONS OF ARCATAO.

6.25 The possession enjoyed by El Salvador in this sector is supported by the formal Title Deed to the Commons of Arcatao, executed in favour of the Indian population inhabiting the township of San Bartolomé Arcatao in the year 1724. The said Indian population inhabiting the Salvadoreñan township of San Bartolomé Arcatao appeared before the subordinate Judge Lieutenant Don José González Batrez asking that he would measure for them the lands within the township of San Bartolomé Arcatao. They stated:

"That the titles and documents by virtue of which they possessed the said lands had been destroyed by fire and that they were being prejudiced by the activities of persons who occupied neighbouring lands who wished to enter onto their lands and take them over [and they requested that] he would measure all the said lands which they thus possessed as their Commons".

The Indians occupying these neighbouring lands came from Gracias a Dios in the Province of Honduras.

6.26 On 7th August 1723 Don Tomás Ignacio de Arana, a member of the Council of His Majesty, his "Oídor y Alcalde de Corte de la Real Audiencia" (Qualified Judge of the

Supreme Court of Guatemala) and the Chancellor of Guatemala, sent the subordinate Judge responsible for land measurements in San Salvador, San Miguel and the Villa of San Vicente, Don José González Batrez, to carry out the measurement of the land in the above mentioned township.

6.27 To this end the "Juez de Tierras" of San Salvador carried out this measurement in August 1723 in the presence of a witness there to defend the interests of the Indians. From this measurement, whose complete text is contained among the documents appended to this Memorial, it is clearly apparent that the boundary line stated in this formal Title Deed is based fundamentally on the actual physical characteristics of the sector, such as its mountains and its rivers.

6.28 The measurement commenced "at the peak of the mountain which is known as Juguín" proceeding from North to South along "a stream of water which is known as the Quebrada Honda". "Moving in direction from South to North, upstream along the River Sumpul, the Quebrada Honda was reached". Here, because it was late, the measurement was halted and two days later was continued "and following the same direction from South East to North West, crossing some hummocks, the highest point of the Cerro Quifuña was reached and following the same course we reached to the headwaters of the gorge also called Quifuña." Then the measurement passed "through the highest point of a peak", then "changing direction from South to North" reached "a ridge of stones", subsequently taking the line of a "rivulet". Following this rivulet upstream, the measurement-

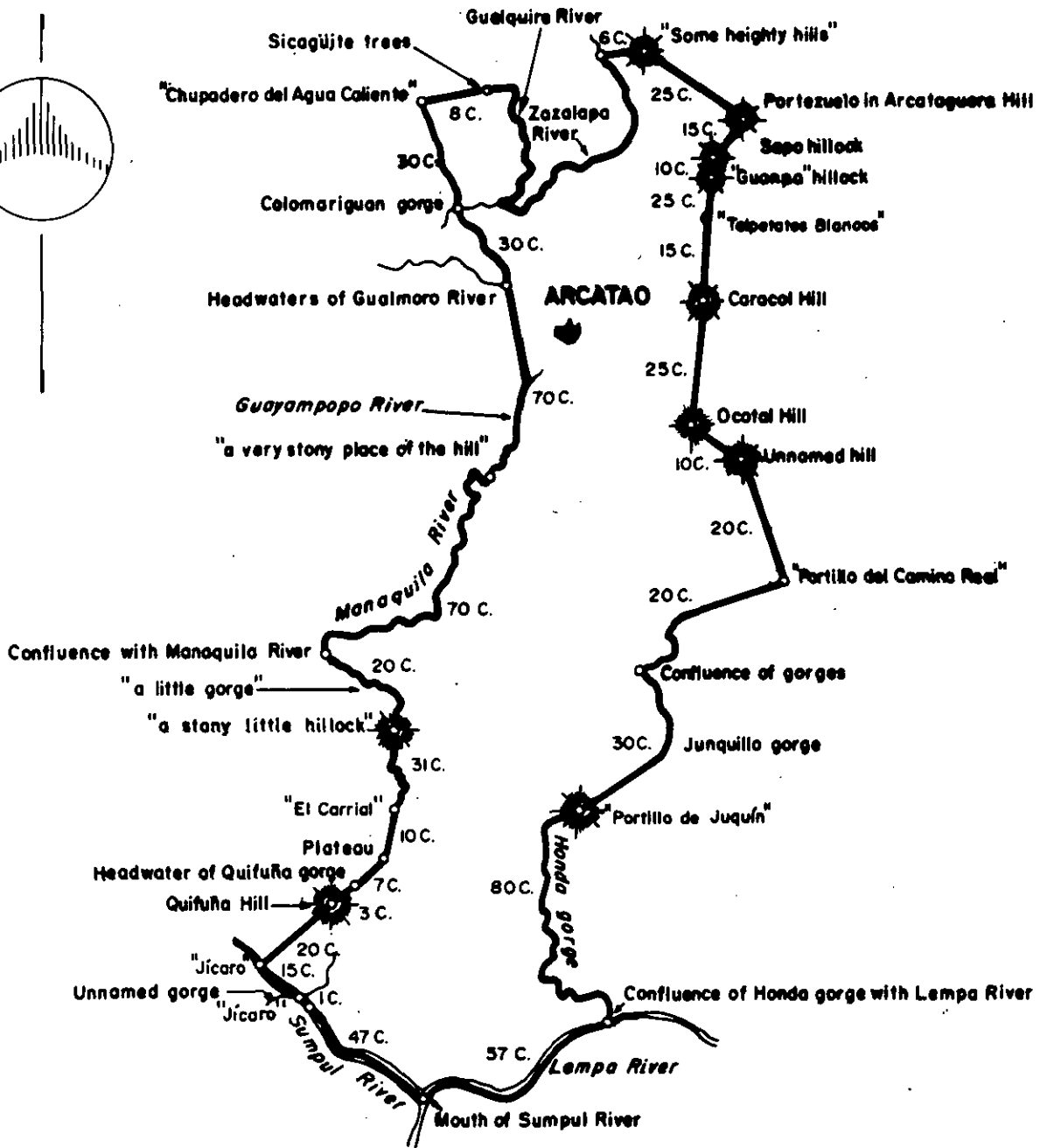
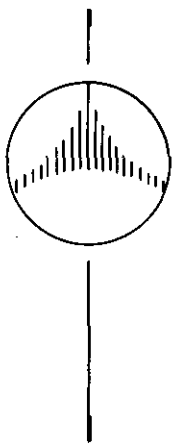
reached "the foot of a great peak which has many crags". The following day, proceeding from South to North, the Quebrada of Colomariguan was reached, "having come there through the ridges of the Cerro Colomariguan". Subsequently the measurement went up to Sasalapa it being then declared that the "Hacienda" (country estate) of this name was "under the jurisdiction of the Province of San Salvador" until "reaching the summit of some very high peaks"; subsequently there was a change of direction, from North to South, to go right round the Commons and for this reason this part of the record is not of any interest for the purposes of the delimitation of the frontier, although the measurement uses the same technique of going from peak to peak, it being stated that "one of these peaks divides the two jurisdictions, that of San Salvador with that of Gracias a Dios". In this way the actual physical characteristics of the land were established as the basis of the Title to the Commons. (Annex 4). (Book of the Maps 6. III) (5).

III. CONCLUSION

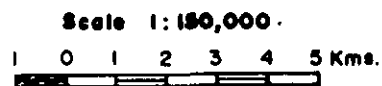
6.29 El Salvador exercises full jurisdiction over this sector and has its documentary proof thereof in the formal Title Deed to the Commons of Arcatao. The jurisdiction of El Salvador in this sector is confirmed by the exercise therein of civil jurisdiction, such as the registration of titles to land in the Property Registry, the grant of Municipal Titles to persons in possession, and the registration of the Births, Deaths and Marriages of the inhabitants, as well as by the records of the Municipal and Presidential Elections carried out in this area. All this documentation is included among the documents appended to this Memorial.

(5) Map 6.3 included in the text.

INTERPRETATION OF THE COMMON LANDS TITLE OF ARCATAO, WHICH PROTECTS THE ZONE OF ZAZALAPA



DIRECCIÓN GENERAL DE LÍMITES
MINISTERIO DE RELACIONES EXTERIORES
REPÚBLICA DE EL SALVADOR



MAP 6.3

D. PERQUIN, SABANETAS OR NAHUATERIQUE.

6.30 This sector is situated at the North of the Salvadoreñan Departament of Morazan which has a common boundary with the Republic of Honduras. Prior to the arrival of the Spanish in Central America, this area was inhabited by the Lenca Tribe of the Taulepas or Caiz Indians. This tribe inhabited in this sector four indigenous communities of great antiquity, those of Arambala, Perquín, Torola and Jocoatique. At Present the area forms a jurisdictional and geographical part of the territory of El Salvador. This area not delimited by the Tratado General de Paz of 1980 is the largest of the sectors in dispute between El Salvador and Honduras with an area of 161.5 Square Kilometres not including the Crown Lands (Tierras realengas). During the colonial period, this sector was within the jurisdiction of the Province of San Miguel and formed part of the Commons principally of Arambala and Perquín and also of Torola.

THE TITLE DEED TO THE COMMONS OF ARAMBALA AND PERQUIN.

6.31 The original Royal Title Deed to the Commons of Arambala and Perquín was issued by the King of Spain in the year 1745 but this was destroyed in 1760 on the occasion of the fire which destroyed the

townships of Arambala and Perquín, the formal Title Deed to their Commons being lost in this fire. Because of this occurrence, in May 1769 the Mayor and the Councillors of the township of Arambala, which was within the jurisdiction of the city of San Miguel, presented themselves before Don Domingo López Urruelo y Arrocha, "Alcalde de Corte de la Real Audiencia de Guatemala y Juez Privativo del Real Juzgado de Tierras de este Reino" (Principal Officer of the Supreme Court of the Kingdom of Guatemala and Private Judge of the Royal Land Court of this Kingdom). In their petition, they declared that the Title Deed to the Commons of Arambala and Perquín had been destroyed in a fire which had also destroyed the entire township and consequently requested the immediate remeasurement and grant of a formal Title Deed to their lands, in other words that a new Title Deed to their Commons should be issued once all the appropriate information had been obtained.

- 6.32 The appropriate instructions were given to Don Antonio de Guzmán, subordinate Judge for land measurement of the city of San Miguel Alcaldía Mayor de San Salvador, and on 26th May 1769 it was ordered that, once he had received the necessary information, he should proceed to summon the inhabitants of the land bordering on these Commons to obtain their recognition of the exact boundaries, reerect the boundary stones and carry out the measurement of these Commons, a task which he in fact delegated to Don Antonio Ignacio de Castro because he was in bad health.

6.33 In order to comply with the instructions which had been given to him, Don Antonio Ignacio de Castro on 28th May 1769 set out from the city of San Miguel to the township of Arambala with the witnesses whose presence was necessary, who were Agustín de la Torre and Sebastián de Pereda, and the other necessary persons, arriving on 30th May and beginning at 11 a.m. on that day to carry out his instructions. He immediately proceeded to nominate Don Antonio Lazo de la Vega as defender of the interests of the inhabitants of Arambala and Perquín and he was duly sworn as such and also to summon the inhabitants of the townships and the owners of the lands which adjoined the old Commons of Arambala and Perquín.

6.34 On 6th June 1769, Don Antonio Ignacio de Castro, the Judge Commissioner, carried out the necessary "visual inspection" in the company of the persons whom he had summoned and nominated with the object of recording the boundaries of the Commons of Arambala. This inspection proved that the Commons:

".... in the part to the North have a common boundary with the jurisdiction of Comayagua; in the part to the South border on the township of Torola of this jurisdiction (of San Miguel) and with a "Hacienda" (country estate) which the townships of Osicala have on lands of the township of Meanguera; in the part to the East border on the "Hacienda" of Joateca (or Juateca) which the Indians of San Juan Yarula have purchased in this jurisdiction (of San Miguel) and have a common boundary with the other jurisdiction; and in the part to the West have a common boundary with the jurisdiction of Gracias a Dios." (Annex 5 323 v. and 324 v.)

6.35 On the 12th June 1769 the Judge Commissioner Don Antonio Ignacio de Castro drew up the formal record of the remeasurement of the Commons of Arambala and Perquín, duly accompanied by the justices, the practitioners, the witnesses, and the nominated measurer. The said measurement describes the entire area of Nahuaterique, all the boundary stones still being able to be encountered on the land in its present state. In this formal Title Deed (which is transcribed at length among the documents which are appended to this Memorial) the "Juez de Tierras" declared that he "would point his compass in the direction of the Cerro de la Ardilla and the lands of Nahuaterique because it was in these lands where the inhabitants of Jocoara had entered". He then stated that "going towards the North East he went to the foot of the peak which is known as the Cerro de la Ardilla", established that "the boundary of the Commons of the township of Jocoara is a considerable distance from this land since between the boundaries of the two Commons there remain Royal landholdings", and consequently took as the first boundary of the Commons the Cerro de la Ardilla.

From this peak, he moved off towards the East "to a peak which is know as Salalamuya" and in the same direction reached the peak known as Napansapa, then the pass of Olocicala, "from there following the same direction to the peak of Chagualaca". The Deed then states that "changing to the direction North to South" he reached the "River Negro which is also known as Pachigual, which river divides this jurisdiction from the jurisdiction of Gracias

a Dios", and then to the Roble Negro (another peak some 940 metres above sea level). There the Indians of Colomoncagua of the jurisdiction of Gracias a Dios questioned his measurement "on the grounds that it entered well within their lands". Consequently the "juez de Tierras" requested their Title Deed, "to which they replied that they did not have it with them but would bring it within two days". Given that "they had not appeared with their Titles as they had offered to do", the "Juez de Tierras" "from the said Roble Negro" continued with his measurement, climbing up and descending from "a high ridge" which bordered on Royal landholdings and afterwards with the land of Colomoncagua. He then continued his measurement taking heights as his points of reference: "the ridge known as Monguetas", "the line of low hills known as Esquingala", "the peak known as La Limpe", "the peak of Sefoal", "the peak Guayampal", "a rocky peak", "the ridge Morata", "the pass known as Equilatina" "where the lands of San Juan Joateca of the said Indians of San Juan Yarula of the jurisdiction of Comayagua end and where the Royal landholdings of the mountain begin", "the peak Zapamani", returning finally "to the Cerro de la Ardilla". The "juez de Tierras" concluded his formal record by referring to the "views expressed in contradiction of this measurement by the inhabitants of the townships of Jucuara and Colomoncagua of the jurisdiction of Gracias a Dios" and decided that "these statements ought to be repudiated since they had no legal foundation".(Annex 5 pages 324 v -- 331 v.) (6) (Book of Maps 6.IV)
(6) Map 6.4 included in the Text.

6.36 Having concluded the proceedings, Don Antonio Ignacio de Castro remitted the documents for the information of the subdelegate judge of the Province of San Miguel, Alcaldía Mayor of San Salvador, who on 16th June of that year ordered that a map of the land remeasured should be drawn up and that the number of "Caballerías" of land within the measurement should be established, it resulting that the area was 60 (Caballerías) and 58 square "Cuerdas". On the 17th June 1769 the subdelegate Judge responsible for Royal Land Measurements approved the measurement made and remitted the documents to the Principal Judge Don Domingo López de Urruelo.

THE INCIDENTS WITH THE INHABITANTS OF JOCOARA OR JUCUARA.

6.37 In spite of the above mentioned measurements and decisions, the Indians of Jocoara (today Santa Elena in the Republic of Honduras) continued entering into the lands of Nahuaterique. In 1763, the corporation of Arambala, in order to treat well and grant a favour to the Indians of the township of Jocoara or Jucuara, granted them a licence to put their communal maize fields, pasture their cattle, provide themselves with firewood, and even carry out their sowing on almost two and a half "Caballerías" of land in the mountains of Nahuaterique (within the jurisdiction of the Province of San Miguel). The inhabitants of Jocoara brought

proceedings before the Private Judge of the Royal Land Court for the grant to them of a Title Deed to the Commons of these almost two a half "Caballerías" located in the section situated in Crown Lands (Tierras Realengas) of the jurisdiction of Arambala - Perquín.

6.38 On 11th November 1815 the inhabitants of Arambala and Perquín presented a document to the Judge Prosecutor declaring that, for many years they had lacked formal Title Deeds to their Commons because these had been burnt in a fire which their townships had suffered; that

"because proceedings had been brought by the inhabitants of Jocoara of the Province of Comayagua in respect of two and half "Caballerías" they had not brought to a conclusion the proceedings relating to their Title Deeds and consequently they today appeared before Your Excellency to ask that these Title Deeds be granted with the sole reduction of the two and a half caballerías which had been taken away from them and measured out to the inhabitants of Santiago de Jocoara and that they did not wish that the latter should usurp these lands any more".

On 13th November 1815 the Judge Prosecutor expressed the view that the request of the inhabitants of Arambala and Perquín was just and, consequently, he suggested that the proceedings relating to the measurement of their Commons should be approved and that the formal Title Deeds should be issued to them with the appropriate insertions.

6.39 On 16th November 1815, Don Jose de Bustamante Guerra de la Vega Pineda Covo Estrada y Zorlado, as President of the "Real Audiencia" of Guatemala, and in the name of his Majesty, and by virtue of the Royal "Cédula de Instrucción" (formal document conferring jurisdiction) granted in San Lorenzo El Real on 15th October 1754, issued a Judgment in the said matter in the following form:

"In the name of his Majesty (may God preserve him) and by virtue of the Royal "Cédula de Instrucción given in San Lorenzo El Real on 15th October in the past year 1754, by the power and the faculties which by that document are conferred upon me, I decree that the Indians of the townships of Arambala and Perquín should be protected in their age old possession of their Commons in order that they may on those lands carry out their sowing and their other communal labours which they may see fit and may utilise freely their lands, waters, pastures, and waterplaces as something which belongs to them by just and legitimate title".

CONCLUSION.

- 6.40 From the study of this Title Deed to the Commons of Arambala and Perquín, the following conclusions are able to be drawn:
- (i) That there is no other title, posterior to the Commons of Arambala and Perquín Title and its reposition of 1815 issued by the spanish authorities, that could be opposed to that either modifying or affecting it.

- (ii) Throughout the Title it is stated that the lands granted to Arambala and Perquín always formed part of the Province of San Miguel. Since independence these territories have continued up until the present day to form part of the territory of El Salvador.
- (iii) These lands border to the South, and within Salvadoreñan territory on the lands of the township of Torola and on a "Hacienda" (country estate) of the townships of Osicala, on lands of the township of Meanguera and to the East border on the "Hacienda" of Joateca (or Juateca).
- (iv) The key or established points of the boundaries of the lands of Arambala and Perquín to the East, North and West with the other jurisdictions of the Province of Honduras start from a rocky peak where there was a boundary marker of old stones (the Mal Paso of Similaton), as far as the Pass of Equilatina and the Royal landholdings of Nahuaterique bordering on the Cerro de Sapamani; from there to Sabanetas on the Montaña de la Isla and from there to the Cerro de la Ardilla where the Indians of Jocoara, in Comayagua, had entered, being at a considerable distance the Commons of Jocoara and the Royal landholdings; then Salalamuya, the ravine of Sojoara, then to the peak of Napansapa, to the Pass of Olosicala, the peak of Chagualaca; and afterwards towards the West to the ridge of Guiriiri bordering on Royal landholdings, then to the Roble Negro and then to the road which leaves Arambala for Colomancagua, where the boundary with the Province of Comayagua ends and the lands of the township of Torola begin.
- (v) This Title Deed to the Commons of Arambala and Perquín, executed in 1815, constitutes overwhelming proof of the rights of El Salvador over this area of Nahuaterique or Sabanetas.

THE TITLE DEED TO THE COMMONS OF TOROLA.

6.41 The Title Deed to the Commons of Torola is complementary to the Title Deed to the Commons of Arambala and Perquín. It is of great antiquity and was preserved in the Municipal Archive of the said township until 1734 when it was destroyed in a ferocious fire which devastated the entire township. As a result of this event the Town Council at the end of 1742 requested that witnesses be examined so as to provide proof of what had happened. The witnesses summoned in evidence given on 5th May 1743 were unanimous in stating that a fire destroyed the township of Torola in the year 1734. The first of the witnesses José Díaz Recinos declared "that the Royal Title Deed to the said indigenous community (Torola) was an extremely old Title and that he knows that the town of Torola had a Royal Title Deed of its commons and when the aforesaid town was destroyed by a fire, the said title was also destroyed, and that he is well acquainted with the borders and landmarks of his property which are public and well known." (Annex 6 pag.3.)

6.42 Captain Juan José de Cañas commenced the remeasurement of these Commons on 7th May 1743, accompanied by the necessary witnesses Pablo de Urbina and Lucas Roque, the first of whom he nominated defender of the interests of the Indians of Torola and the second of whom he nominated defender of the interests of the Indians of Colomocagua, Arambala, Perquín and Jocoaitique. They were also accompanied by the nominated measurer Juan Crisóstomo León, the people of Torola and many persons from neighbouring townships. The remeasurement commenced on the northern boundary on the right hand bank of the River Torola at the point where the stream Güespique or Mal Paso (today known as Paso de Guacuco) flows into the river.

At this point there is a round mound in the middle of the stream, a boundary marker which is also mentioned in the Title Deed of the Hacienda of San José. Measuring in the direction South North the boundary passed by way of some peaks with rugged summits, by way of the Portezuelo de San Diego where there is a large stone of "Talpetate", by way of the stream of Las Anonas and by way of the Pass of San Diego. The Title Deed adds that the measurement "reached a spot which is known as Las Tijeretas and in the same direction reached the shores of a river in a ravine known as the River de las Cañas". (Annex 6) (7) (Book of Maps, 6.IV).

- 6.43 The Title Deed so issued in 1743 was still preserved in 1844 but in a much deteriorated state and so the Mayor and his Secretary, in the name and representation of the Corporation and People of Torola, requested the Political and Military Governor of the Province of San Miguel, General Joaquín Eufrasio Guzmán to carry out once again a remeasurement of these Commons so as to avoid the continuous disputes that were arising over land boundaries. On 29th February 1844, the said Political and Military Governor nominated Cecilio Espinoza as Special Judge for Land Measurements in respect of these proceedings so that he, with the assistance of the surveyor Fernando Bustamante and the witnesses José Pío Argueta and Esteban Echeverría, should proceed to remeasure the said Commons in accordance with the established laws and procedures, and should localise and renew the old boundary markers.
(7) Map 6.4 included in the text.

Consequently on 5th March 1844, the Mayor and Secretary of Torola handed over to the nominated Special Judge for Land Measurements the formal Title Deed to the Commons of Torola of 1743 which consisted of twenty two written pages. The remeasurement began on 6th March 1844, the appropriate formal record being issued by the Special Judge for Land Measurements in which is stated that: "According to the Title Deed of the lands of the township of Torola... its boundaries commence at the point known as the stream Güespique on the north bank or right hand side of the River Torola". From this geographical feature, which was taken as the starting point, the measurement was taken, using a cord of 50 "Varas castellanas" in length, in the direction South North and the boundary of the Commons of Torola to the West was determined in accordance with the following boundary markers: from the gorge of Güespique to the Cerro (peak) Chiriquí, 15 cords; from the Cerro Chiriquí to the Cerro El Portezuelo, 17 cords; from the Cerro El Portezuelo to the Pass of San Diego, 31 cords; and from the Pass of San Diego to the point known as Las Tijeretas, 41 cords.

6.44 The Mayor of Colomoncagua, Don J. Inés Díaz, was summoned to attend for the fixing of these measurements and replied that:

"he would attend at the point known as Las Tijeretas with the Title Deed to the Commons of his township so that in the light of both documents (that is to say the Title Deeds to the Commons of Torola and of Colomoncagua) we may be assured of our property".

6.45 By formal process on 11th March 1844 the Special Judge for Land Measurements proceeded to compare both Title Deeds with the following results:

"he indicated, citing folio 13 of the Title Deed to the Commons of Torola of 1743, that as from the point known as Las Tijeretas this document indicates that the boundary proceeds by way of the boundary marker of the River de Cañas, which line is the dividing line between the jurisdictions of San Miguel and of Gracias a Dios."

The people of Colomoncagua declared that in their Title Deed to the Commons of San Pedro Colomoncagua their boundary markers were from Las Tijeretas to Los Picachos. The Judge, having asked them for their Title Deed, found the appropriate part and read in a loud voice the following: "by way of boundary, the river de la Yuquina". He then asked the people of Colomoncagua which was this river. They replied that this was the same river as the River de Cañas. In other words, in the Title Deed to the Commons of San Pedro Colomoncagua it is stated that "... the said river Yuquina or de las Cañas is the boundary line" (emphasis added).

The people of Colomoncagua as presented before the Judge, asked him to point his compass in order to see what was the direction taken by the boundary line at Las Tijeretas from South to North (the direction stated in the Title Deeds both of Torola and of Colomoncagua) and it was seen that the line taken encountered a river in a ravine called Las Pilas and in the same direction (from South to North) at a short distance it encountered the River de las Cañas, known as Yuquina in the already mentioned Title Deed of Colomoncagua.

6.46 This same boundary, the River de las Cañas, has indeed been accepted as the boundary between El Salvador and Honduras in the various Joint Boundary Commissions that have taken place between the two States. Thus at the Fifth Meeting of the Cruz Letona Joint Boundary Commission in 1884 there were summoned the representatives of the frontier townships of Torola and Carolina of El Salvador and Colomoncagua of Honduras, as well as the owners of the Haciendas of San Diego and Candelaria which constitute the boundary of Salvadoreñan territory in this area under the jurisdiction of Carolina. When the respective Title Deeds had been examined, the Commissioners agreed to adopt the frontier line stated in the most authentic of these Title Deeds and consequently the state frontier line was agreed in the following form: From the peak "Alguacil Mayor", where the Rio de Cañas has its source, following the line of the said river as far as a

place called Cajón de Champate where the river passes between two peaks, the Southern peak being in the territory of El Salvador and the Northern peak in territory of Honduras. At that point the frontier line leaves the river, which enters Salvadoreñan territory, and in a direction approximately South 75° West runs in a straight line to the summit of the peak known as El Vallecillo or Redondo, where the stream known as La Orilla has its source. From there the frontier line follows the course of this stream until it flows into the River Torola at the foot of the Cerro Azacualpa, which belongs to Honduras, opposite the lands of the hacienda de Candelaria which belongs to El Salvador. From this confluence of the stream with the River Torola, the frontier line follows the course of the River Torola until its confluence with the River Lempa, the territory of El Salvador being on the left and the territory of Honduras being on the right. This recognition of the frontier line in 1884 confirms the rights of El Salvador in this sector.

JURISDICTION AND SOVEREIGNTY OF EL SALVADOR IN THIS SECTOR OF NAHUATERIQUE.

- 6.47 On the basis of the provisions of Article 26 of the Tratado General de Paz, signed in Lima, Perú, on -- 30th October 1980, by both States, the superiority of the Salvadoreñan Title to the lands comprised in this sector is indiscutible by virtue of the fact that its Title Deed, apart from the fact that it was issued by the Spanish authorities, clearly indicates which jurisdiction had control over the land in respect of which the measurements were carried out. The fundamental and essential aspect of the Title-

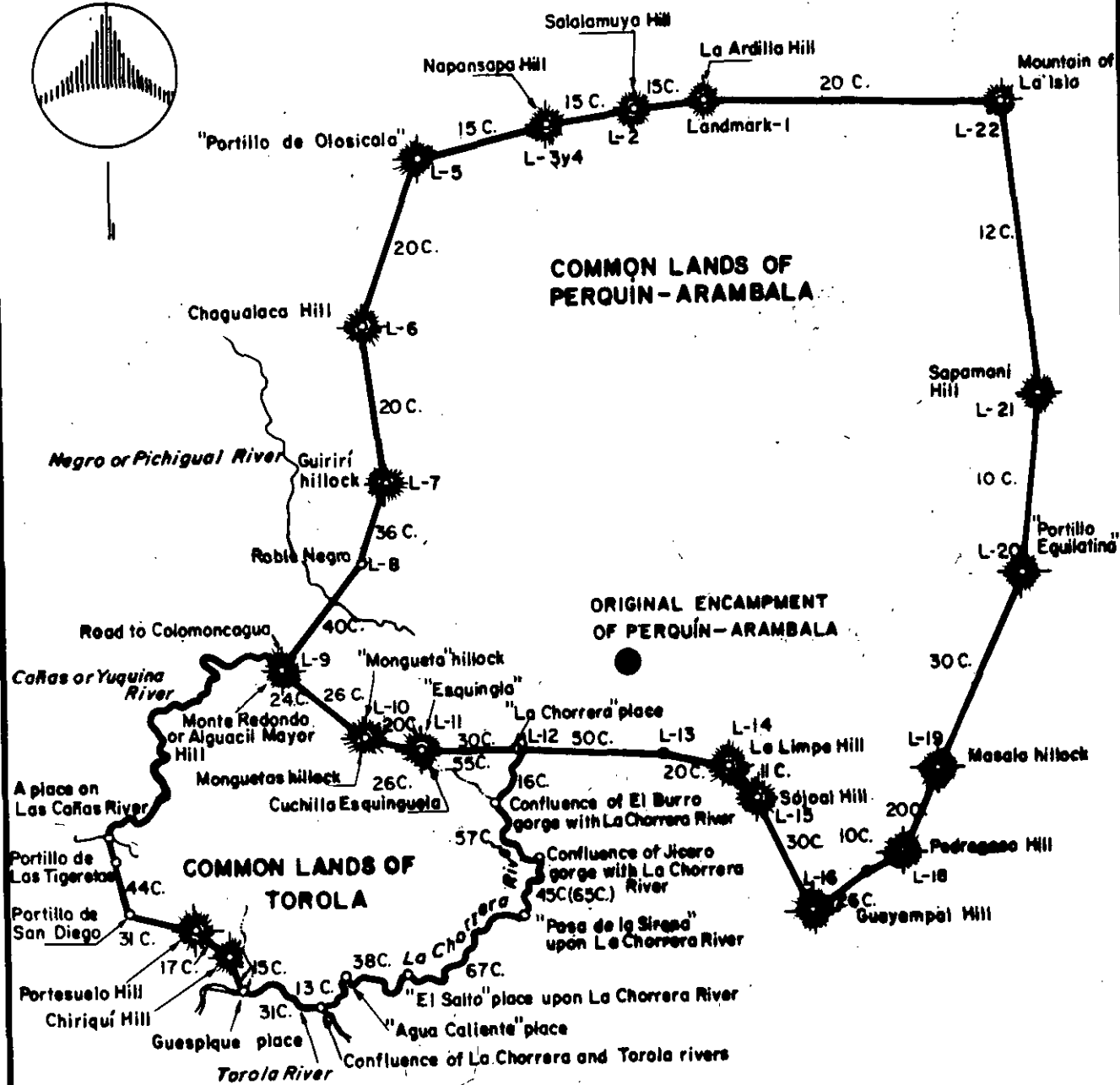
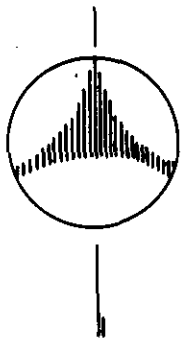
in in question arises out of the fact that the land measured therein was granted to the inhabitants of Arambala and Perquin as a long ago as 1774 so that El Salvador has been exercising jurisdiction and sovereignty over these lands since these in memorial time. Further the topography set out in this Title Deed coincides in every aspect with the actual state of the land.

6.6848 The legitimate rights of El Salvador in this sector of Nahuaténique are principally supported by the Title Deed to the Commons of Arambala and Perquin, executed by the Spanish authorities in a definitive manner in 1815. In the perimeter indicated by the formal Commons Title Deed and in the Realengo Lands mentioned in the document, from memorial times El Salvador exerts undisputed jurisdiction and sovereignty.

6.6849 Further Article 626 of the Tratado de General de Paz itself states that: "An account shall equally be taken of other means of proof and arguments and reasons of a juridical historical or human nature or of any other kind which may be adduced by the parties and which are admissible under international law". In this respect, El Salvador has documentation which clearly proves its effective possession of this sector. In the Census carried out by the National Geographical Institute of El Salvador in 1975 and 1979 it is clearly established that 90% to 95% of the persons who

live in this disputed sector are Salvadorian. Additionally there should be mentioned the Registrations of Births and Deaths, the grant National Identity Documents, the registration of Titles to land in the Salvadorian Property Registry, the grant of Municipal Titles to persons in possession, and the records of the Municipal, Parliamentary and Presidential Elections carried out in this sector. In addition there is a whole series of judicial, administrative and legal actions which have been carried out by Salvadorian authorities in the sector, such as judicial decisions emitted by Judges and Tribunals that have jurisdiction over the sector, the nomination of Directors of Institutes of Health and of Teachers, and Legislative Decrees for the refection of townships, towns and Municipalities in the sector. All this documentation to this Memorial clearly demonstrates that this sector is administratively apart from El Salvador.

INTERPRETATION OF THE COMMON LANDS TITLE OF PERQUIN-ARAMBALA AND TOROLA, WHICH PROTECTS THE ZONE OF NAHUATERIQUE OR SABANETAS



DIRECCIÓN GENERAL DE LÍMITES
MINISTERIO DE RELACIONES EXTERIORES
REPÚBLICA DE EL SALVADOR

Scale 1:150,000
0 1 2 3 4 KM.

MAP 6.4

E. MONTECA OR POLOROS

6.50 The area in dispute in this sector was in the colonial period within the jurisdiction of the Province of San Miguel, in the Alcaldía Mayor de San Salvador, as an integral part of the Commons of San Juan Polorós, in agreement with the Title Deed to these Commons which was granted to the inhabitants of Polorós in Guatemala in 1760 by Don Domingo López de Urrelo y Arrocha, "Alcalde de Corte de la Real Audiencia de Guatemala y Juez Privativo del Real Juzgado de Tierras de este Reino" (Principal Officer of the Supreme Court of the Kingdom of Guatemala and Private Judge of the Royal Land Court of that Kingdom), in accordance with the measurements made by Don Antonio Lazo de la Vega, duly commissioned to carry out this function.

6.51 At the present time this sector forms part of the Salvadoreñan Department of La Unión (created in 1865) and has an area of 56 Square Kilometres, not including the Crown Lands (Tierras Realengas).

6.52 In accordance with the formal Title Deed to the Commons of Polorós, the limits of the Commons are, from the East to the West as following:

"Upstream along the River Guajiniquil, which in this area takes the name Unire, as far as the source of the eastern most branch of this river, which goes towards the Cerro de Rivitá; from this source in a straight line to the summit of the said Cerro de Rivitá, which is the highest peak; from the summit of the Cerro Rivitá to the summit of the Cerro de López and from the summit of the Cerro de López to the confluence of the stream Mansupucagua with the River Torola."

6.53 Although there have been a number of Joint Boundary Commissions and Conventions between the two States in order to resolve the frontier problems between them and although serious disagreements have arisen between the Salvadoreñan township of Polorós and the Hondureñan township of Opatoro, it was only comparatively recently in 1880 that Honduras begin its claim in this sector.

6.54 In 1884 there commenced on 15th March in Concepción de Oriente (formerly known as Saco) a new round of Meetings of this Joint Boundary Commission to resolve the frontier problems between El Salvador and Honduras, the Salvadoreñan delegation comprising General Don Lisandro Letona, the surveyor Don Maximo Brizuela and (as Secretary) Don Salvador G. Hernández and the Hondureñan delegation comprising Doctor Don Francisco Cruz, the surveyor A.F. Byrne and (as Secretary) Don Tomás Membreño. The territory which was the subject of dispute in the sector of Monteca was considered at the Third Meeting of the Commission, which took place at Joateca, within the jurisdiction of Cacaopera on 24th March 1884. At this Meeting, in accordance with the examination carried out of the documentation presented by each side, agreement was reached to the effect should be determined in accordance with the Title Deed to the Commons of Polorós on the grounds that this Deed was the oldest document presented and that it referred to well known landmarks.

6.55 According this Conference, the borderline between both Republics was determined under to the Commons Title of Polorós, because of being this the older one and the Title that mentioned the best known places, beginning the description from the Paso Unire following the course of this river towards the north-northwest till the Rivitá, which is the highestiest peak of the four that constitute the sierra of Rivitá, which is made of four prominences, being the first the one they call El Guanacastillo, on the Planes de Monteca and the hightiest and northermost peak that of Rivitá, which is located near the landmark of the Commons of San Antonio del Norte in El Robledal; with a west path it is reached the Cerro de López; from this hill with a south to west route in a straight line till the junction of the Mansupucagua gorge with the Torola River and from here till the confluence with the San Antonio River. (Annex 7) (8) (Book of Maps 6.v)

6.56 One of the principal consequences of these Meetings was the signature by both delegations on 10th April 1884 in the city of San Miguel in the Republic of El Salvador of a Convention fixing the State boundaries with the object of delimiting the frontier line between, on the one hand, the townships of Opatoro, Santa Elena, Colomancagua, and Ocotepeque in Honduras and, on the other hand, the townships of Polorós, Arambala, Perquín, San Fernando, Carolina and Citalá in El Salvador. This Convention was signed after the Title Deeds to the Commons and of other communal property of the frontier townships of both Republics had been duly read, compared and examined and the frontier line of the sector at present being considered was fixed in

(8) Map 6.5 included in the text.

accordance with the Title Deed to the Commons of Polorós.

6.57 This Convention was not approved by the Congress of Honduras where its Commissioner, Dr. Francisco Cruz, was accused of being a traitor. As a consequence of this, Dr. Cruz appeared before the Congress of his country to make his defence. (His speech is included among the documents appended to this Memorial). In his speech he declared, inter alia that the Commissioners had "established the basis that, in the appraisal of the Titles and other proofs produced by one another, (they) would give preference to the oldest authentic evidence." He added "that it is not correct, as the Congress asserted, that the Salvadoreñan Title Deed to the Commons of Poloros is not authentic; it is in fact one of the very oldest, it refers to well known landmarks, and there were no documents whatever which contradicted its terms." His most important statement is the following passage:

"It is not true that the inhabitants of Opatoro have possessed the area of Dolores from time immemorial. What happened was that when the Commons of Polorós were measured at the time of the execution of the last mentioned Title Deed, express permission was given by the inhabitants of Polorós that the inhabitants of Opatoro could have a farm for the raising of cattle within the jurisdiction of the Commons of Polorós."

THE EXERCISE OF JURISDICTION AND SOVEREIGNTY BY EL SALVADOR IN THIS SECTOR.

6.58 The legitimate right of El Salvador in the Monteca

zone is mainly backed by the Common Title of San Juan Polorós of the year of 1760, exercising thence undisputed sovereignty and jurisdiction because this title is one of the oldest and because it mentions well known places.

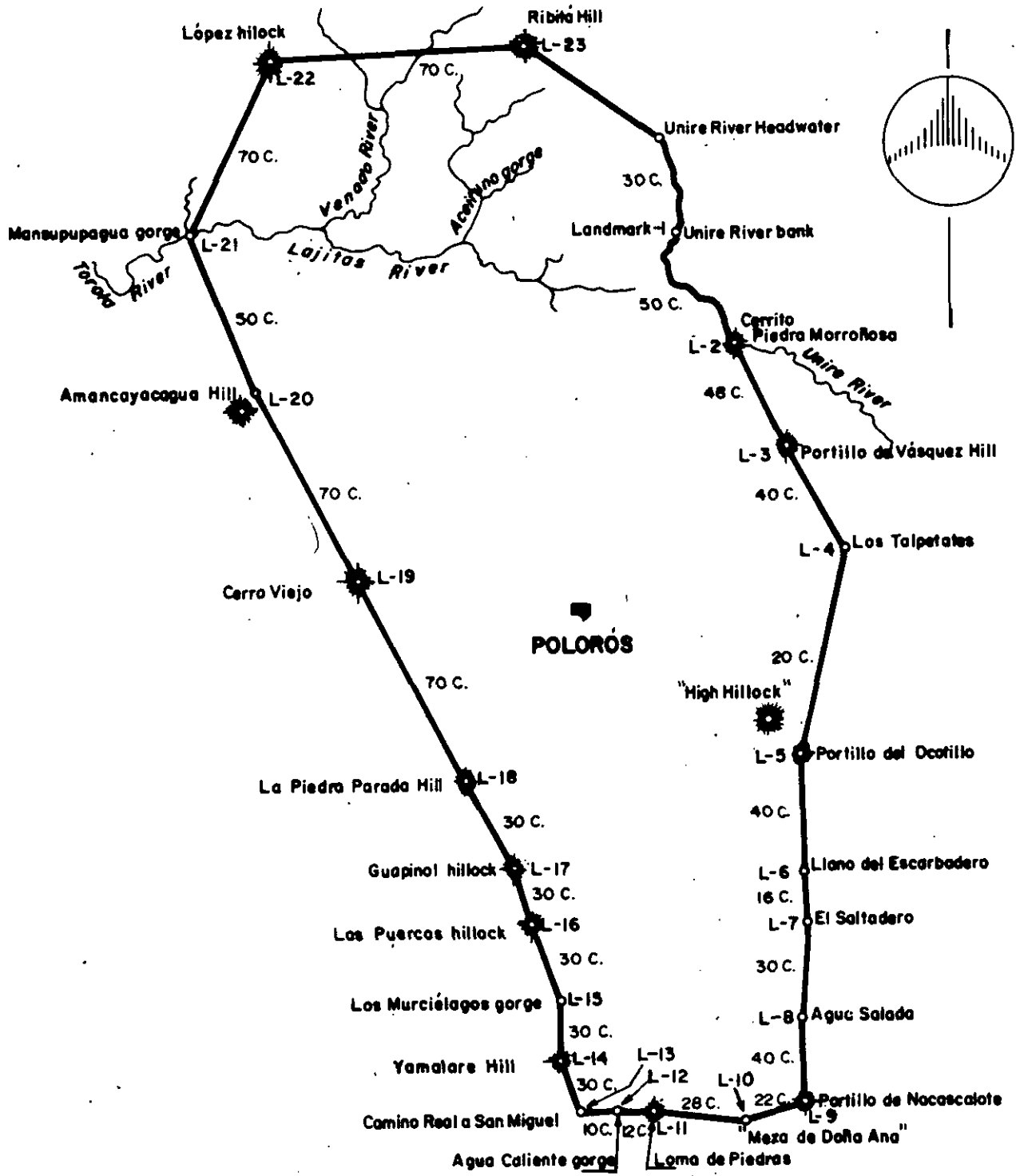
Based on the 26th Article of the General Peace Treaty suscribed in Lima, Perú, on October 30th 1980, by both States, the superiority of the salvadoreñan title does not admit discussion.

Besides the cited article establishes "It shall also take into account other evidence and arguments of a legal, historical, human or any other kind, brought before it by the Parties and admitted under international law.

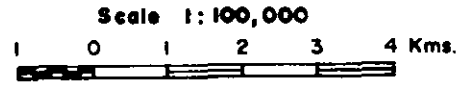
El Salvador has exercised effective possession over this sector as is illustrated by the Census carried out by the National Geographic Institute of El Salvador in 1975 and 1979 which prove that 90% to 95% of the persons who live in this disputed sector are Salvadoreñan. There also exists in the Property Registry the registration of the properties of Salvadoreñans; all that is lacking is that the appropriate maps of the sector are produced. The Ministry of the Interior has also been able to provide Certificates of Births and Deaths, the grant of National Identity Documents, and the nomination of Teachers for the inhabitants of this region who are

settled under Salvadoreñan jurisdiction. In the same way there exist Salvadoreñan Civil Municipal authorities, Cantonal and other Commissioners in this region, something which is even confirmed by some proceedings carried out in the Political Government of Honduras as a result of a request from the Municipality of Opatoro, in which Hondureñan subjects provide authority for the fact that the persons who live in the settlements of the farms and the plains and other geographical features in this disputed sector are Salvadoreñans.

INTERPRETATION OF THE COMMON LANDS TITLE OF POLORÓS, WHICH PROTECTS THE ZONE OF MONTECA



DIRECCIÓN GENERAL DE LÍMITES
MINISTERIO DE RELACIONES EXTERIORES
REPÚBLICA DE EL SALVADOR



MAP 6.5

F. THE ESTUARY OF THE RIVER GOASCORAN

o

- 6.59 El Salvador adduces, that the frontier line is the old and easternmost of the branches of the Goascoran River and that it flows into the same Gulf, in the La Cutú Estuary, jurisdiction of Pasaquina, Department of La Unión, Republic of El Salvador.
- 6.60 Accordingly to the beforesaid has been the criteria established by the honduran geographer Professor Bernardo Galindo y Galindo, who fixed the old mouth of Goascorán River in the Estuary of "La Cutú", facing the Zacate Grande Island, being this the primitive mouth of the Goascoran River.
- 6.61 To the West of the former course of the River Goascoran was the Hacienda Los Amates (9), within the jurisdiction of the Province of San Miguel in the "Alcaldía Mayor" of San Salvador. The first Royal measurement of these lands was carried out in the year 1695 at the request of San Juan Bautista de Fuentes, originary from the Province of San Miguel, which in the concerning part says:

"... a statement was made to the effect that in an area known as Los Amates, which is an estuary (the Estero El Capulín) in the vicinity of the sea, there were some unoccupied Royal Land holdings which he [Juan Bautista de Fuentes] sought to have measured and marked out." (Annex 8 Pag. 11).

- (9) A place name which still exists since this sector has recently been given this name in the dispute with Honduras.

6.62 The "Alcalde Mayor" of San Salvador, Principal Lieutenant José Calvo de Lara, delegated the carrying out of this measurement to Captain Francisco de Goicochea y Uriarte, who in the appropriate formal record in which the boundaries of Los Amates were described made the following statement:

"The measurement was commenced from a large ceiba (silk-cotton tree) where a cross was placed (the first boundary marker)... going in a North South direction an estuary was reached at a distance of three cords and, passing the estuary proceeding in the same direction through a plain known as Sabana Larga, the sea was reached at a distance of five cords (the second boundary marker)...walking from West to East along and over the actual beaches we reached the mountain which borders on the River Goascorán at its meeting with the sea at a distance of twelve cords (third boundary marker)...walking from South to North along the bank of the said River (Goascorán) the end point of the mountain was reached at a distance of eight cords where a cross was placed (the fourth boundary marker) and proceeding from East to West the ceiba where the measurement had been commenced was reached at a distance of twelve cords." (Annex 8 pag.13,14)
(10) (Book of the maps 6.VI).

6.63 It is obvious that this description in the year 1695 of the property known as Los Amates in the Estuary of the River Goascorán (at the eastern extremity of the Province of San Miguel in the "Alcaldía Mayor" of San Salvador) only has one possible explanation when considering the old bed as the dividing line of the Goascoran River that is, when it flowed into the "La Cutú" Estuary. Besides El Salvador has possessed the zone from immemorial days, where its dwellers have exploited and still exploit the extense mangrove forests, living in general from fishing.

(10) Map 6.6. included in the text)

6.64 The arguments maintained by El Salvador in order to demonstrate its legitimate title to this sector are based on the formal Title Deeds executed by the "Jueces de Tierras" (Land Judges) in the sector in compliance with the instruction of the "Real Audiencia" (Supreme Court) of Guatemala. One of these Title Deeds (the already mentioned Title Deed of Los Amates executed in favour of a Spaniard, Juan Bautista de Fuentes, who was resident in the Province of San Miguel in the "Alcaldía Mayor" of San Salvador) executed in 1695 contained an express declaration that "the land of Los Amates within the jurisdiction" of the Province of San Miguel. (Annex 8 pág.1a 22). The Title of the lands of Peje Espada issued by the respective Judge of Land Surveying with instructions of the Royal Audiencia of Guatemala, comprehended in the salvadoreñan Hacienda of San Juan Buenavista. (11).

6.65 Around the year of 1916 the Hondureñans constructed a reinforced dike on the left bank of the River Goascorán in Los Amates. This dike has been constructed where the former course of the river ran thus prevents or avoids the river running along its former course. At the present time and in the same place there is a stone wall made by Honduras.

6.66 In the Arbitration of El Chamizal in 1911, it was recognised that a total change in the course of a river does not bring about any change in the states ownership of the lands situated between

(11) Revista La Quincena año III, Tomo V, No.49, San Salvador, 1º of abril of 1905.

the old and the new courses of the river. It was accepted in these negotiations between Mexico and the United States of America that there is a rule of Public International Law to the effect that: "if a river abandons its former course, the international boundary remains the middle of the abandoned course of the river". Thus the former course of the river, now dry land because of the change in the water course, remains the international frontier. As Hackworth states in the Digest of International Law Vol. I p. 4:

"When sudden and violent changes in the channel of the stream occur, whether from natural or artificial causes, and the stream suddenly leaves its old bed and forms a new one, the process is known as a vulsion, and the resulting change in the channel does not bring about a change in the boundary. In the latter case, in the absence of an agreement to the contrary the middle of the old channel, it is previously marked the boundary, continues to do so even though the old bed may have been entirely abandoned by the stream."

6.67

The Hondureñan Geographers and Historians members of the "Sociedad Pedagógica del Departamento de Valle" (The Society of Teachers of the Department of Valle) who under the direction of Bernanrdo Galindo y Galindo carried out a very detailed study entitled "Monografía del Departamento de Valle", the relevant part of which states:

"On the left are found traces of its original riverbed...which had its mouth in the Estero La Cutú opposite the Isla Zacate Grande." (12).

(12) Monografía del Departamento de Valle, Bernardo Galindo y Galindo, año 1933.-

6.68 Among the Salvadoreñan reports referring to the change in the course of the River Goascorán is the study carried out by Doctor Santiago I. Barberena entitled "Los Ríos Lempa y Goascorán", y la Regla de Babinet o de Baer", the relevant parts of which state:

"....the flow of its waters (those of the River Lempa) tends to have preference for the right hand bank in which the effect of erosion is much more fierce and efficient than on the opposite bank".

"...in 1888 I made an analogous observation in relation to the Goascorán which, as is well known, also runs in a North South direction in the final part of its course from the point where it receives the waters of the Guajiniquil or Río del Pescado until its mouth in the Golfo de Fonseca. Some 7 kilometres upstream from this same latter point is the place where the Goascorán leaving its old course took a new course towards the right abandoning.... a piece of land of very high quality with an area of some 25 "caballerías" known as Peje Espada, which land is comprised within the Titles of the Salvadoreñan Hacienda of San Juan Buena Vista. (13).

(13) Ibid, cita Revista La Quincena.

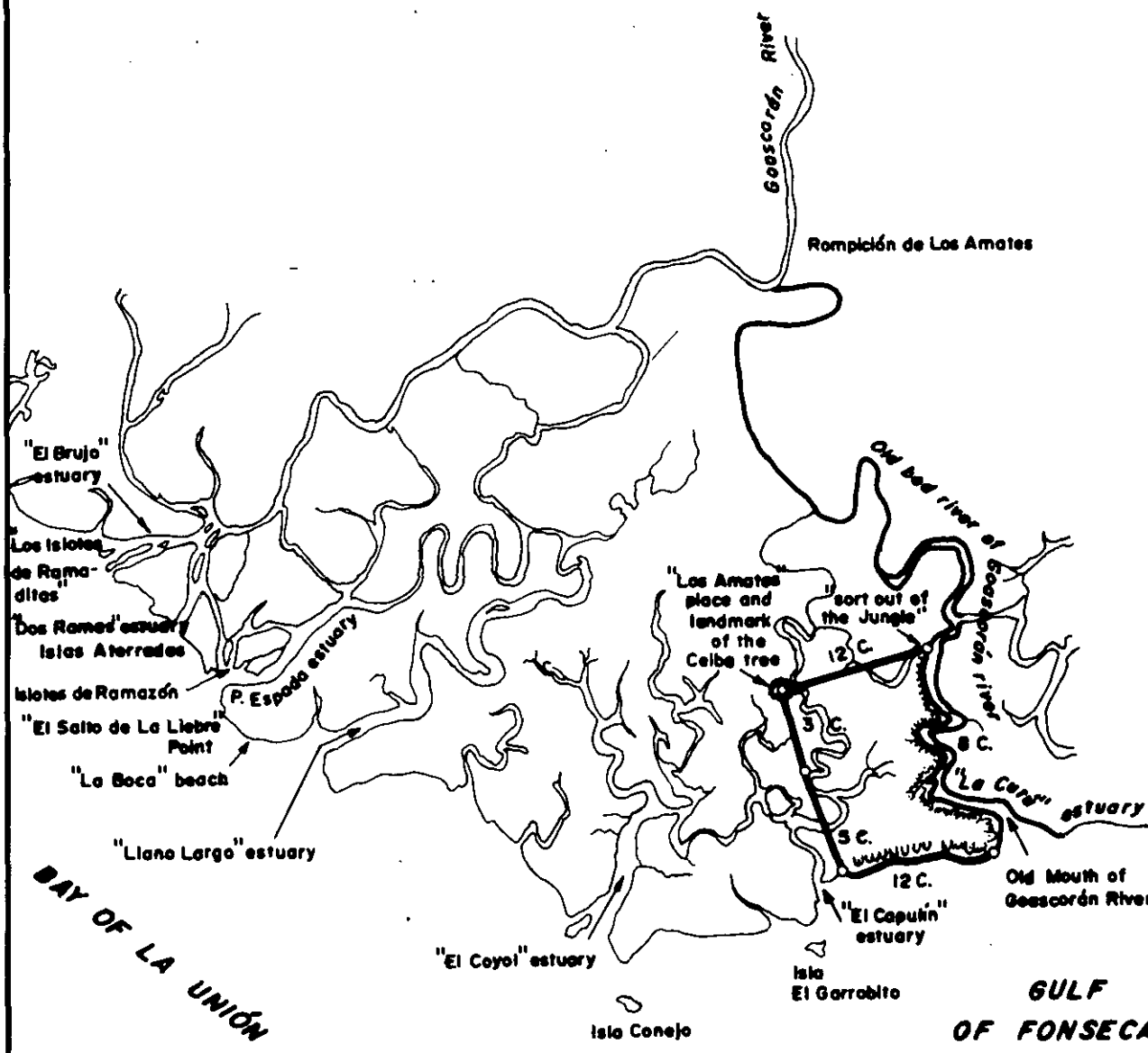
87°45'

87°40'

DELTA OF THE RIVER GOASCORÁN

13°30'

13°30'

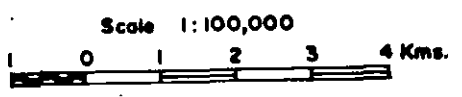


13°25'

13°20'

13°20'

DIRECCIÓN GENERAL DE LÍMITES
 MINISTERIO DE RELACIONES EXTERIORES
 REPÚBLICA DE EL SALVADOR



87°45'

87°40'

MAP 6.6

CONCLUSION

The Commons Title issued by the Crown and the Spanish authorities in behalf of the Province of San Salvador and which embrace the disputed zones let us determine with absolute evidence the boundaries of the commons perimeter belonging to El Salvador, same which, although demarcating with absolute precision the limits of salvadoreñan common lands are not restrictive of its jurisdiction because in the Colonial days, a province's jurisdiction always extended beyond the limit of its commons. The interpretation of these Common Titles has abled El Salvador to trace technically the line that determines the inclusion of the common lands comprehended in the disputed zones. A technical interpretation which preserving the salvadoreñan rights in the claimed crown Lands, goes as following:

6.69 I. TECPANGUISIR MOUNTAIN.

Starting from the summit of the peak known as Cerro Zapotal or Chiporro situated at Latitude 14°23'26" North and Longitude 89°14'43" West, the frontier continues in a straight line in the direction North

71°27'20" West for a distance of 3,530 metres as far as the peak known as Cerro Piedra Menuda situated at Latitude 14°24'02" North and Longitude 89°16'35" West. From this peak, it continues in the direction North 57°19'33" West for a distance of 2,951 metres as far as the boundary marker known as Mojón del Talquezalar on the river known as Pomola situated at Latitude 14°24'54" North and Longitude 89°17'58" West. From this boundary marker, it follows the course of the River Pomola upstream for a distance of 875 metres as far as the confluence of the streams known as Pomola and Cipresales situated at Latitude 14°24'45" North and Longitude 89°18'21" West. From this confluence, it follows the course of the Stream Pomola upstream for a distance of 4,625 metres as far as its source situated at Latitude 14°26'05" North and Longitude 89°20'12" West. From this source, it continues in a straight line in the direction South 51°35'00" West for a distance of 2,700 metres as far as the summit of the peak known as Cerro Montecristo situated at Latitude 14°25'10,784" North and Longitude 89°21'21,568" West. (14)

II. LAS PILAS OR CAYAGUANCA.

6.70 Starting from the confluence of the stream known as Oscura or Chiquita with the river known as Sumpul situated at Latitude 14°20'26" North and Longitude

(14) Map 6.7 included in the text.

89°04'58" West, the frontier follows the course of the River Sumpul upstream for a distance of 10,500 metres as far as its source situated at Latitude 14°24'17" North and Longitude 89°06'45" West. From this source, it continues in a straight line in the direction South 53°46'31" West for a distance of 7,404 metres as far as the peak known as Peña de Cayaguanca situated at Latitude 14°21'54" North and Longitude 89°10'04" West. (15)

III. ARCATAO OR ZAZALAPA.

6.71 Starting from the boundary marker known as Mojón Poza del Cajón on the river known as Guayquiquín, Gualcuquín or El Amatillo situated at Latitude 14°01'28" North and Longitude 88°41'09" West, the frontier follows the said river upstream for a distance of 5,000 metres as far as its source situated at Latitude 14°02'45" North and Longitude 88°42'33" West. From this source, it continues in a straight line in the direction North 18°21'16" West for a distance of 9,853 metres as far as the summit of the peak known as Cerro El Fraile situated at Latitude 14°07'49" North and Longitude 88°44'16" West. From this peak, it continues in the direction North 60°30' West for a distance of 7,550 metres as far as the summit of the peak known as Cerro La Pintal situated at Latitude 14°09'49" North and Longitude 88°47'55" West. From this peak, it continues in a straight line in the

(15) Map 6.8 included in the text.

direction South 21°30' West for a distance of 2,830 metres as far as the source of the stream or river known as Pacacio situated at Latitude 14°08'23" North and Longitude 88°48'30" West. From this source, it follows the course of the Stream or River Pacacio downstream for a distance of 5,125 metres as far as a point on the said Stream or River Pacacio situated at Latitude 14°06'27" North and Longitude 88°49'18" West. (16).

IV PERQUIN, SABANETAS OR NAHUATERIQUE.

6.72 Starting from the boundary marker known as Mojón Mal Paso de Similatón situated at Latitude 14°00'53" North and Longitude 88°03'54" West, the frontier continues in a straight line in the direction North 3° West for a distance of 3,000 metres as far as the boundary marker known as the Antiguo Mojón de la Loma situated at Latitude 14°02'32" North and Longitude 88°03'59" West. From this boundary marker, it continues in a straight line in the direction North 31°30 West for a distance of 2,780 metres as far as the mountain known as La Isla situated at Latitude 14°03'49" North and Longitude 88°04'47 West. From this mountain, it continues in a straight line in the direction North 89°40'02" West for a distance of 7,059

(16) Map 6.9 included in the text.

metres as far as the summit of the peak known as Cerro La Ardilla situated at Latitude $14^{\circ}03'51''$ North and Longitude $88^{\circ}08'43''$ West. From this peak, it continues in a straight line in the direction South $78^{\circ}35'13''$ West for a distance of 6,833 metres as far as the summit of the peak known as Cerro El Alumbrador situated at $14^{\circ}03'08''$ North and Longitude $88^{\circ}12'26''$ West. From this peak, it continues in a straight line in the direction South $18^{\circ}13'36''$ West for a distance of 4,222 metres as far as the summit of the peak known as Cerro Chagualaca or Marquezote situated at Latitude $14^{\circ}00'57''$ North and Longitude $88^{\circ}13'11''$ West. From this peak, it continues in a straight line in the direction South $66^{\circ}45'$ West for a distance of 2,650 metres as far as an elbow of the river known as Negro situated at Latitude $14^{\circ}00'22''$ North and Longitude $88^{\circ}14'31''$ West. From this elbow of this river, it follows the course of the River Negro upstream for a distance of 1,800 metres as far as the confluence with it of the river known as La Presa, Las Flores or Pichigual situated at Latitude $13^{\circ}59'38''$ North and Longitude $88^{\circ}14'16''$ West. From this confluence, it follows the course of the River la Presa, las Flores or Pichigual upstream for a distance of 4,300 metres as far as a boundary marker situated on its course at Latitude $13^{\circ}57'44''$ North and Longitude $88^{\circ}57'44''$ North and Longitude $88^{\circ}13'49''$ West. From this boundary marker, it continues in a straight line in the direction South $22^{\circ}40'$ West for a distance of

2,170 metres as far as the summit of the peak known as Cerro El Alguacil situated at Latitude $13^{\circ}56'21''$ North and Longitude $88^{\circ}14'16''$ West. From this peak, it continues in a straight line in the direction South $73^{\circ}14'11''$ West for a distance of 1,881 metres as far as an elbow of the river known as Cañas situated at Latitude $13^{\circ}56'21''$ North and Longitude $88^{\circ}15'16''$ West. From this elbow of this river, it follows the course of the River Cañas downstream for a distance of 12,000 metres as far as the place known as Cajón de Champate situated on its course at Latitude $13^{\circ}53'33''$ North and Longitude $88^{\circ}19'00''$ West. From this place, it continues in a straight line in the direction North $71^{\circ}02'22''$ West for a distance of 2,321 metres as far as the summit of the peak known as Cerro El Volcancillo situated at Latitude $13^{\circ}53'58''$ North and Longitude $88^{\circ}20'13''$ West. From this peak, it continues in a straight line in the direction South $60^{\circ}25'12''$ West for a distance of 930 metres as far as the source of the stream known as La Orilla situated at Latitude $13^{\circ}53'43''$ North and Longitude $88^{\circ}20'38''$ West. (17)

V. MONTECA OR POLOROS

6.73 Starting from the place known as Paso de Unire situated on the river known as Unire, Guajiniquil or Pescado at Latitude $13^{\circ}52'10''$ North and Longitude $87^{\circ}46'02''$ West, the frontier follows the course of the River Unire, Guajiniquil or Pescado upstream

(17) Map 6.10 included in the text.

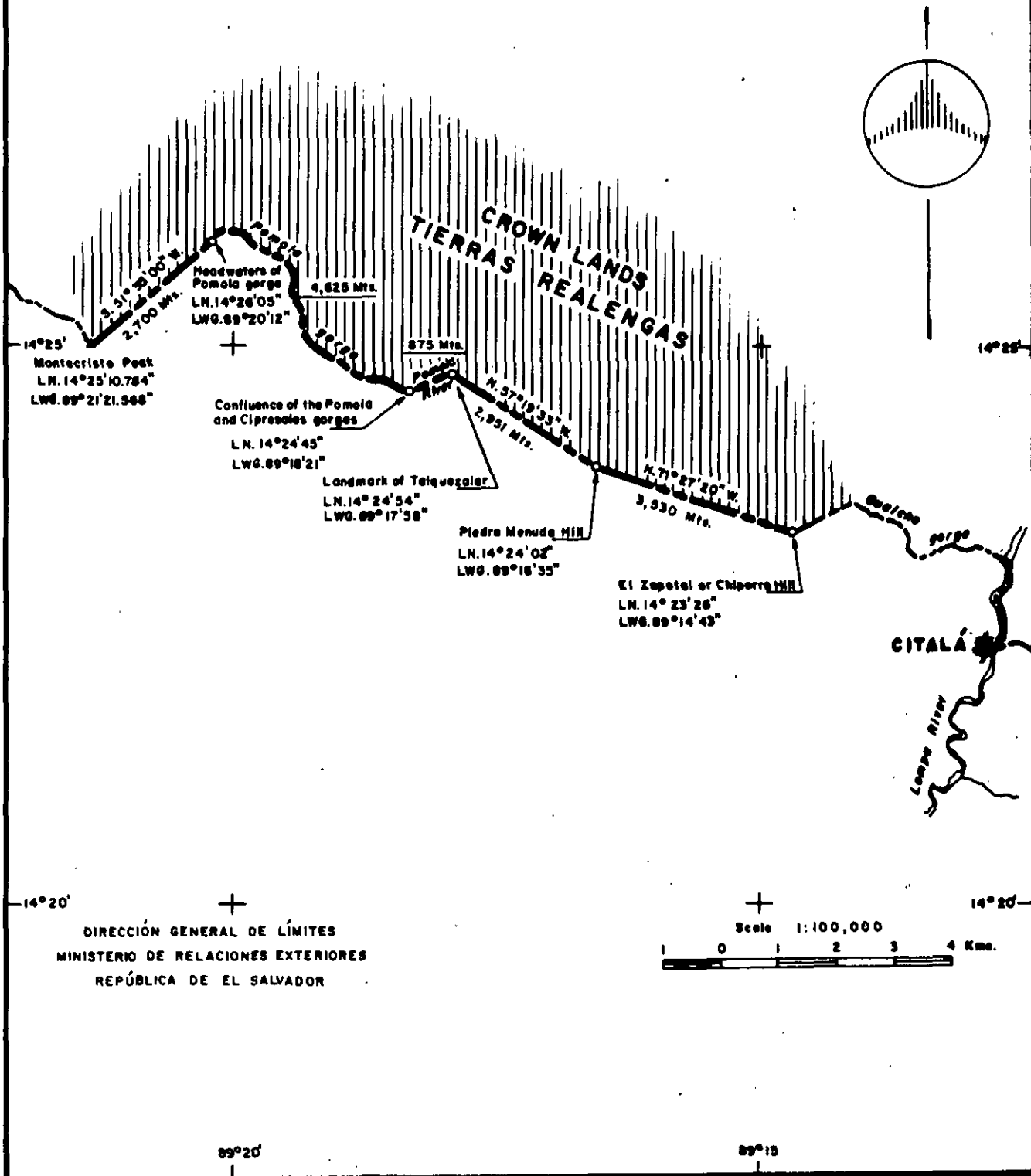
for a distance of 8,800 metres as far as its source situated at Latitude $13^{\circ}55'16''$ North and Longitude $87^{\circ}47'58''$ West. From this source, it continues in a straight line in the direction North $56^{\circ}23'13''$ West for a distance of 4,179 metres as far as the peak known as Cerro Ribitá situated at Latitude $13^{\circ}56'32''$ North and Longitude $87^{\circ}49'54''$ West. From this peak, it continues in a straight line in the direction South $87^{\circ}02'24''$ West for a distance of 6,241 metres as far as the peak known as Cerro López situated at Latitude $13^{\circ}56'23''$ North and Longitude $87^{\circ}53'21''$ West. From this peak, it continues in a straight line in the direction South $40^{\circ}30'$ West for a distance of 2,550 metres as far as the boundary marker known as Mojón Alto de la Loza situated at Latitude $13^{\circ}55'18''$ North and Longitude $87^{\circ}54'17''$ West. From this boundary marker, it continues in a straight line in the direction South 10° West for a distance of 500 metres as far as the source of the stream known as Manzucupagua or Manzupucagua situated at Latitude $13^{\circ}55'03''$ North and Longitude $87^{\circ}54'19''$ West. From this source, it follows the course of the Stream Manzucupagua or Manzupucagua downstream as far as its mouth in the river known as Torola situated at Latitude $13^{\circ}53'59''$ North and Longitude $87^{\circ}54'30''$ West. (18).

(18) Map 6.11 included in the text.

Departin from the old mounth of the Goascoran River, in the inlet of "La Cutú" (Latitude $13^{\circ}22'00''$ North; Longitude $87^{\circ}41'25''$) West the limit continues along the old course of the Goascoran during a distance of 17.3 Kilometers till reaching the place known as Rompicion de los Amates (Latitude $13^{\circ}26'29''$ North; Longitude $87^{\circ}43'25''$ West)*, point where in former days was deviated the course of the river. (19).

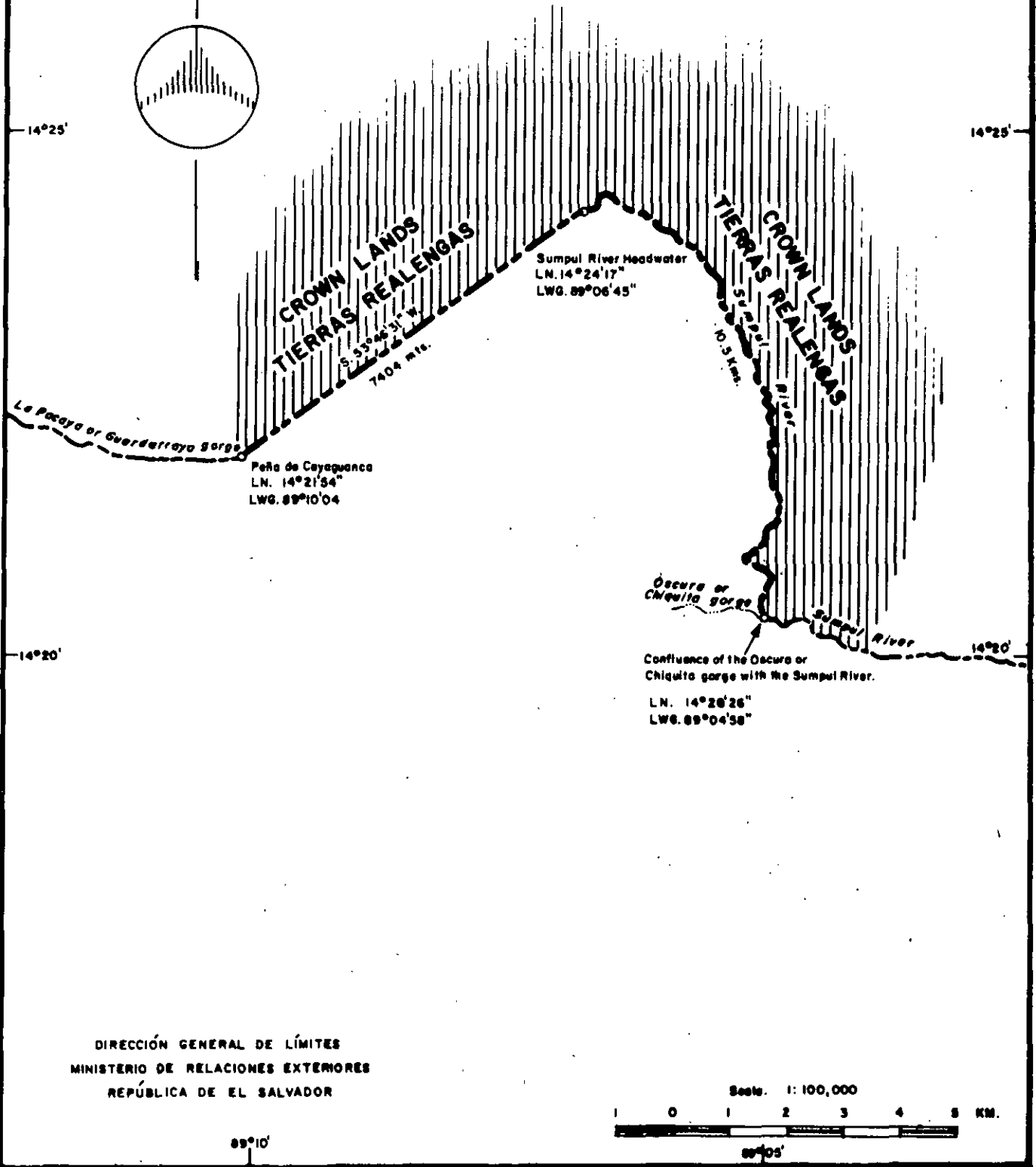
*Everithing according to the Greenwich Meridian.
(19) Map 6.12 included in the text.

**LOCALIZATION OF CROWN LAND (TIERRAS REALENGAS)
BEYOND THE COMMON LAND (TIERRAS EJIDALES)
DESCRIBED IN THE TITLE OF CITALÁ (TECPANGUISIR MOUNTAIN)**



MAP 6.7

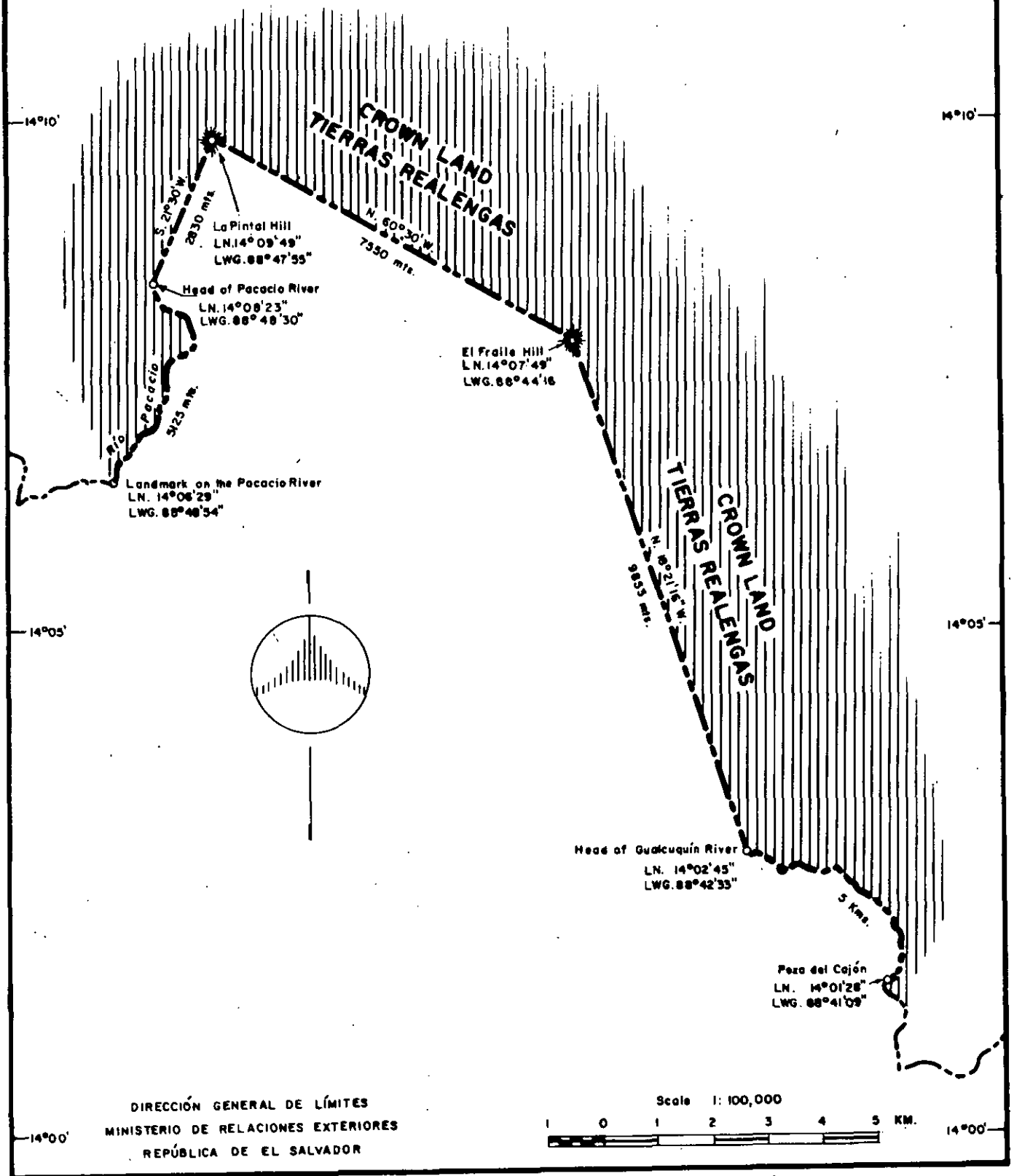
LOCALIZATION OF CROWN LAND (TIERRAS REALENGAS)
 BEYOND THE COMMON LAND (TIERRAS EJIDALES)
 DESCRIBED IN THE TITLE OF LA PALMA



MAP 6.8

88°45'

LOCALIZATION OF CROWN LAND (TIERRAS REALENGAS) BEYOND THE COMMON LAND (TIERRAS EJIDALES) DESCRIBED IN THE TITLE OF ARCATAO

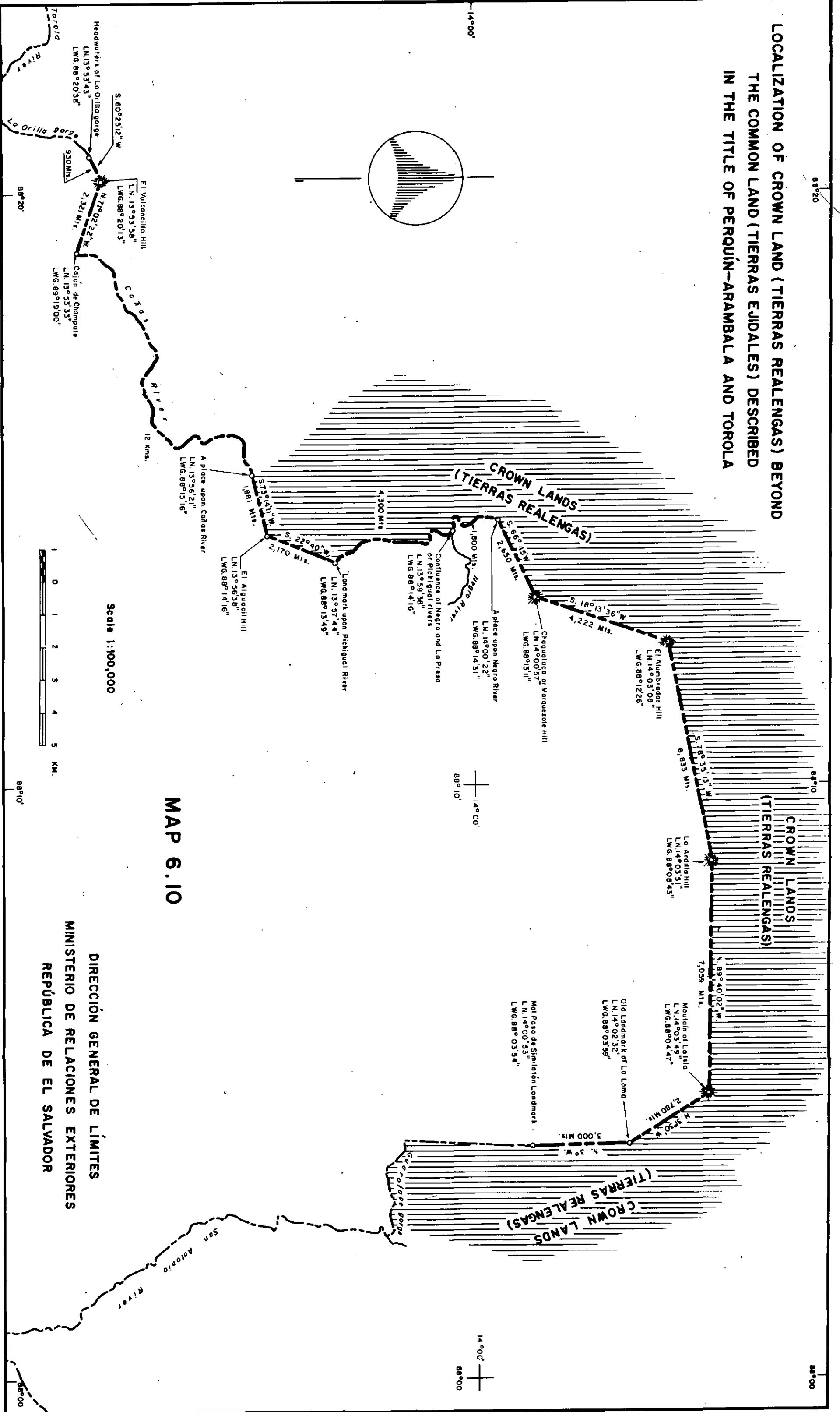


MAP 6.9

LOCALIZATION OF CROWN LAND (TIERRAS REALENGAS) BEYOND
THE COMMON LAND (TIERRAS EJIDALES) DESCRIBED
IN THE TITLE OF PERQUIN-ARAMBALA AND TOROLA

88°20'

88°00'



MAP 6.10

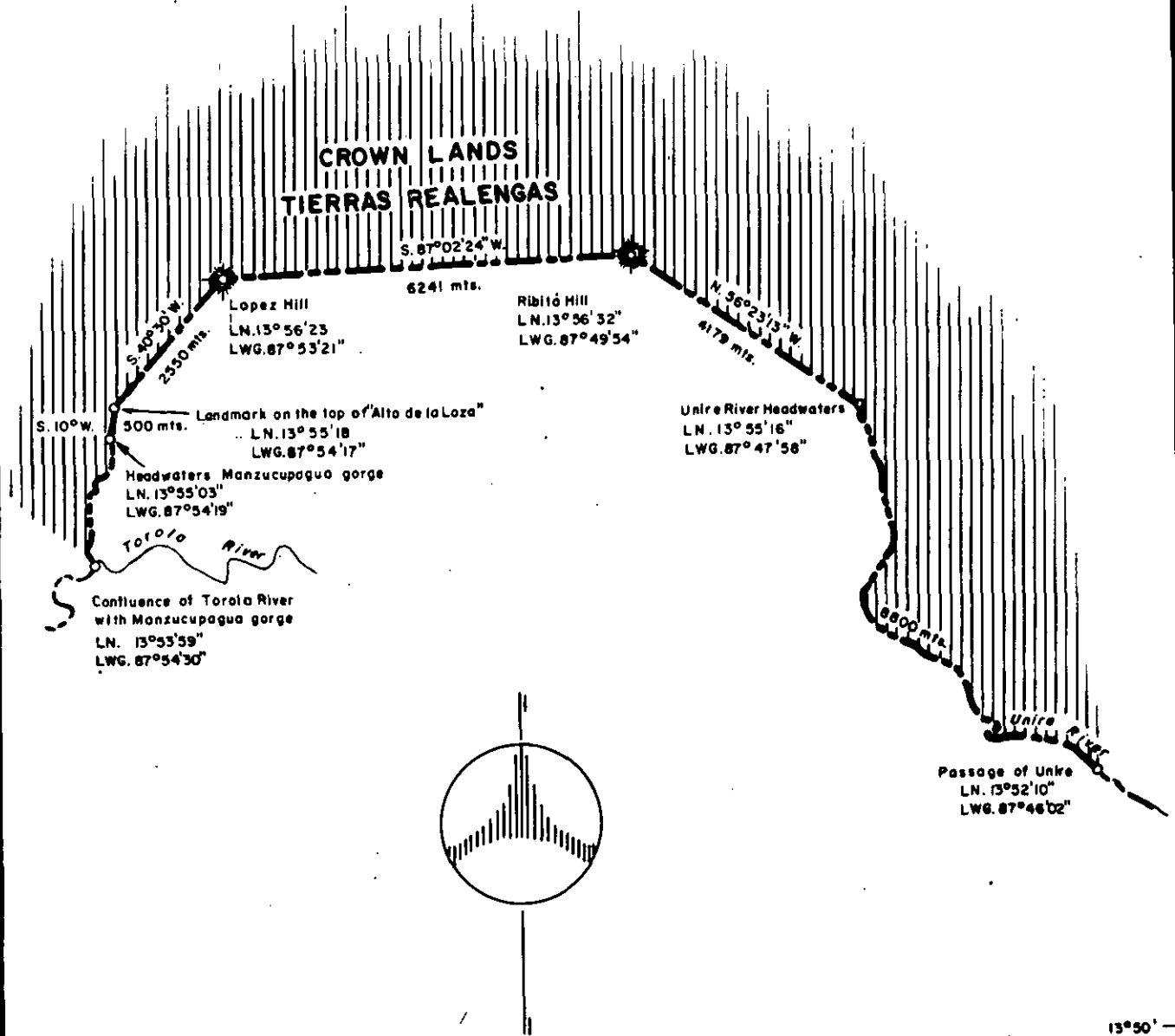
DIRECCIÓN GENERAL DE LÍMITES
MINISTERIO DE RELACIONES EXTERIORES
REPÚBLICA DE EL SALVADOR

14°00'

87°50'

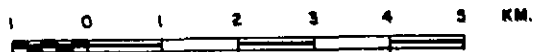
14°00'

**LOCALIZATION OF CROWN LAND (TIERRAS REALENGAS)
BEYOND THE COMMON LAND (TIERRAS EJIDALES)
DESCRIBED IN THE TITLE OF POLORÓS**

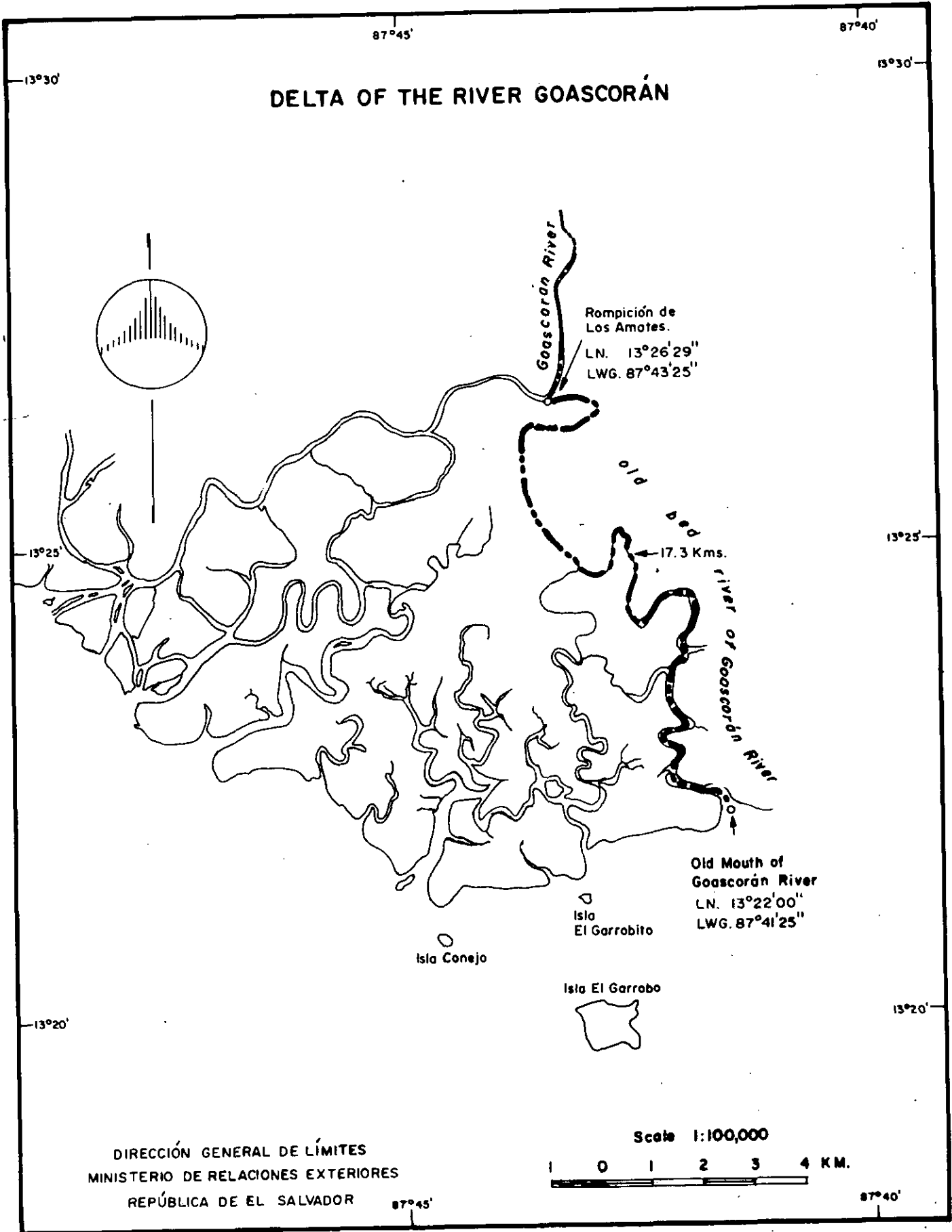


DIRECCIÓN GENERAL DE LÍMITES
MINISTERIO DE RELACIONES EXTERIORES
REPÚBLICA DE EL SALVADOR

Scale 1:100,000



MAP 6.11



MAP 6.12

CHAPTER 7

ARGUMENTS OF A HUMAN NATURE PRESENTED BY EL SALVADOR IN SUPPORT OF ITS FRONTIER RIGHTS (EFECTIVITTES)

I. THE LEGAL BASIS OF SUCH ARGUMENTS

7.1 The Tratado General de Paz signed between the Republic of El Salvador and the Republic of Honduras in Lima, Perú, on 30th October 1980, declares in its Preface that the respective Governments in signing the same are acting

"Under the inspiration of that high spirit of fraternity which for reasons of tradition and of their profound historical and cultural links constitutes the natural basis for their relations at every level".

This spirit of fraternity underlies all the principles, provisions and procedures contained in the Treaty which is much more than a Peace Treaty, being rather a Treaty of Fraternity and Co-operation, as it was indeed entitled in the first draft prepared by the Commission by which it was drafted.

7.2 In this context Article 26 of the Treaty, in laying down the methods of proof to be used in the resolution of the various disputes between the Parties, not only includes those of a purely juridical nature but also, as is both natural and indispensable, embraces others without consideration of which the settlement of a dispute between countries united by such unavoidable historical, geographical and human destiny would not

focus on the most profound aspects of the problem. Thus this Article of the Treaty states textually that:

"Account shall equally be taken of other methods of proof and arguments and reasons of a juridical, historical or human nature or of any other kind which may be adduced by the parties and which are admissible under International Law."

This provision, applicable at the appropriate time to the work of the Joint Boundary Commission created by the Treaty, was clearly contemplated in Article 5 of the "Special Agreement between El Salvador and Honduras to submit for the decision of the International Court of Justice the dispute existing between the two States as to the land frontier, the islands, and the maritime spaces" signed between the parties in Esquipulas, Guatemala, on 24th May 1986; this Special Agreement, when laying down the law applicable by the Chamber of the International Court of Justice, provides that

"....the Chamber, in delivering its judgment, shall take into account the norms of International Law applicable between the parties, including, in so far as they are pertinent, the provisions of the Tratado General de Paz." (emphasis added)

The arguments of a human and historical nature which were relevant for the work of the Joint Boundary Commission are undoubtedly also relevant for the Chamber of the International Court of Justice since the basis of the dispute is exactly the same and the complex characteristics of the problem have not changed in any way. Thus to take

into account arguments of a human nature is not merely convenient but in fact indispensable in the best interests of the requirements of authentic international justice.

II. THE HISTORICAL BACKGROUND

7.3 The actual political configuration of Central America has explanations that are not only geographical but also, perhaps principally, historical. The reduced size of El Salvador in relation to its four neighbours is a phenomenon which cannot fail to awaken the interest of any researcher. The geographical position, volcanic and coastal, of the country undoubtedly contributed right from the beginning in reducing its dimensions but equally undoubtedly the mobility of the groups of settlers who established themselves over the years in this narrow strip of land also had an influence.

7.4 Geographical destiny seems to have imprisoned El Salvador, since before the Spanish Conquest, within a very small and very well defined space between a line of mountains to the North and the Pacific Ocean to the South with a river, the Rio Lempa, dividing the country into two parts. Before the Spanish Conquest the River Lempa divided this land into two principal domains, Cuscatlán to the West and Chaparrastique to the East. The historian Rodolfo Barón Castro in his monumental work "La Población de El Salvador" states:

"It is barely necessary to say that the boundaries of these primitive organisations have not been established with any precision. Perhaps there were no other frontiers between them than, to utilise the expression of Tacitus, those established by their fear another. (1)

Throughout a period whose time limits are difficult to determine various peoples reached this territory and also emigrated from it in part of a series of population movements that have been one of the historical features of the country.

7.5 Towards the end of the prehispanic period, El Salvador seems to have been densely populated this at least can reasonably be presumed from the abundant resistance that was made by the indigenous population, principally that of Cuscatlán, to the Spanish Conquest. Making very accurate calculations based on the data provided by the Spanish conquering forces as to the number of the indigenous population that opposed the Spanish troops, Rodolfo Barón Castro affirms:

"Now if we consider that from the River Acelhuate, regarded as the eastern boundary of the "pipil" region which put up resistance to the Spaniards, to the River Lempa there extended a territory almost as large as that embraced by the first region and of whose abundant population there exist various pieces of evidence subsequent to the Conquest, there can be no obstacle whatever to estimating its population to have been at the very least equal to that of the first region, that is to say a further 38,640 Indians. And in so far as concerns the final region [that comprised between the River Lempa and the River Goascorán, that is to say the area of Chaparrastique], the reports from the middle of the Sixteenth Century present this region as having had population equivalent to half of that

1. (2nd Edition (1978) San Salvador) p.23.

established in the two regions already discussed, that is to say the same as each them. In this way, therefore, we would arrive at the conclusion that the sum total of the population of El Salvador at the moment of the Conquest would have been, at the very least, 115,920 persons. If, in order to give greater flexibility to the calculations, we introduce a variable factor somewhat in excess of 10%, we can say that the population of the Salvadoreñan territory at the moment of the arrival of the Spanish was in round figures somewhere between 116,000 and 130,000 Indians. This supposes a population density of from 5.1 to 6.1 inhabitants per square kilometre." (2)

7.6 One of the most relevant connotations of the Salvadoreñan population phenomenon is its balanced distribution both in the prehispanic period but above all in the colonial and republican periods. To a sustained and accelerated population growth is added its racial homogeneity, with a percentage of interbreeding superior to 80%, and the total utilization of its territory by its inhabitants even in its most precipitous and remote parts. In 1821 the estimated population was 250,000 inhabitants (3); in 1900 the population had grown to 783,433 (4); and in the 1971 Census, the population was 3,647,147 (5). According to the projections and estimates of the salvadoreñan statisticians, the population of El Salvador in the year 2000 is estimated as 11,000,000 inhabitants which supposes a population density of 523 inhabitants per square kilometre (6). The following diagrammatic synthesis

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2. Ibid. p.96
 3. Barón Castro: op.cit. pp.132-133
 4. Ibid. p.493
 5. Ibid. p.516
 6. Dirección General de Estadísticas y Censos, Ministerio de Economía de El Salvador.

makes it possible to appreciate the population grown both in total and in percentage terms, it being understood that the birth rate is 42.2 births per 1,000 population in the Republic of El Salvador.

CENSUS 1950	CENSUS 1961	POULATION GROWTH %	CENSUS 1971	POPULATION GROWTH %
1,855,917	2,310,984	135.3	3,647,147	42.2

The percentages of growth in accordance with the above figures were: (7)

In 1950 88 inhabitants per square kilometre.
 In 1961 119 inhabitants per square kilometre.
 In 1971 137 inhabitants per square kilometre.
 In 2000 523 inhabitants per square kilometre.

In the colonial period El Salvador was already a densely populated territory in marked contrast to the rest of Central America, something which gave it a certain organizational peculiarity in respect of its administrative and political order. The Salvadoreños were notable for the love of their work and for their dedication in exploiting their land. They were good businessmen and the Spanish concessionaries appreciated them because they were productive for the Crown in that they paid its taxes and increased its wealth. They carried out extensive cultivation of cocoa, dedicated themselves to the pasture of

7. Third and Fourth National Population Censi in 1961 and 1971; Dirección General de Estadísticas y Censos, Ministerio de Economía de El Salvador.

their floks, produced articles for commerce, and established themselves in towns which they subsequently caused to grow as a result of their unceasing efforts.

7.7 The scarce territorial extension of El Salvador is linked to its geographical configuration but is undoubtedly indicative of an historical injustice which has been becoming more visible with the passage of time, given the population growth and the enlargement of the means of communication; all this has meant that the average Salvadoreñan has had to respond with a series of titanic efforts merely in order to survive, something which has influenced the social and political organization of the country and the permanent and grievous phenomenon of emigration, which has always been a very significant part of the national destiny.

III. THE SOCIOLOGICAL DIMENSION

7.8 The Salvadoreñan population, which is territorially the most dense in America, has a scarce physical area which apart from being coastal and volcanic has been impoverished by the upheavals of nature such as earthquakes, droughts and floods. This reality is in stark contrast to the situation of the other Central American countries. Honduras, for example, is more than six times greater in area than El Salvador and possesses enormous fertile valleys,

mountains with rich resources of timber, an ample Atlantic coastline and extensive areas which are scarcely or not at all inhabited. Faced with this situation, the Salvadoreñan population has had to develop techniques whose laboriousness and efficiency are recognised both within Central America and outside that region. El Salvador is, basically a country of emigrants and the persons who do emigrate have to be psychologically prepared to face the vicissitudes that tend to occur to persons living in a foreign country. This philosophy of emigration, a product of necessity, is now incorporated into the Salvadoreñan national character but is balanced by a real sense of belonging to the land which produces a permanent desire to return. All this has ensured that El Salvador is grossly overpopulated but that at the same time its development is merely beginning.

"At the present time the Salvadoreñan population is spread out over the entire territory. The population density is already fierce and it can fairly be said that there are no empty spaces. The popular classes occupy the greater part of our population pyramid. The growth curve, which had remained for hundreds of years very even, began during this century a rise which has placed it close to the vertical. In the last forty-eight years of our life, the Salvadoreñan population has more than tripled; from the 1,493,000 persons whom we had in 1939, we have reached at the present time [1978] almost 5,000,000. This can be explained by the high birth rate and the reduction in the death rate, which was 21.9% in 1930 but which had reduced by 1960 to 9.9%, less than half." (8)

8. Escamilla, Manuel Luis and others: op.cit.
P.14

The drama of overpopulation has been compensated in El Salvador by the emergence of a human attitude which defies poverty and geographical difficulties with enormous amounts of effort, even sacrifice. Barón Castro has pointed out in this respect:

"and over and above everything written, the most efficient and self-evident demonstration is the living reality of the country. Look only at the numerous population, hardworking and daring, which develops and expands in a narrow territory, which cultivates its lands with skilful mastery, which raises towns where the forces of the earth destroy them; which fills its soil with industries great and small, with roads, with vehicles...." (9)

The Salvadoreños have dedicated themselves to the introduction of progress to their land: electric power, the telegraph, the railway; later the cultivation of indigo, of coffee and of sugar cane. They have intensified their commerce with European countries following the construction of two important ports which necessitated the construction of the most advanced network of roads and highways in the entire national territory.

7.9 In the areas of Tecpanguisir, Las Pilas, Arcatao, Nahuaterique, Polorós and Los Amates, the Salvadoreños have developed valleys, cantons and hamlets which they have dedicated for years to the cultivation of cereals, to the care of flocks, and to the development of handicrafts. Thousands of families have settled themselves

in these places in which they have consolidated their customs and deepened their convictions. They have obtained a social identity eminently Salvadoreñan, linked to El Salvador, their country. The Central Government of the Republic and the Municipal Corporations have assisted in the development of these areas by the provision of important services such as the creation of schools, the introduction of drinking water, the vigilance of the police and military authorities, the opening of highways and local roads, the attention to and preservation of public health, the concession of important financial credits and loans in order to increase the planting of fruits, cereals, fine timber, and vegetables, and the rearing of livestock of all types. The rewards of all this have been a greatly accelerated economic and social development which has produced, due to political deficiencies, an intense upheaval within the country to the point that it has descended into an armed conflict that has still not been resolved. This has tended to render still more acute ancestral problems to do with the land and with those who cultivate it or yearn for it.

7.10 The relationship between man and the land is more intense in El Salvador than in the remainder of the Central American countries. For the Salvadoreñan, the land is an element which is tremendously scarce, which it becomes

necessary to preserve, conserve and cultivate with great care because it represents a patrimony that is limited, and which the volcanic nature of the terrain renders still more unfavourable. The human factor thus acquires an inevitably important dimension because, despite its scarce geographical area and its population density, El Salvador continues to be an eminently agricultural country. The whole of its productive potential and the whole of its social development depend, to a greatly elevated extent, on its limited number of agricultural products, such as coffee, sugar cane, and cotton. All this ensures that the sense of belonging to the land, the possession thereof, and the affection therefor have for the Salvadoreño a much more emotive significance than for the inhabitants of countries whose extensive territories have not yet been fully developed and which have agricultural and mineral riches incomparably superior.

7.11 All this contrasts rather curiously with the fact that El Salvador has not been, historically speaking, a country with expansionistic aspirations. To the contrary, its attitude has been permanently in favour of union and integration with the remaining countries of Central America. The territorial dispute with Honduras has arisen due to the pretensions of the latter country, which has a long history of frontier disputes with all its neighbours, both in relation to land frontiers and in relation to islands and maritime

spaces. It is not known as a matter of historical record when Honduras first set out in search of access to the Pacific Ocean. What is known in relation to such territorial expansion is that in 1812, nine years before independence, two representatives of the Town Council of Comayagua presented to the King of Spain a declaration in which they sought vehemently:

"The addition of the Judicial District of San Miguel, subject today to the Intendency of San Salvador, forty leagues distant from Comayagua; extending the boundaries of the Province of Honduras, or its deputation, as far the banks of the River Lempa as from its source." (10)

This Hondureñan claim went so far as to fix this territorial expansion as:

"Following the normal course of this river and the emptying of its waters in the sea." (11)

With this claim Honduras was seeking from the Spanish Monarch the curtailment of what is at the present day all the territory of the Eastern part of El Salvador and, to the North, the Department of Chalatenango, an area of 9,711 Square Kilometres with a coastline on the Golfo de Fonseca, where El Salvador is the owner of all the islands.

10. Boundary Arbitration between Guatemala and Honduras: Plea of Guatemala: Vol.I, p.232.

11. Ibid.

7.12 Honduras has an area of 112,880 Square kilometres, that is to say an area 5.38 times greater than that of El Salvador. Its population is relatively small and is essentially concentrated in the northern part of the country, on its Atlantic coast, and in the area of Tegucigalpa; these are the places where, since the colonial area, the most important cities of the country have been developed and enlarged. The southern part of Honduras which has a common frontier with the northern part of El Salvador is virtually uninhabited. The Hondureñans that do live in this area sell their products in the salvadoreñan market rather than in their own country because the salvadoreñan network of communication grants them better and cheaper access and also better prices for their products. The Hondureñan Departments of La Paz, Intibuca, Lempira and Ocotepeque, which border on El Salvador, are inhabited by less than ten persons per square kilometre and only four towns, Ocotepeque, La Esperanza, Intibuca and Marcala, have populations of between 1,000 and 5,000 persons. In the Population Census taken in Honduras in 1887, the country proved to be inhabited by 331,917 persons. The results of subsequent Censi have been as follows:

1940: 1,107,859 persons.	1961: 1,884,765 persons.
1945: 1,200,542 persons.	1974: 2,656,948 persons.
1950: 1,368,605 persons.	1980: 3,500,000 persons.

It is calculated that by the year 2000 the population of Honduras will rise to some 7,000,000 persons. These figures show that in 1974 Honduras had 24 inhabitants per square kilometre, that in 1984 it had 31 inhabitants per square kilometre and that in the year 2,000 it will have 62 inhabitants per square kilometre.

7.13 While El Salvador has a reduced number of water basins because of the narrowness of its territory, Honduras has water basins with rivers such as the Chamelecón, the Aguán and the others which flow into the Caribbean amounting to 91,912 Square Kilometres which, with the addition of the Hondureñan rivers which flow into the Golfo de Fonseca, amount to a total of 112,088 Square Kilometres. These resources have permitted Honduras to develop large hydroelectric projects and thus increase its agricultural production and the numbers of its livestock which in turn has nourished an increasing industrial development of vast proportions. While El Salvador the longest river is the River Lempa which has a length of 260 Kilometres, in Honduras, the River Segovia has a length of 550 Kilometres, the River Patuca has a length of 550 Kilometres, and the Rivers Ulúa, Choluteca, Aguán, Tinto and Chamelecón all have lengths of between 250 and 125 Kilometres.

7.14 In the light of the data set out above, it can be appreciated that Honduras has considerable natural advantages which are perfectly capable of being utilised; that its population is primarily settled in the North

of the country and in the central Department where its capital, the city of Tegucigalpa, is located; that in the region of Honduras that borders on El Salvador there are no substantial communities with firm links with those lands; and that the Government of Honduras has made little effort to develop this frontier region to the extent that even at the present time the progress that can be observed is extremely limited.

7.15 On the other hand, Honduras has obtained notable territorial gains as a result of the Ruling of the King of Spain made in 1906 in its territorial dispute with Nicaragua and as a result of the Arbitration Award made in 1932 in its territorial dispute with Guatemala. Further on 2nd August 1986 Honduras signed with the Republic of Colombia a Treaty delimiting between the two States substantial maritime spaces in the Caribbean Sea or Sea of the Antilles. The signature of this Treaty achieved for Honduras maritime spaces "of an area of 27,000 Square Kilometres" according to the report of the Hondureñan Foreign Minister to the National Congress, as reported in the Hondureñan newspapers.

7.16 El Salvador has traditionally and unquestionably possessed the territories claimed by Honduras. This possession, based on historic titles, is also based on reasons of crucial human necessity. This has ensured that the areas

under dispute have always received such attention in all aspects as has been within the administrative and financial possibilities of the Salvadoreñan State and society. In these areas, as is proven statistically by the documents which are appended to this Memorial, El Salvador has provided normal and ever increasing services in matters of health, security, education; and juridical, administrative and political organization. Indeed these services are frequently utilised by the Hondureñans living on the other side of the frontier since by contrast, these Hondureñan territories are virtually isolated from the rest of that country and have hardly been developed at all in comparison with what has been achieved by El Salvador. If the descendants of the original settlers of the disputed areas, who are Salvadoreñans and have a strong sense of being permanently settled therein, were to be evicted from their lands, a further historical injustice would be added in these areas to all the injustices which the Salvadoreñan nation has suffered for a variety of reasons during its history and this would in turn produce a still greater economic, social and political chaos in El Salvador, a truly catastrophic prospect for this small nation. It is for this reason that in this case the supplementing of the doctrine of uti possidetis juris by arguments of a human nature is a reinforcement which is indispensable for the obtaining of justice in order to ensure that the duly considered judgment is appropriate for the destiny and necessities of the persons whose lives are bound up in the matter.

IV. DOCUMENTARY TITLES AND EFFECTIVE

7.17 The clear ethical basis of the Salvadoreñan position in defense of the scarce territories which it possesses has, of course, both juridical and human dimensions, a combination which is, as has already been indicated, envisaged in the Tratado General de Paz and in the Special Agreement which brought this matter before the Chamber of the International Court of Justice for its decision. Colonial Title Deeds are almost always vague and deficient simply because of their antiquity. Consideration of such Title Deeds, which is obviously indispensable, has to be aided by a consideration of the question of long term exercise of effective jurisdiction over the diverse aspects of the life of the communities affected. This concept of "effectivité" over a period of time is the only satisfactory way of dealing with the emotively real and ethically unavoidable question of the link between man and the land.

7.18 The precise application of the doctrine of uti possidetis iuris over the length of an entire frontier has on some cases in the past produced certain practical difficulties due to the insufficiencies of the Spanish documentation in relation to certain sectors of the frontier in dispute. Consequently, in order to be able to carry out a complete delimitation, it has been necessary in certain cases to give those responsible for making the

decision, powers to take into account in a subsidiary or complementary form other arguments or reasons. In this case, Article 26 of the Tratado General de Paz, after indicating in its opening phrase that the "basis" of the delimitation is to be the documents issued by the Spanish colonial authorities, adds in the following phrase that "account shall equally be taken of other means of proof and arguments and reasons of a juridical, historical or human nature". In this phrase the reference to arguments and reasons of a human nature is particularly significant since it involves the taking into account of what it is appropriate to call the political geography and the human geography of some of the disputed sectors. In particular, there should be taken into account the situation of townships and human settlements which have been since immemorial time located in some of the areas of the disputed sectors under the administration of the Salvadoreñan authorities, inhabited by Salvadoreñan citizens who are the proprietors of the lands comprised therein, with road communications with El Salvador and without any means of communication with Honduras so that any change of jurisdiction would have a grave effect on the lives, the properties and the economic activities of these human groupings dedicated above all to agriculture.

7.19 In the frontier dispute between Burkina Faso and Mali, the Chamber of the International

Court of Justice rightly chose to examine the relationship between documentary titles and what it described as "effectivité", that is to say the conduct of the administrative authorities as proof of the effective exercise of territorial jurisdiction. The Chamber considered that it was necessary to clarify:

"In general terms, what legal relationship exists between such acts and the titles on which the implementation of the principle of uti possidetis is grounded. For this purpose, a distinction must be drawn among several eventualities. Where the act corresponds exactly to law, where effective administration is additional to the uti possidetis iuris, the only role of effectivité is to confirm the exercise of the right derived from a legal title. Where the act does not correspond to the law, where the territory which is the subject of the dispute is effectively administered by a State other than the one possessing the legal title, preference should be given to the holder of the title. In the event that the effectivité does not co-exist with any legal title, it must invariably be taken into consideration. Finally, there are cases where the legal title is not capable of showing exactly the territorial expanse to which it relates. The effectivité can then play an assential role in showing how the title is interpreted in practice." (12)

V. OVERALL CONSIDERATIONS

7.20 The treatment of the case relating to the delimitation of the land frontier between El

12. I.C.J. Reports [1986] Par.63 pp.586-587.

El Salvador and Honduras and the determination of the juridical status of the islands and of the maritime spaces is indissolubly determined by historical reasons, geographical realities and sociological and human conditions. The law applicable to the case for this reason permits a range of proofs and arguments which take in these varied perspectives. Although the case is now in the course of being litigated, any global consideration of its complexities involves, inevitably, evidence of two national realities, those of El Salvador and of Honduras, which, despite their similarities, manifest many clear differences. Honduras has a geographical size greatly superior to that of El Salvador and a population which is comparatively very much smaller. Honduras has access to the two great oceans: to the Atlantic by means of its ample coastline thereon and to the Pacific by virtue of its rights of co-ownership in the Golfo de Fonseca. El Salvador is small in terms of territorial dimensions and is populated extremely densely. It has access only to the Pacific Ocean, something which constitutes a disadvantage for its commerce and its access to the major maritime routes of the world. The attempt to reduce still further these precarious geographical conditions of El Salvador is something which goes well beyond the simple consideration of historical documents; it constitutes a type of injustice which modern

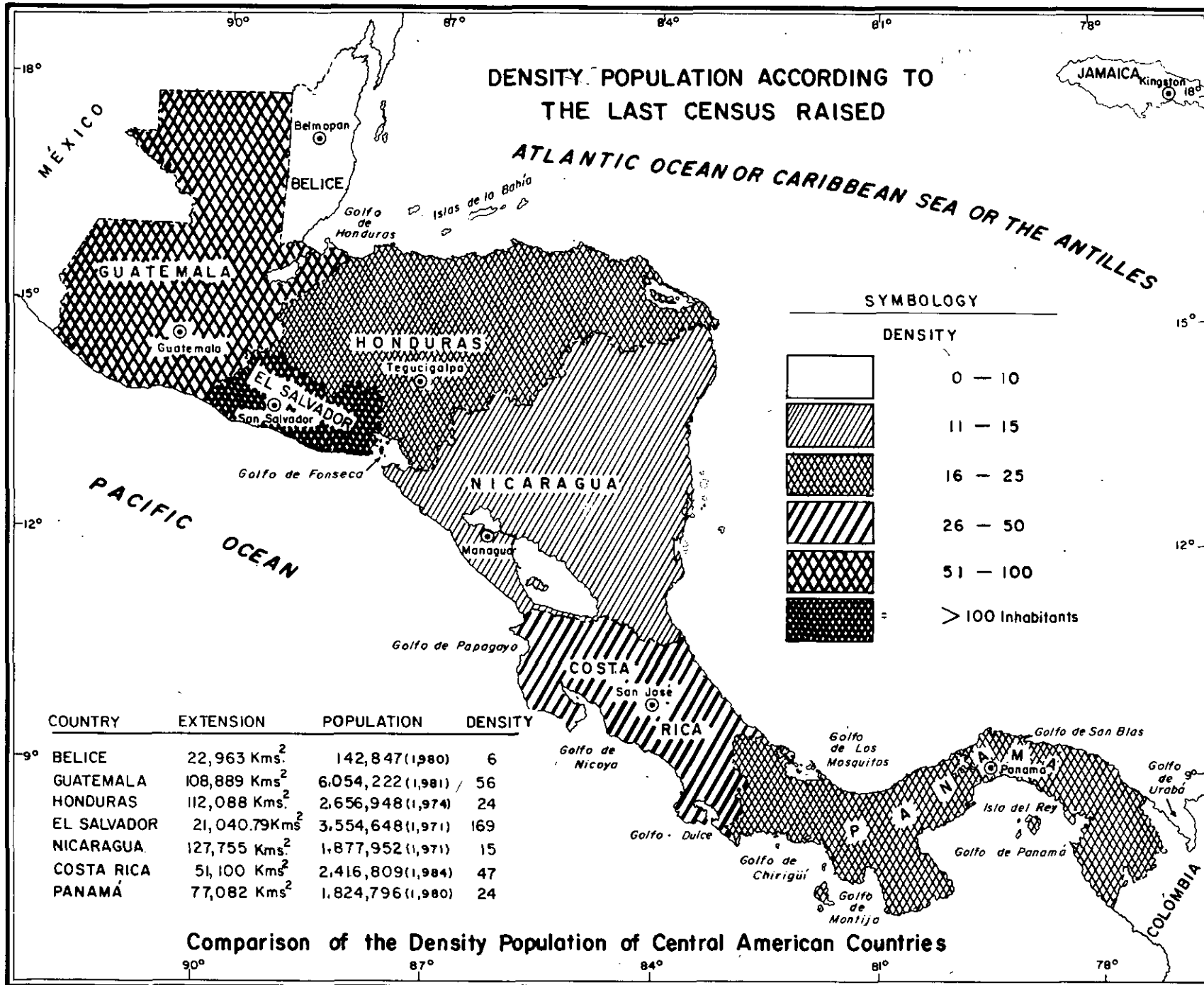
International Law, so steeped in ethical considerations and so zealously in favour of equitable solutions, cannot accept with serenity.

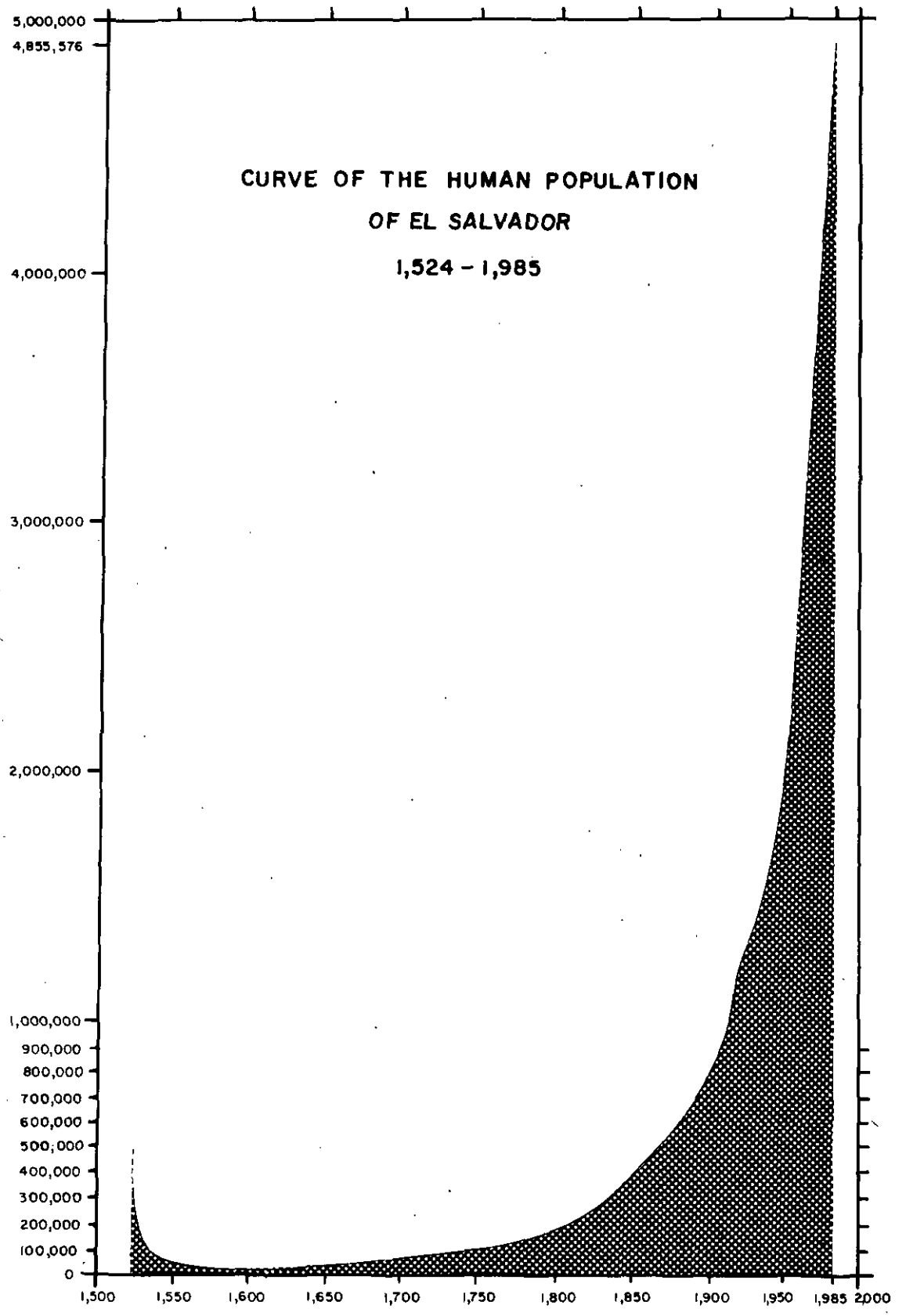
"For unremedied wrongs to be allowed to endanger social stability it is not enough that they are profound nor that they are legitimate; such a situation depends above all on the strategic position and the numerical importance of the victims of wrong. Thus, for example, a small state can see itself obliged to submit to conditions for which there does not exist any type of moral justification." (13)

7.21 The rights of El Salvador are clear and exact in relation to documentary Title Deeds, in so far as this is possible in view of the juridical and administrative limitations of the colonial period. But raised to the same level as these rights is the imperious sway of a justice which is not content merely with arguments of a technical juridical nature but considers in the first place man, as a being settled on land which has belonged to him since immemorial time and to which is united not only his material well-being but also and principally his spiritual destiny. The statistical figures are eloquent in support of the Salvadoreñan rights over all the territories claimed by Honduras; here the numbers reflect palpitating realities, which the honourable Judges will without any doubt be able to evaluate in the interests of right and of justice, its primary substance.

13. C.A.W. Manning: "Les elements de la securité collective" p.231 (quoted by De Visscher).

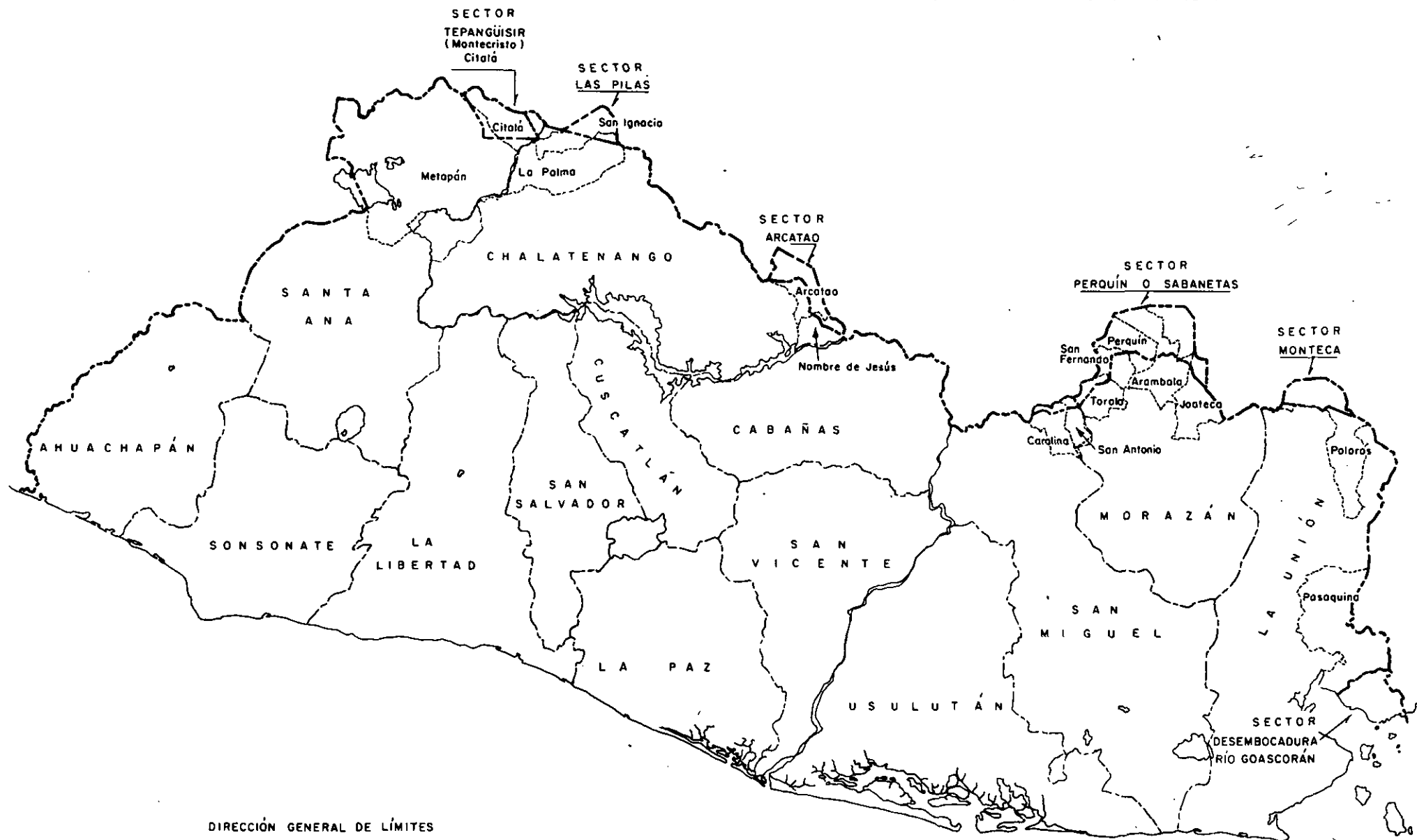
7.22 El Salvador requests, with all due respect, the Honourable Chamber of the International Court of Justice that when making its judgment it will consider these human factors which are social, cultural, economic and political aspects of the feeling of thousands of Salvadoreñan families that they have their roots in the lands which Honduras claims as its property. El Salvador also wishes to indicate that the areas claimed by Honduras have been developed culturally and economically by its Government and by its Municipal Authorities within whose jurisdiction they have been incorporated since 1821, the date of Independence. El Salvador considers that the Honourable Chamber of the International Court of Justice will appreciate all these elements which, together with the juridical proofs which are appended, determine that the areas claimed by Honduras are and always have been Salvadoreñan.





Token from "Environmental Conservation in El Salvador" by Howard E. Daugherty, page 18, printed by Artes Gráficas Publicitarias S. A. San Salvador, El Salvador 1,973; actualized to 1,985.

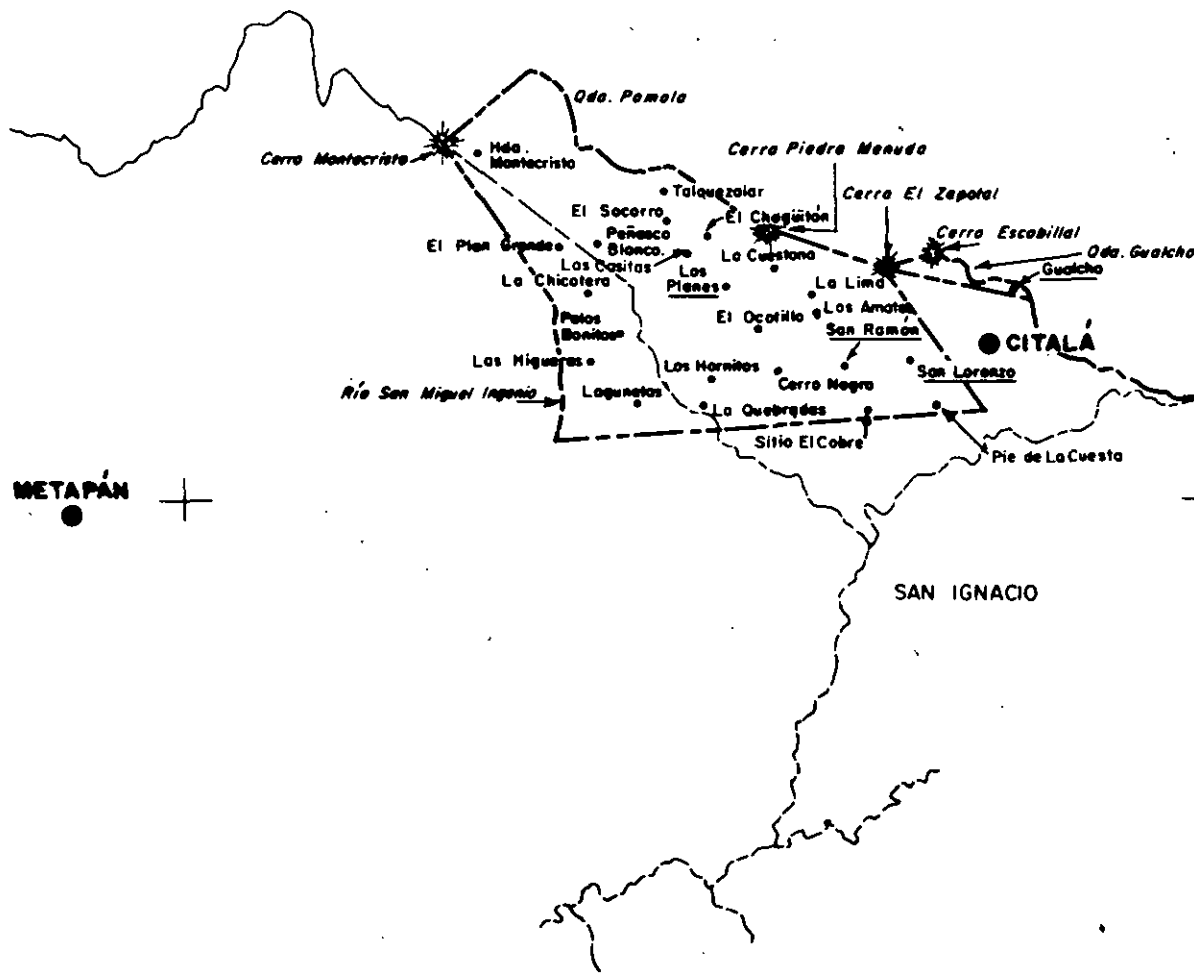
MUNICIPALITIES INCLUDED IN THE NON DELIMITED ZONES EL SALVADOR—HONDURAS FRONTIER



DIRECCIÓN GENERAL DE LÍMITES
 MINISTERIO DE RELACIONES EXTERIORES
 REPÚBLICA DE EL SALVADOR

Escala 1:1,000,000

HUMAN SETTLEMENTS INCLUDED IN THE NON DELIMITED ZONES
 EL SALVADOR — HONDURAS FRONTIER
 TECPANGÜISIR MOUNTAIN SECTOR

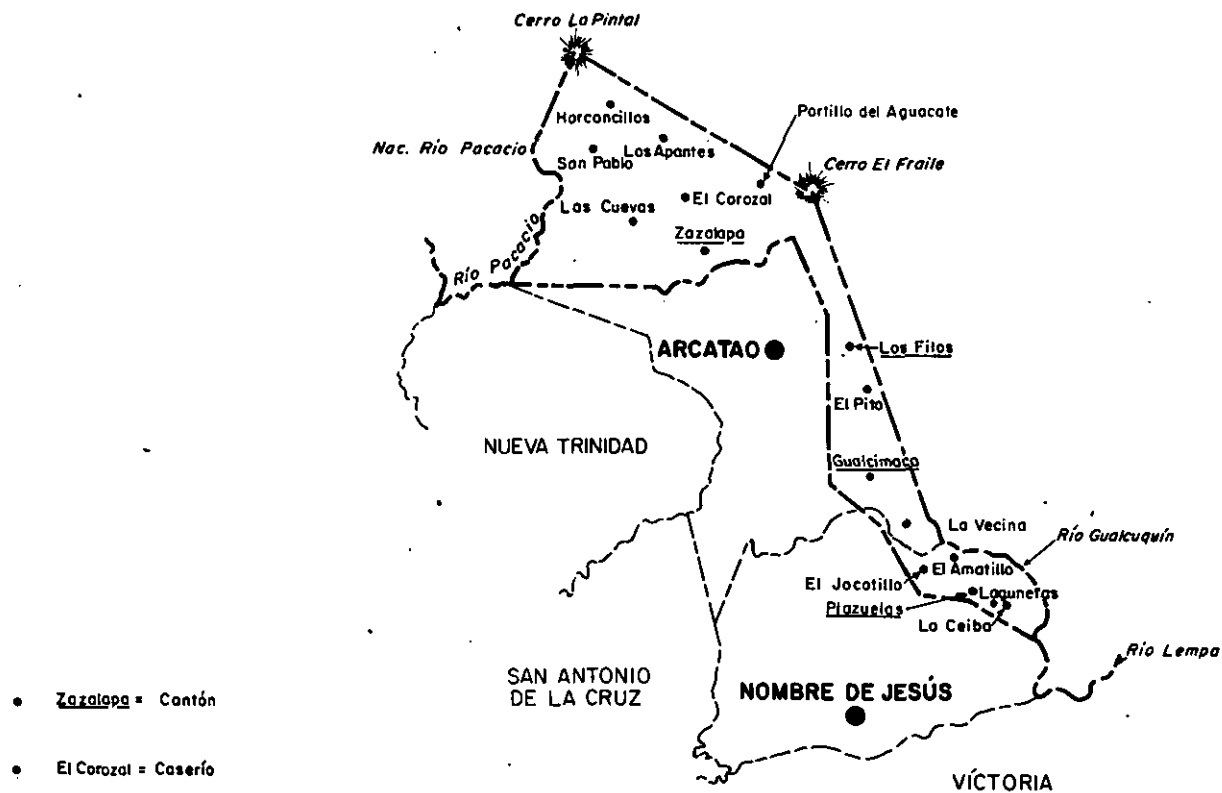


- Gualcho = Cantón
- Las Higuera = Casería

DIRECCIÓN GENERAL DE LÍMITES
 MINISTERIO DE RELACIONES EXTERIORES
 REPÚBLICA DE EL SALVADOR

Escala 1: 200,000

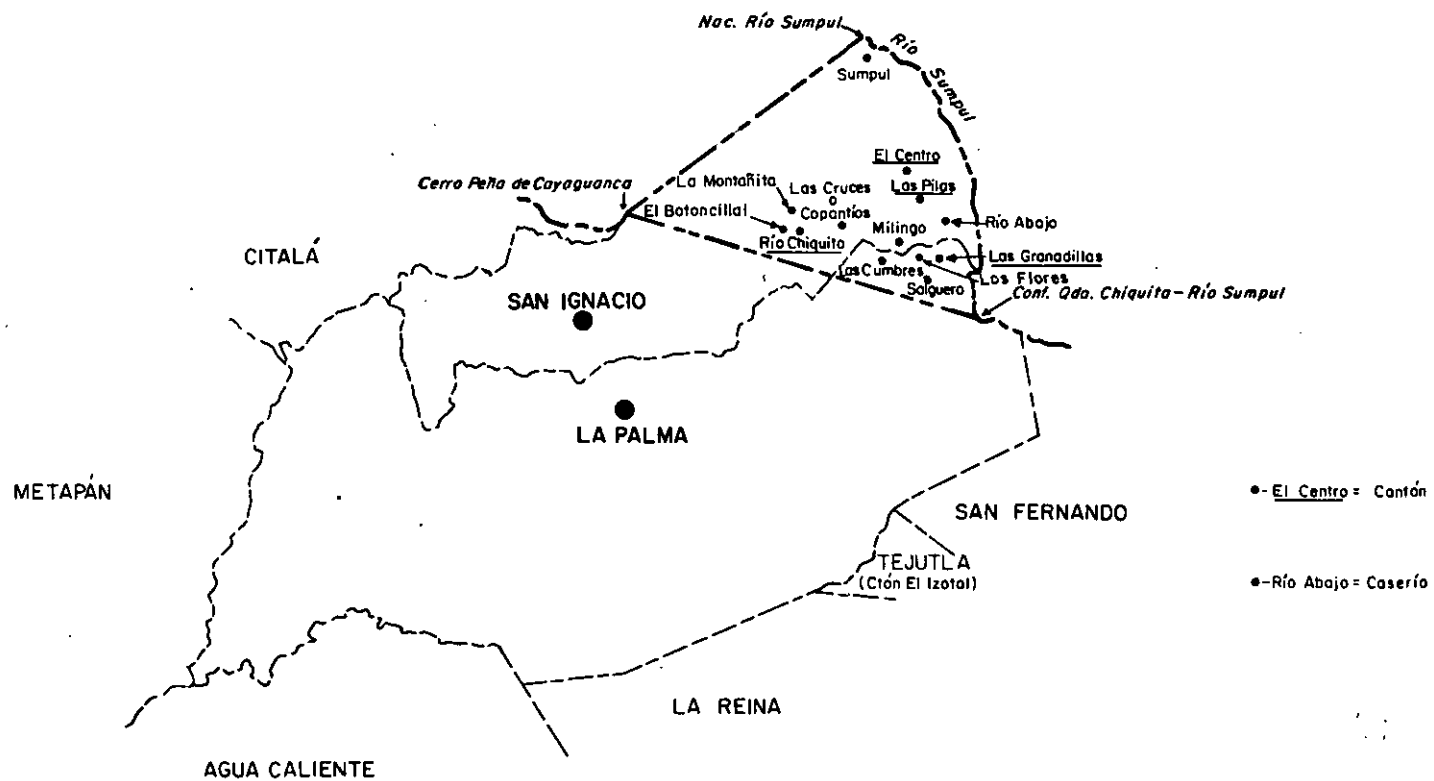
HUMAN SETTLEMENTS INCLUDED IN THE NON DELIMITED ZONES
 EL SALVADOR — HONDURAS FRONTIER
 ARCATAO OR ZAZALAPA



Escala. 1: 200,000

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 MINISTERIO DE RELACIONES EXTERIORES
 REPÚBLICA DE EL SALVADOR

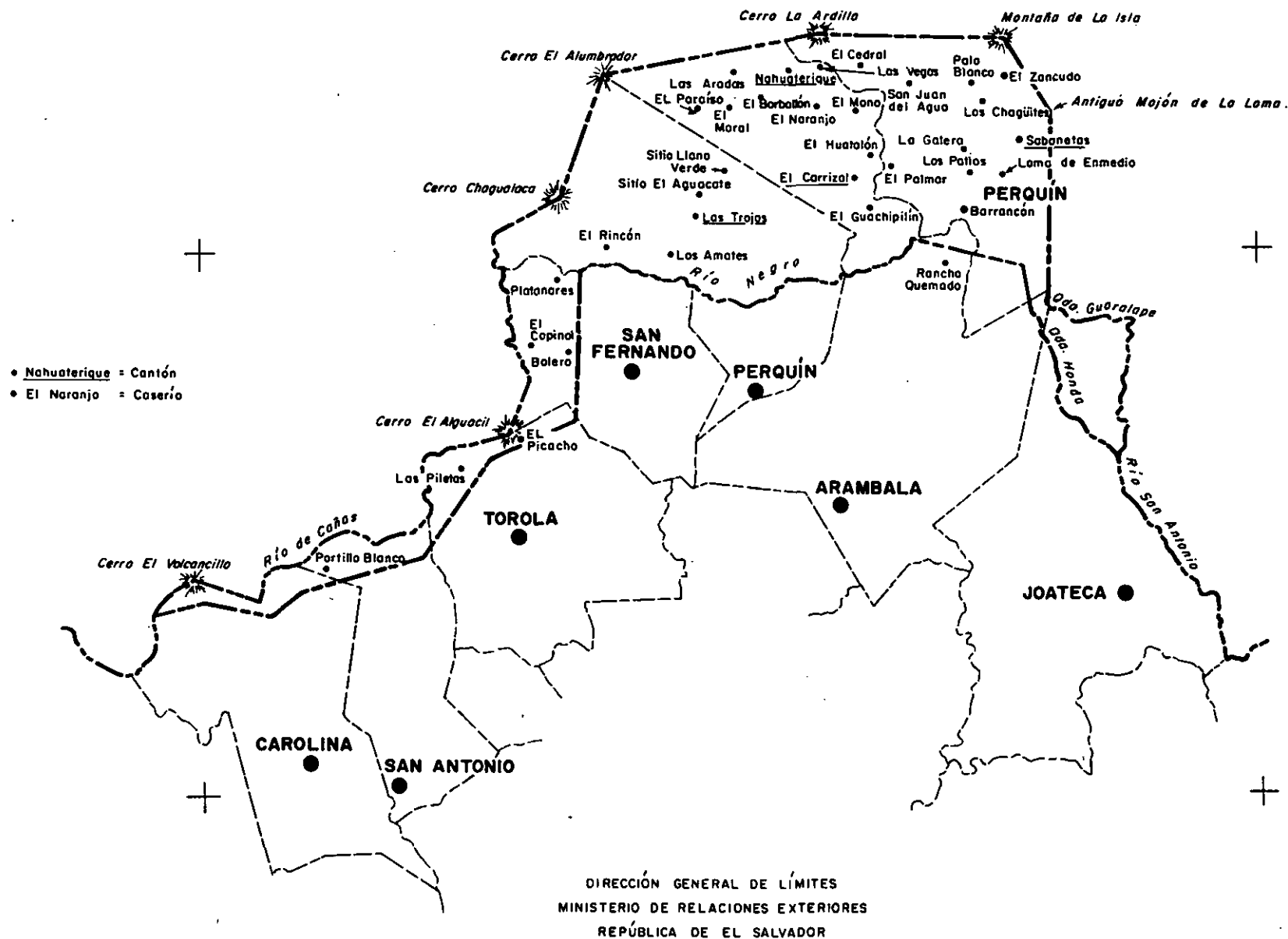
HUMAN SETTLEMENTS INCLUDED IN THE NON DELIMITED ZONES
 EL SALVADOR - HONDURAS FRONTIER
 LAS PILAS OR CAYAGUANCA SECTOR



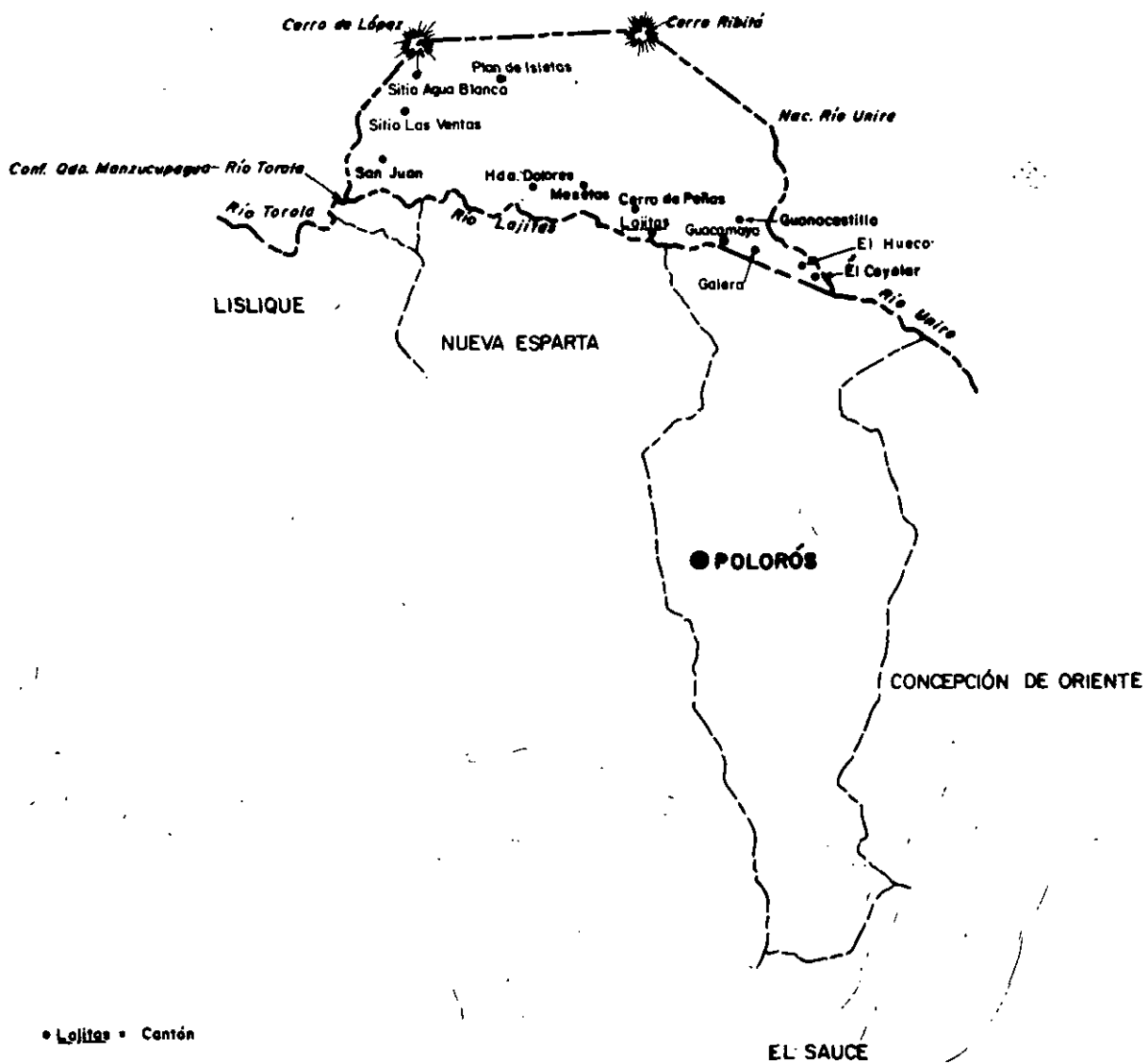
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DIRECCIÓN GENERAL DE LÍMITES
 MINISTERIO DE RELACIONES EXTERIORES
 REPÚBLICA DE EL SALVADOR

HUMAN SETTLEMENTS INCLUDED IN THE 'NON DELIMITED ZONES'
 EL SALVADOR — HONDURAS FRONTIER
 PERQUIN SABANETAS OR NAHUATERIQUE SECTOR



HUMAN SETTLEMENTS INCLUDED IN THE NON DELIMITED ZONES
 EL SALVADOR — HONDURAS FRONTIER
 MONTECA OR POLOROS SECTOR



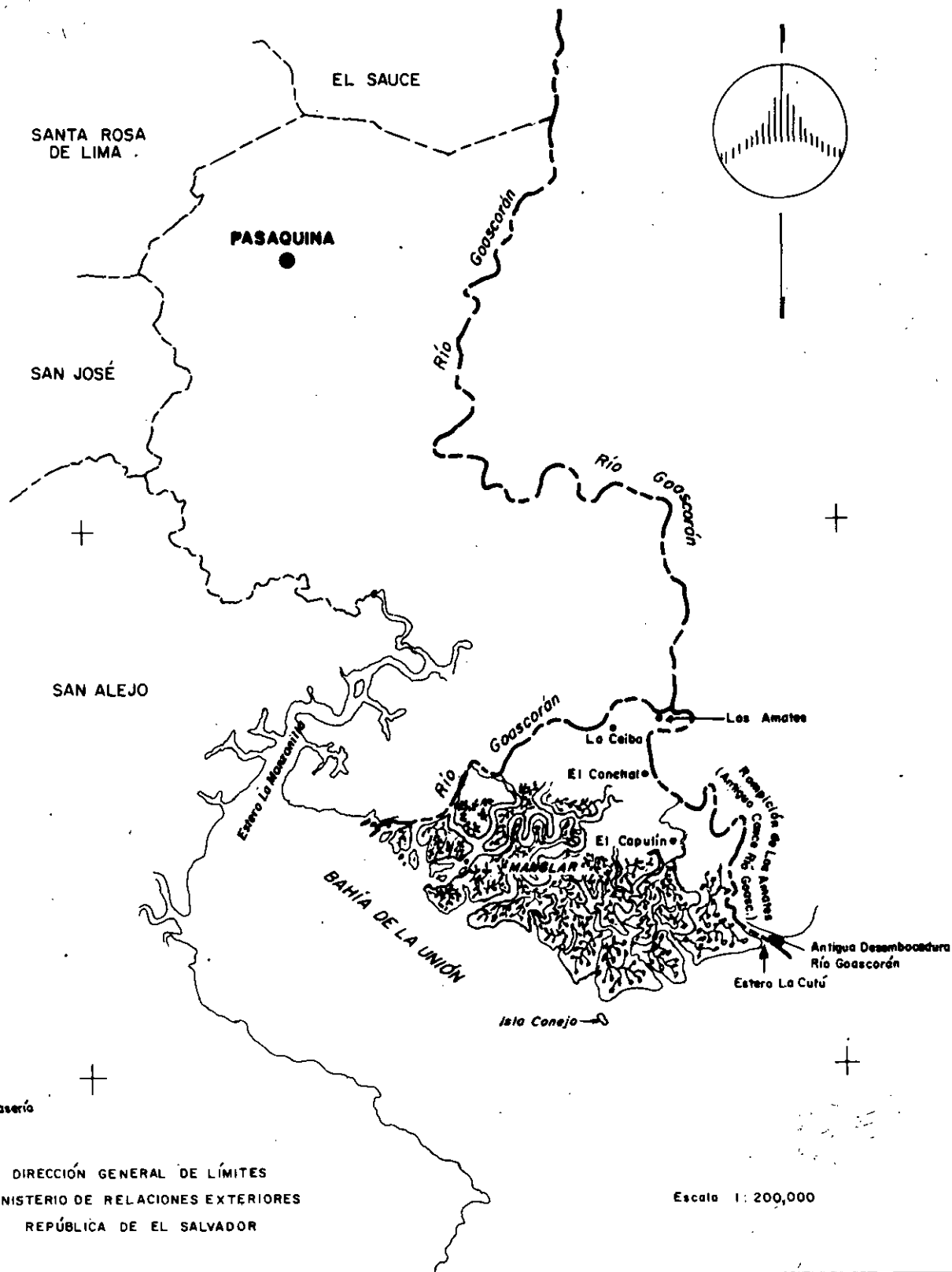
• *Lojitas* = Cantón

• *EL Coyotar* = Caserío

DIRECCIÓN GENERAL DE LÍMITES
 MINISTERIO DE RELACIONES EXTERIORES
 REPÚBLICA DE EL SALVADOR

Escala. 1:200,000

HUMAN SETTLEMENTS INCLUDED IN THE NON DELIMITED ZONES
 EL SALVADOR — HONDURAS FRONTIER
 ESTUARY OF THE GOASCORÁN



PART III

JURIDICAL STATUS OF THE ISLAND
OF THE MARITIME SPACES

SECTION A

GENERAL ASPECTS

CHAPTER 8

The task of the Court

The task of the Court in this part of the case is to respond to the request of the Parties to "determine the legal position of the island and the maritime areas".

This request contrasted with the first request to the Court

As stated in Chapter I above, the Government of El Salvador (G/ES) recalls the contrast between this request and the one contained in paragraph 1 of Article 2 of the Spacial Agreement. In the first request the Court was asked "to delimit the boundary kine" in the spacial areas. In the second request the simply to decide, as between the Parties, the legal status of certain island and of certain maritime areas.

THE G/ES feels it necessary to insist on this point principally because of the title which has been given to this case in the documentation of the Court, namely, "Land, Island and Maritme Frontier Dipute". While the G/ES has not thought it necessary to raise with the Court

a preliminary question as to the appropriateness of this title. It is obliged to stress that although one aspect of the case is certainly about the delimitation the land frontier between the Parties, the remainder of the case is certainly not about an "island frontier", since that is a meaningless concept, and is equally not about a "maritime frontier", even though that is not a meaningless concept. So far as the island and the maritime areas are concerned, the Court is asked to determine "Their legal position".

CHAPTER 9

THE GEOGRAPHY OF THE ISLAND AND THE MARITIME AREAS.

The geography of the region comprising "the island and the maritime areas" may be described as follows:

On the stretch of Pacific Coast extending between the points in the northwest and the southeast at which the land boundaries between Guatemala and El Salvador and between Nicaragua and Costa Rica respectively reach the Pacific, the most prominent indentation is the Gulf of Fonseca.

The Gulf of Fonseca is divisible into two parts, an inner and an outer part. The natural and visually obvious dividing line between the two parts is formed by a straight line joining Punta Chiquirin on the coast of El Salvador to Punta El Rosario on the coast of Nicaragua. This line is 31.25 kilometers (16.87 nautical miles) long. To the north and east of the line lies the inner part of the Gulf which is bounded, moving a clockwise direction, by the coast of El Salvador, Honduras and Nicaragua. Within this part there lie a number of Islands.

To the south west of the line lies what may be described as the "neck" of the Gulf extends to a straight line drawn between Punta Amapala, on the El Salvador coast, to Punta Cosiguina on the Nicaraguan coast. (For convenience this line will be referred to as "the Pacific closing line".) The length of this line is 35.20 kilometers (19,01 nautical miles).

Thus "the islands" spoken of in the Special Agreement are the islands which lie within the two parts of the Gulf of Fonseca. " The maritime areas" are the waters comprised within the Gulf of Fonseca together the waters of the Pacific seaward of the Pacific closing line is so far as the latter may be the subject of a claim by Honduras which conflicts with the traditional and historic of El Salvador.

SECTION B

The Legal Position of the Islands

CHAPTER 10

THE LAW APPLICABLE TO THE DETERMINATION OF THE STATUS OF THE ISLANDS

10.1 As has already been seen in Chapter I of this Memorial, one of the issues in dispute between the Parties to the present case is the sovereignty over a number of islands in the Golfo de Fonseca. The Special Agreement requests the Chamber to determine the juridical status of these islands, that is to say to determine which State enjoys sovereignty over each of the islands in dispute. The consideration of this question requires some preliminary discussion of the principles and rules of International Law applicable to the determination of which State enjoys sovereignty over an island or group of islands. The controversy over the islands constitutes a typical dispute over the "attribution of territory", something which has to be distinguished from a frontier dispute, which concerns the delimitation of land territory.

10.2 The island in the Gulf of Fonseca are the following: Meanguera, Meanguerita o Pirigallo, Conchagüita, Martín Pérez, Ilca o Irca, Zacatillo, Perico, Periquito, Coyote, Conejo, Violin, Garrobo, Inglesera, Exposición, El Tigre, Zacate Grande, El Comandante de las Almejas de la Vaca.

THE DISTINCTION BETWEEN DISPUTES OVER THE ATRIBUTION OF
TERRITORY AND FRONTIER DISPUTES

10.3 The International Court of Justice, following precedents established both by Tribunals of Arbitration and by the Permanent Court Of International Justice, has drawn a clear distinction between disputes over the attribution of territory and disputes over the delimitation of a frontier and has consequently applied different principes and rules of law to the two types of dispute.

10.4 In disputes over the attribution of territory, the tribunal in question has to decide which of two or more claimant states enjoys sovereignty over an island, a group of islands, or an entire detached territory. On the other hand, in disputes over the delimitation of a frontiers the tribunal is asked either to fix a boundary line or to indicate the principes and rules of law which will permit the Parties themselves to establish a frontier.

10.5 The significance of the distinction lies in the different legal principes and rules applicable in each case. In disputes over the attribution of territory the tribunals have based their decisions on considerations relating to the exercise or display of sovereignty over the disputed island, islands or territory. In disputes over the delimitation of a frontier, considerations of this type have, generally speaking, been

subordinated to the legal titles invoked by the Parties, such as Treaties, Arbitration Awards, or, where the principle utis possidetis juris is applicable, documents issued by a former sovereign power fixing administrative boundaries.

10.6 Thus in the Island of Palmas Case the arbitrator based his decision not on the ancient titles invoked by the Parties but on what he described as the "actual display of sovereignty", stating that "the continuous and peaceful display of territorial sovereignty" is as good as title. On this ground, the island was awarded to The Netherlands, which had shown "unchallenged acts of peaceful display of sovereignty". (1)

10.7 In the Eastern Greenland Case in 1933, the Permanent Court of International Justice accepted the Danish claim to sovereignty over Eastern Greenland because that claim was "founded on the peaceful and continuous display of State authority". The Court took into account the existence of Danish legislation for the area, remarking that "legislation is one of the most obvious forms of the exercise of sovereign power". It also paid attention to acts of recognition by other States. (2)

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1. U.N. Reports of International Arbitral Awards Vol.II p.839.
 2. P.C.I.J. Series A/B No. 53 p.48.

10.8

The leading case on the subject in the jurisprudence of the International Court of Justice is the judgement in the Minquiers and Ecrehos Case, where the Court decided that "the sovereignty over the islands and rocks of the Ecrehos and Minquiers groups belongs to the United Kingdom". (3)

This case was a typical dispute over the attribution of territory, comparable to the Island of Palmas Case, to the Eastern Greenland Case, and to the present case. Again the decision was based on the peaceful and continuous display of State authority over the territory in dispute. The Court analysed the contentions of both Parties that they possessed an ancient or original title to the islands but concluded: "What is of decisive importance, in the opinion of the Court, is not indirect presumptions derived from events in the Middle Ages, but the evidence which relates directly to the possession of the Ecrehos and Minquiers groups" (4). The Court attached "in particular, probative value to the acts which related to the exercise of jurisdiction and local administration and to legislation". It found in an favour of the United Kingdom on the ground that "British authorities during the greater part of the Nineteenth Century and in the Twentieth Century have exercised State functions in respect of both groups of islands". (5)

3. (1953) I.C.J. Reports p.72

4. Ibid. p.57

5. Ibid. pp.65,67,70.

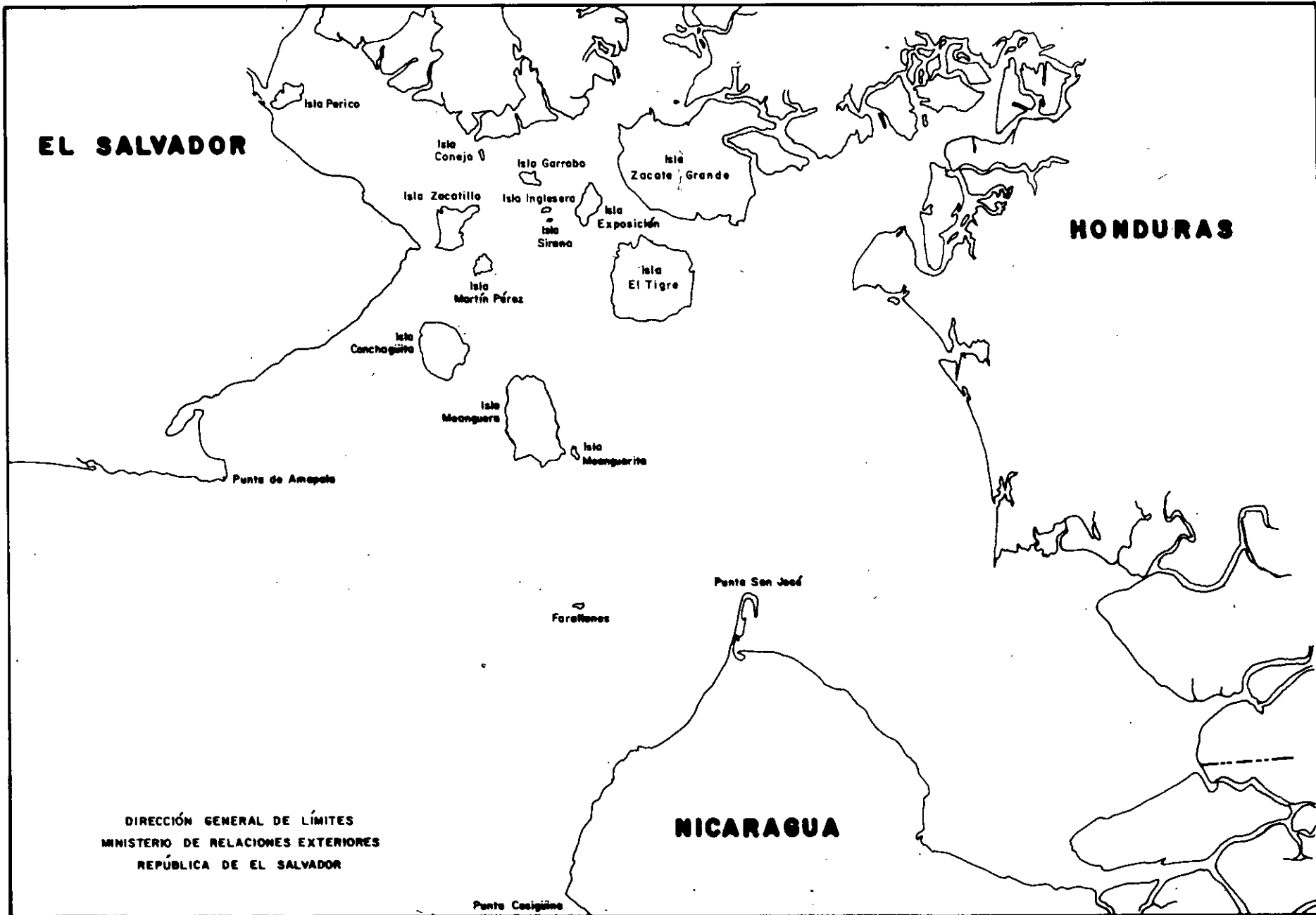
10.9 On the other hand, in disputes over the delimitation of a frontier the Court has attributed decisive affect to legal titles and has stated that acts of exercise of administrative functions are "insufficient to displace sovereignty established by the Convention" (6) and do not suffice "to efface or cancel out the clear impression of acceptance of the frontier line" created by the absence of objection to certain maps. (7)

10.10 In the Burkina Faso-Mali Case, the Chamber stated that the application of utis possidetis juris "resulted in administrative boundaries being transformed into international frontiers". (8) While the Chamber considered that the distinction "is not so much a difference in kind but rather a difference of degree", it anyway found that the dispute before it "belongs rather to the category of delimitation disputes" (9). The Chamber also said that "the effect of any judicial decision rendered either in a dispute as to attribution of territory or in a delimitation dispute, is necessarily to establish a frontier". However, this is not the situation in the present case, nor was it in the Minquires and Ecrehos Case where the attribution of sovereignty over an island or a group of islands in favour of one of the Parties did not result in the establishment of a frontier with the other Party.

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6. Case concerning Sovereignty over certain frontier land (1959) I.C.J. Reports p.229.
 7. Temple Case (1962) I.C.J. Reports P.30.
 8. (1986) I.C.J. Reports p.566.
 9. Ibid p.563.

10.11 It may be concluded from the preceding exposition that, according to established jurisprudence, the determination of the status of the disputed islands in the Golfo de Fonseca involves a decision as to which of the two States has exercised in respect of these islands a continuous and peaceful display of territorial sovereignty and has performed State functions and exercised State authority, in particular by means of acts of jurisdiction, of administration, and of legislation.

GOLFO DE FONSECA Escala Aproximada 1:350,000



EL SALVADOR

HONDURAS

NICARAGUA

DIRECCIÓN GENERAL DE LÍMITES
MINISTERIO DE RELACIONES EXTERIORES
REPÚBLICA DE EL SALVADOR

CHAPTER 11

THE DISPLAY OF STATE SOVEREIGNTY BY EL SALVADOR

11.1 As early in 1776, before the independence of Central America and therefore during the colonial regime, the "Real Audiencia" of Guatemala was asked to solve a doubt as to whether the jurisdiction to adjudicate land situated in an island in the Golfo de Fonseca located between the isla del Tigre and the Isla Zacate (this island is now known as the Isla Exposición) was vested in the judge of San Miguel (in what is now El Salvador) or in the judge of Nacaome (in what is now Honduras). The "Real Audiencia", the supreme civil authority for the entire Colony, decided on 14th July 1776 that the jurisdiction to adjudicate the land belonging to the Crown in that island was vested in the Judge of San Miguel and ordered that "no one should place any obstacle" to the exercise of his authority. (Annex 1 pag 1 and pags 9-11)

11.2 This decision is significant because this island, now known as the Isla Exposición, is located between the Isla del Tigre and the Isla Zacate. The latter island, the Isla Zacate, is in a special position because it is closely linked to the Hondureñan coastline, particularly at low water. Consequently, the decision of the "Real Audiencia" indicated that the jurisdiction of the judge of San Miguel extended as far as the Isla Exposición and that the jurisdiction of the Judge of Nacaome only extended as far as the Isla Zacate. This is confirmed by the fact that, when in 1769 and in 1779 a military officer was officially appointed to exercise delegated authority in Nacaome, both appointments stated that the delegated authority

in Nacaome, both appointments stated that the delegated authority extended only to the Isla Zacate, which was the only island mentioned in the two decrees. (Annex 2 pag 1 and pag 8) (Annex 3 pag 1).

11.3 After the independence from Spain and the subsequent separation of the colonial territories into the Central American Republics, the State authority and jurisdiction over the islands in the Golfo de Fonseca, with the exception of the Isla Zacate, continued to be exercised by the authorities of El Salvador. For example, in the Reports of Cases decided by the "Juzgado General de Hacienda" of El Salvador in the period from November 1854 to May 1855 there can be found petitions from persons interested in acquiring land in the islands known as the Punta del Zacate (an island quite distinct from the already mentioned isla Zacate), the Isla El Conejo, the isla Conchagüita, and the Isla Ilca. The authorities in El Salvador, after declaring that the lands in question were free from ownership ("baldías" in the original Spanish text), authorised their sale to the petitioners. (Annex 4)

11.4 Further, in a report from the "Juzgado general de Hacienda" to a Minister of the Government of El Salvador concerning the status of decrees sent to surveyors in San Miguel directing them to measure various landholdings that were free from ownership so as to permit their subsequent sale to

petitioners, several references are made to land on the islands of the Golfo de Fonseca: for example, a decree was made for the measurement of land on the Isla Meanguera on 25th September 1854: on the Isla Punta de Zacate on 10th February 1854: on the Isla Conchagüita and the Isla Ilca on 3rd March 1854: and on the Isla Los Pericos on 14th October 1855. (Annex 5)

11.5 On 29th November 1879 the "Juzgado General de Hacienda" ordered a further public auction of available lands in the Isla Meanguera. (Annex 6).

11.6 The Executive of El Salvador, by a Decree of 17th April 1893, established a school for girls on the Isla Meanguera. (Annex 7)

11.7 On 24th April 1894 the Government of El Salvador captured armed forces which were engaged in revolutionary action against the Government of Honduras and which had taken refuge on the Isla Meanguera along with their arms and ammunition. The Government of El Salvador declared that these forces had "entered onto the territory of the Republic" of El Salvador; consequently they were disarmed and their arms and ammunition confiscated. The Government of El Salvador subsequently declared that, as a mark of Central American solidarity it was placing these arms and ammunition at the disposition of the Government of Honduras, which duly accepted them. (Annex 8)

11.8 A law adopted by the National Legislative Assembly of El Salvador on 23rd April 1914 authorised the Executive to open a free port on one of the island owned by El Salvador in the Golfo de Fonseca. (Annex 9a). Subsequently on 19th May 1914 the National Legislative Assembly approved the Contract entered into to 8th May 1914 by the Government of El Salvador with Mr. Frederick F. Searing to build and exploit a free port in the Isla Meanguera (Annex 9b).

These resolutions of the National Legislative Assembly were duly published in the Official Government Journal of El Salvador and no objections whatsoever were raised by Honduras in respect of this significant exercise of legislative power by El Salvador.

11.9 Finally a law adopted by the National Legislative Assembly of El Salvador on 19th June 1916 declared that the Village on the Isla Meanguera now had the status of a township with the name "Meanguera del Golfo" and that this township had jurisdiction over the whole of the island. This resolution was duly published in the Official Government Journal of El Salvador on 27th June 1916. (Annex 10)

THE RECOGNITION OF THE SOVEREIGNTY OF
EL SALVADOR BY THE UNITED KINGDOM AND BY HONDURAS.

11.10 In 1849 the Government of the United Kingdom recognised the sovereignty of El Salvador over a large number of the islands in the Golfo de Fonseca. In a letter dated 26 th October 1849 the Charge d'Affaires of the United Kingdom, Mr.

Chatfield, communicated to the Government of El Salvador that, in view of the absence of a satisfactory answer to certain claims by British subjects, a blockade had been established by British naval forces of the Salvadoreñan port of La Union; Mr. Chatfield added, in the name of the Queen, that "until final payment of all British claims, and a less hostile attitude towards this nation's interests becomes evident, all the islands in the Bay belonging to the State of El Salvador, specially Meanguera, Conchagüita, Punta de Zacate and Perez shall be taken in pledge, and in these circumstances, they cannot be ceded or alienated under any pretext" (Annex 11).

11.11 According to a notice published in the "Gaceta del Salvador" of 29th March 1850, Mr. Chatfield subsequently received an order from the competent United Kingdom Minister to return "the Island El Tigre belonging to Honduras, as well as the other ones which it occupied in the Gulf of Fonseca, belonging to El Salvador".

11.12 In respect of the Isla El Tigre, which was the only island so returned by the United Kingdom to Honduras, it must be pointed out that until 1833 that island had been under the authority of El Salvador, being administered from the Salvadoreñan township of San Miguel. For instance, several sales of land on that island were carried out under the authorisation of the Judge of the port of La

Union and the appropriate purchase monies were paid over in the place of residence of the said Judge, San Alejo in El Salvador.

11.13 However in 1833 the Salvadoreñan authorities allowed the Hondureñan authorities to occupy the Isla El Tigre on condition that the Hondureñan authorities would disarm and intern dissident forces in opposition to the Government of El Salvador who had taken refuge on that island.

11.14 Further in 1966 the President of the Republic of Honduras in a Decree countersigned by the Foreign Minister granted naturalisation to an applicant who had been born in the Isla Meanguera and this Decree expressly stated that this island formed part of the Departament of La Union in the Republic of El Salvador. (Annex 12)

CHAPTER 12

THE HISTORIC TITLE OF EL SALVADOR TO ALL THE ISLANDS IN DISPUTE

12.1 The contention expounded by the Government of El Salvador in the first part of this Chapter that in disputes over the attribution of territory the display of State activities prevails over historic titles has not been adopted because of any absence of historic titles in favour of El Salvador. On the contrary, and so as to cover the possibility that the abovementioned contention is not entirely accepted by the Court, the Government of El Salvador can and will demonstrate in this Part of this Chapter that it indeed enjoys the best historic title, inherited from the Spanish Crown, to all the islands in dispute. The basis of this title is that during the colonial period the Golfo de Fonseca, also known at that time as the Bahía de Conchagua, and all its islands were at all times within the jurisdiction of the township of San Miguel in the Colonial Province of San Salvador, which was in turn within the jurisdiction of the "Real Audiencia" of Guatemala.

12.2 The historic title of El Salvador to all the islands in dispute is based upon the fact that until 1672 the

territory of Honduras did not extend as far as the coast of the Golfo de Fonseca. The entire coast of the Golfo de Fonseca was governed during the Colonial period through the "Real Audiencia" of Guatemala in respect of civil and military matters and through the Bishopric of Guatemala in respect of ecclesiastical matters. These principal authorities in Guatemala had delegated the local administration of the area to the "Alcaldia Mayor" of San Salvador. This all important fact is proven by official documents emanating from the Spanish Crown and by other authentic documents, all of which were in fact invoked by Honduras as evidence in the boundary disputes which it has maintained with Guatemala and with Guatemala and with Nicaragua. This fact is also confirmed by cartographic documents of the era, such as the Map of Mexico or Nueva España published by Sanson d'Abbeville in Paris in 1659 and by a series of ancient maps which were published in 1980 by the government of Columbia. All this evidence shows that at this time the territory of Honduras did not reach the Pacific Ocean. (Annex 1) The Colonial Province of Honduras was in fact constituted by a Royal "Cédula" of 21st August 1526 by which Diego López de Salcedo was appointed Governor of that Province. The Government of Honduras indeed recognised in the Pleadings which it submitted in the Mediation Proceedings between Honduras and Nicaragua in 1920-1921 that the Province of Honduras had no coast in the Pacific (Annexes 2a and 2b). Indeed in the Reply submitted by Honduras to the King of Spain in the Arbitration over its boundary dispute with Nicaragua,

the Government of Honduras presented as part of its evidence a decision by the Spanish Crow to the effect that the South Sea was the boundary of Nicaragua.

- 12.3 The original Colonial Province of Honduras was within the jurisdiction of the "Real Audiencia" of Panamá, whose jurisdictional limits were stated by a Royal "Cédula" of 8th September 1563 to extend up to but not including the Golfo de Fonseca. On the other hand, the jurisdictional limits of the "Real Audiencia" of Guatemala were stated to extend up to and including the Golfo de Fonseca (Annex 3), The Royal "Cédula" of 1563 was subsequently amended by another "Cédula" of 17th May 1564 which transferred the Province of Honduras from the jurisdiction of Panamá to the jurisdiction of Guatemala. However, this "Cédula" transferred Honduras with the boundaries as defined in the previous year, in other words without access to the Pacific Ocean. This Royal "Cédula" of 1564 was also filed as evidence by Honduras in the Mediation Proceedings of 1920-1921 to which reference has already been made. This 1564 "Cédula" provides that the jurisdiction of the "Gobernación" of Guatemala extends "from and including the Golfo de Fonseca up to and excluding the Province of Honduras" (Annex 4) and that the "Gobernación" and "Bishopric of Honduras shall have as its boundary "the township of San Miguel with the people as far as the South Sea and the limits of Nicaragua". Clearly this indicates that the "Gobernación" and Bishopric of Honduras did not reach

the sea, since San Miguel belonged to the Province of San Salvador within the "Real Audiencia" of Guatemala. Further evidence is supplied by another document filed by Honduras in the Mediation Proceedings already referred to: a letter dated 20th November 1536 from the "Adelantado" Pedro de Alvarado, in which this representative of the King in Guatemala refers to the "discovery of a very good, deep and safe port in the mouth of the River Lempa, where a town called San Miguel has been established".

12.4 In rebuttal of the decisive evidence set out above, Honduras has invoked a Royal "Cédula" of 1745 appointing Colonel Juan de Vera as Governor of the Province of Honduras and Comandant General of the Royal Military Forces on the coast from Yucatán to the Cape of Gracias a Dios. However, this Royal "Cédula" of 1745, which was pleaded by Honduras in its litigation with Guatemala, was rejected by the Tribunal of Arbitration under the Presidency of Charles Evan Hughes which adjudicated that dispute. The Tribunal pointed out "that this grant of military authority was for special reasons expressly limited to the two functions of defense and the prevention of illicit commerce and was not for the purpose of disturbing or altering the limits of provincial administrative authority in other matters" (1) (Annex 5).

12.5 In the Mediation Proceedings of 1920-1921 to which reference has already been made, Honduras recognised, referring to the Royal "Cédula" of 1564, that "it is not strange that the King has included in the Province

(1) United Nations Reports of International Arbitral Awards. Vol. II p. 1329.

of Guatemala the Gulf of Fonseca because at that time and long after that time Guatemala extended as far as the Province of Nicaragua, including the territory that is today the Republic of El Salvador and a parte of the territory of Honduras on the Gulf" (Annex 6). As the representatives of Guatemala indicated in these negotiations, this Admission by Honduras signified that Honduras was therefore obliged to furnish positive evidence by means of Royal "Cédulas" subsequent to the Eighteenth Century that the part of the territory on the Golfo de Fonseca which did not originally belong to Honduras was subsequently awarded to Honduras and withdrawn from Guatemala (Annex 7). No such evidence exists.

- 12.6 On 20th Decemeber 1750 the President of the "Real Audiencia" of Guatemala, Joseph de Araujo, sent from Guatemala a Report, issued along with the opinion of the Attorney-General, concerning the political and military administration of the Provinces of Comayagua and Nicaragua. In this Report it is stated that "the Alcaldía Mayor" of Tegucigalpa is placed at a distance of 30 leagues from the above mentioned Government of Comayagua and this "Alcaldía Mayor" has no sea port through which it could suffer an enemy invasion" (Annex 8). This document, of colonial Spanish origin, shows clearly that at this stage neither Comayagua nor Tegucigalpa had coastlines on the Golfo de Fonseca.
- 12.7 The expansion of Honduras towards the Pacific Ocean

took a different and more limited form. It was not based on any Royal "Cédulas" but began in 1672 when the curacy of Choluteca. Wich belonged to the jurisdiction of the Bishopric of Guatemala, was transferred to the jurisdiction of the Bishopric of Comayagua. This decision was taken on the basis of a Report from the Bishop of Guatemala in 1669. (Annex 9).

12.8 But this transfer did not include Nacaome, which is the crucial commanding part of the coastline on the Golfo de Fonseca. On the contrary, when in 1675 the Bishop of Comayagua in Honduras requested the transfer of Nacaome, the Bishop of Guatemala objected to this request of the Bishop of Comayagua and this request was not granted by the Spanish authorities. (Annex 10).

12.9 Furthermore the village of Choluteca, even when it was transferred to the jurisdiction of the Bishopric of Comayagua, did not exercise jurisdiction over the islands in the Golfo de Fonseca. These continued to be governed from San Miguel, in the Province of San Salvador, which had been founded earlier than Choluteca. Nor can it be contended that Honduras gained access to the Pacific Coast during the concluding years of the Spanish dominion. In 1807 the "Corregidor Intendente" Antonio Gutiérrez y Ulloa submitted a Report on the General State of the Province of San Salvador and in this Report he stated clearly that the Province of San Salvador has a common boundary with the Province of Nicaragua. When describing the jurisdiction of the Salvadoreñan township of San Alejo, the "Intendente" states that "Conchagua --

Barra, to the East of San Alejo, divides this jurisdiction and that of the Province of San Salvador from that of Leon (a township in Nicaragua) which is twenty-four hours journey away by boat or canoe" (Annex 11).

12.10 This consideration of the historic title to the islands establishes the following conclusions.

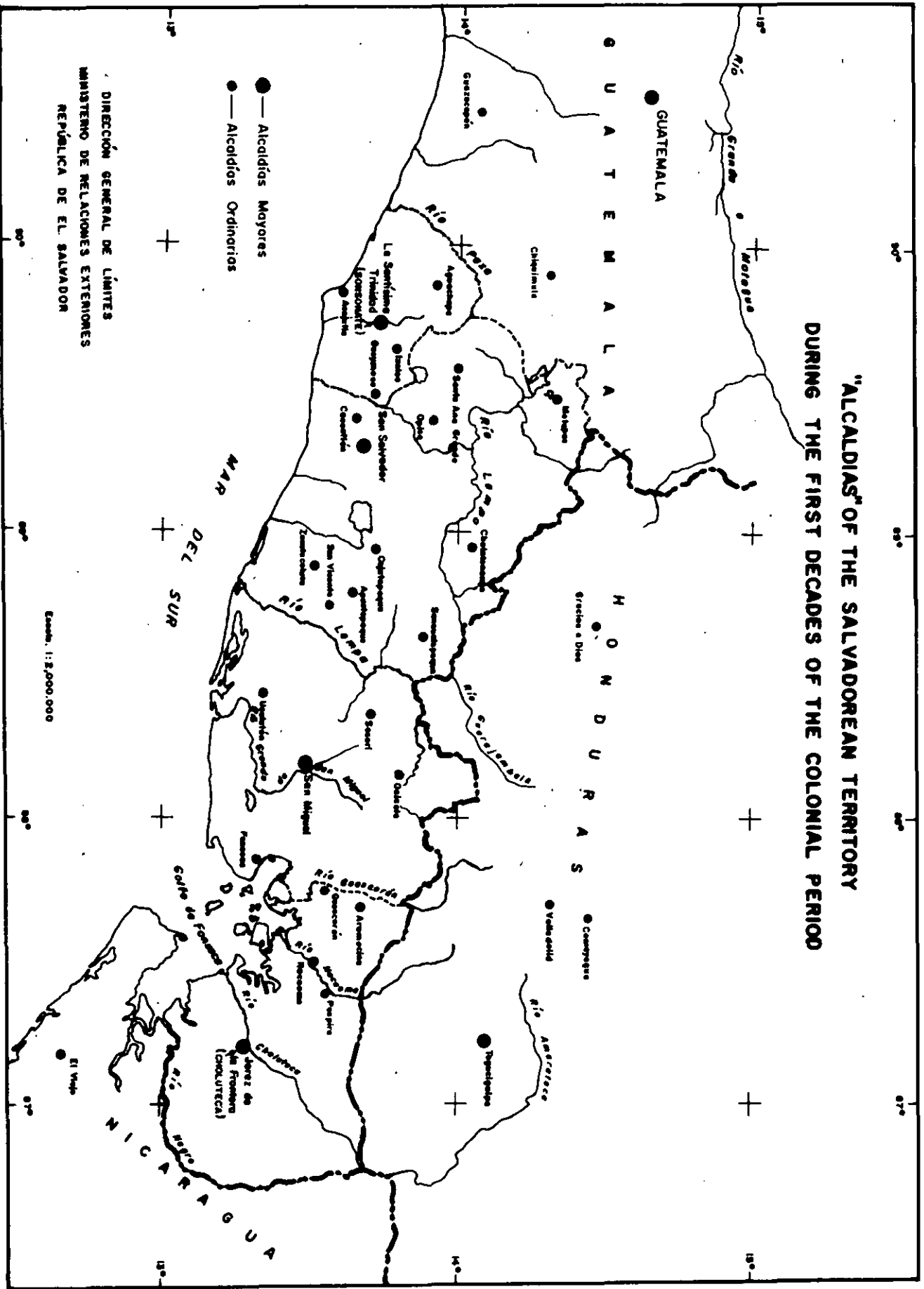
(a) Choluteca and Nacaome were until 1672 under the jurisdiction of the "Alcaldía Mayor" of San Salvador and of the Bishopric of Guatemala.

(b) Only the curacy of Choluteca was transferred to the Bishopric of Comayagua, Nacaome remaining within the jurisdiction of the "Alcaldía Mayor" of San Salvador and of the Bishopric of Guatemala.

(c) Choluteca did not exercise jurisdiction over the islands in the Golfo de Fonseca, which were governed from San Miguel in El Salvador.

(d) Since the whole of the Golfo de Fonseca and its islands were under the civil and ecclesiastical jurisdiction of Guatemala and, more locally, under the jurisdiction of the "Alcaldía Mayor" of San Salvador, Honduras can only claim historic title to any of the islands in the Golfo de Fonseca if it is able to produce a Royal "Cédula" or other positive evidence of title with a date subsequent to 1673 by which Honduras was granted jurisdiction in the Golfo de Fonseca and in respect of the islands therein. No such evidence in fact exists.

**"ALCALDIAS" OF THE SALVADOREAN TERRITORY
DURING THE FIRST DECADES OF THE COLONIAL PERIOD**



SECTION C

THE LEGAL POSITION OF THE MARITIME AREAS

CHAPTER 13

The position within the Gulf of Fonseca

13.1 The legal position of the maritime areas within the Gulf of Fonseca is regulated by the judgement rendered on 9 March 1917 by the Central American Court of Justice in the case between El Salvador and Nicaragua relating to the said Gulf. This judgement was accepted by the G/ES and express reference is made to it in Article 84 of the Constitution of the Republic of El Salvador of 1983 where the judgement is identified as determining the territorial and maritime right of El Salvador in the Gulf of Fonseca. (Text of Article 84 to be inserted in an Annex).

The relevant part of the Judgement is as follows:

NINTH QUESTION: Taking into consideration the geographic and historic conditions, as well as the situation extent and configuration of the Gulf of Fonseca, what is the international legal status of that Gulf?

The judges answered unanimously that it is an historic bay possessed of the characteristics of a closed sea.

TENTH QUESTION: As to which of those characteristics are the High Parties litigant in accord?

The Judges answered unanimously that the parties are agreed that the Gulf is a closed sea.

ELEVENTH QUESTION: What is the legal status of the Gulf of Fonseca in the light of the foregoing answer and the concurrence of the high parties litigant, as expressed in their arguments, with respect to ownership and the incident derived therefrom?

Judges Medal, Oreamuno, Castro Ramírez and Bocanegra answered that the legal status of the Gulf of Fonseca, according to the terms of the question, is that of property belonging to the three countries that surround it; and, Judges Gutiérrez Navas answered that the ownership of the Gulf of Fonseca belongs, respectively, to the three riparian countries in proportion.

The legal status of the Gulf of Fonseca having been recognized by this Court to be that of a historic bay possessed of the characteristic of a closed sea, the three riparian States of El Salvador, Honduras and Nicaragua are, therefore, recognized as coöwners of its waters, except as to the littoral marine league which is the exclusive property of each.

- 13.2 On the basis of the 1917 judgement an objective legal regime has been established in the Gulf. Even if initially the judgement was binding only in respect of the direct parties to the litigation, Nicaragua and El Salvador, the legal status recognized therein has

been consolidated in the course of time its effects extend to third States, and in particular, they extend to Honduras.

13.3 As to third States in General, the objective legal regime established on the basis of the judgement relies on the acquiescence and in some cases on the express recognition of third States, particularly, of the great maritime powers. Thus, for instance, the United States, had already recognized in 1904, in a diplomatic note addressed to El Salvador, that "the Gulf of Fonseca is a territorial bay whose waters are within the jurisdiction of the bordering States". (1). The other maritime powers have continuously enjoyed the "uso inocente" of the waters of the Gulf for their merchant vessels and have never questioned the character of the Gulf as a territorial bay whose waters are within the jurisdiction of the bordering States. And such a character of a territorial bay has been confirmed by the 1982 UN Convention on the Law of the Sea, which authorizes the closing of a bay when the width of its mouth does not exceed 24 nautical miles.

13.4 What is decisive in this case, however, is the acceptance by Honduras of the legal status of the Gulf as recognized and proclaimed by the 1917 judgement. It is necessary to recall that in the Central American Court of Justice sat a Judge from Honduras, since the court consisted of five justices, one appointed by each republic through its legislative branch (Articles VI and VII - of the Convention establishing the court

(1) Ibid, p.709 The English translation of the Judge--
ment States that this express recognition took place
in 1914 but this seems to be a printing mistake.

signed on December 20, 1907, by the five Central-American Republics) (2) Article XIII Declared that the court represented "the national conscience of Central America" and Article XXV provided that the "judgements of the Court shall be communicated to the five Governments of the contracting Republics. The interested parties pledge themselves to submit to such judgement and all to lend the moral support that may be needed in order that it is complied with, thus constituting a real and positive guarantee of respect to the present Convention and to the Central American Court of Justice". (3)

It follows that if Honduras disagreed or rejected the conclusions reached by the Central-American Court of Justice as to the legal status of the Gulf it should have expressed its rejection or disagreement in that respect.

- 13.5 Far from that, the attitude of Honduras was not only one of acquiescence but it had such a degree of participation in the litigation that it is possible to characterize Honduras as an "interested party" in the meaning given to this term by the pledge contained in the above-transcribed Article XXV of the Convention. Before the delivery of the judgment Honduras addressed a protest to El Salvador opposing the Salvadorean complaint which asserted the coöwnership of the three riparian States over all the waters in the Gulf of Fonseca. This protest said "That the Government of Honduras has not recognized the status of coöwnership with El Salvador, nor with any other republic, in the waters belonging to it in

(2) The text of the Conventions is to be found in US Foreign Relations 1907, II, p. 692 and 2 American Journal International Law. (Supp. 1908, p219.)

(3) (Please check the English translation of this Article XXV in one of the sources given in footnote 2 above)

the Gulf of Fonseca". (4) During the course of the litigation the Republic of Honduras brought to the attention of the Central American Court a copy of this protest. (5).

13.6 While at the first sight, this protest might have been interpreted as a complete rejection by Honduras of the regime of co-ownership claimed by El Salvador, in its applications to the Court subsequent declarations by the Court and by Honduras authorities demonstrate the limited character of the Honduras protest as to the extent of the waters claimed as "belonging to it" in the Gulf.

The Central American Court dealt with the protest of the Foreign Minister of Honduras, stating that "the Court can do no less than accord to it the full effect claimed, therefore, by that high officer in his report of January 5, 1917, to the Nacional Congress of his country". (6)

In that report by the Honduras Foreign Minister, transcribed in the judgement the Foreign Minister of Honduras explains that his expression concerning the "waters belonging to it" only applied to the three miles belt of waters contiguous to the coasts and islands of Honduras.

The Honduras Foreign Minister's report states that the protest was made:

"against the allegation of the complaint referred to, wherein, coownership in all the waters of the Gulf of Fonseca is claimed on the ground of the status of community among the three riparian Repu-

(4) Text of the Judgment, Ajil, p. 696.

(5) Ibid, p. 696.

(6) Ibid, p. 716.

blics even as to the waters contiguous to the coasts and islands of Honduras, own which extends the undisputed sovereignty of the Republic as exclusive owner thereof." (7)

Thus, the Foreign Minister explains that Honduras protest referred only to the waters of the litoral marine league which the Court recognized as the exclusive property of each riparian State. That is why the Honduras Foreign Minister's report adds that "the Government of El Salvador took the protest mentioned into consideration and gave to this Government frank and satisfactory evidence of its full justification". (8)

13.7 Subsequently, Honduras accepted the conclusions of the judgment as to the legal status of the Gulf. The President of the Republic of Honduras, in this Report to Congress Published in the Gaceta Oficial of the 3 January 1918, after delivery of the judgment, declared that the judgment of the Central American Court of Justice had "Satisfactory results and was in conformity with the purposes of the institution"

Referring in particular to the legal status of the Gulf the President of the Honduras declared:

"This Tribunal, in deciding the question raised by the Government of El Salvador against that of Nicaragua, concerning the Bryan-Chamorro treaty, has recognized the rights that Honduras has in the Gulf of Fonseca; a recognition which is in perfect harmony with the protest of this Government against the claims of the El Salvador in -- respect of the territorial waters to which the

(7) Ibid, emphasis added.

(8) Transcribed in the text of the judgment, AJIL, p. 717.

sovering domain of Honduras extends".

The conclusion to be draw from these documents is that El Salvador originally claimed the existence of the regime of co-ownership with respect to all the waters of the Gulf, while Nicaragua took the position that there was no community between the three States in these waters. (9) Honduras, for its part, protested against the claim of co-ownership only with respect to the three mile belt of littoral waters. El Salvador amended its complaint accordingly in order to take into account the protest of Honduras.

The Court took the intermediate position advocated by Honduras when it recognized that the legal status of co-ownership "does not exist in the three marine miles that form the littoral on the coasts of the mainland and islands which belong to the States separately and over wich they exercise ownership and possession both exclusive and absolute". (10)

- 13.8 It may be added that in the more than 70 years since the 1917 judgment was delivered Honduras not only never questioned or made a reservation with respect to the common ownership of the waters of the Gulf but, on the contrary, it has continuously taken advantage of the common character of these waters, using its navigation channels, which are located in the proximity of the coasts of El Salvador, for access to and from its port of Amapala, for ships of all flags, including the Honduran flag. The same

(9) AJIL, p. 678

(10) IBID., p. 711

applies to fishing in the area close to the coast of Honduras and El Salvador which is conducted without distinction by fishing boats of Salvadorean or Honduran registry.

13.9 The most recent publicly stated position of Honduras as regards the waters in the Gulf of Fonseca is reported in the Summary Record of the Second Committee of the 3rd UN Conference on the Law of the Sea as follows:

18. Honduras was one of three coastal States bordering on the Gulf of Fonseca in the Pacific Ocean. That gulf was regulated exclusively by existing delimitations and agreements between the coastal States. The legal concept contained in Article 7 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone (11) would be applicable to that bay but for the exception laid down in that article, i.e., that it related only "to bays the coasts of which belong to a single State" and that it would not apply to so-called "historic" bays. He regarded the latter provision as open to objection because of its discriminatory nature. It was discriminatory to exclude bays which bordered the coasts of various States when, as in the present case, all the coastal States maintained that the waters of the bay were international. Although there was no established legal norm, the status of that bay had been accepted by the coastal States. It had never been maintained that the entrance to the Gulf of Fonseca was an international strait, which showed that the legal unity of all parts of the bay was generally accepted. Moreover, there was no valid reason for excluding from the legal concept of bays the so-called "historic" bays in cases where the concept applied to them. His delegation therefore maintained that the traditional concept of "historic" bays should be revised because it had been elaborated in response to a former need for a legal definition of bays under the exclusive competence of the coastal State. (Official Records of the 3rd UNCLOS, vol.III pp. 100-101).

(11) United Nations, Treaty Series, vo. 516 p. 206.

CHAPTER 14

THE POSITION IN THE PACIFIC OCEAN OUTSIDE THE CLOSING LINE OF THE GULF OF FONSECA.

The G/ES turns next to a consideration of the position of the waters seawards of the Pacific closing line.

At the outset, it is convenient to recall that in the region of the mouth of the Gulf of Fonseca only El Salvador and Nicaragua possess what may objectively be described as a Pacific coast or seaboard. Honduras does not. The relative regularity of the coasts of El Salvador and Nicaragua is interrupted only by the opening of the Gulf of Fonseca which, measured along the Pacific closing line is 19.01 nautical miles wide.

Each of these Pacific coasts generates for each of these States a territorial sea, a contiguous zone, a continental shelf, and an exclusive economic zone (EEZ).

14.1 THE LIMITS OF EL SALVADOR.

El Salvador claimed in its Constitution of 7 September 1950, Article 7, a territorial sea of 200 nautical miles. This claim was re-stated in the Constitution of 13 December 1983, Article 84, as a claim to exercise sovereignty and jurisdiction over the sea and submarine areas up to a distance of 200 nautical miles measured from the low-water mark line.

THE POSITION OF HONDURAS.

The position of Honduras in relation to the waters of the Pacific seawards of the closing line of the Gulf of Fonseca is not clear. The G/ES sets out below some material which may indicate some claim by Honduras in these waters. However, until Honduras has presented its Memorial in this case it will not be possible for the G/ES to deal with these claims in a precise and focussed manner. The G/ES will, therefore, after setting out such public material as it has been able to find regarding the position of Honduras, limit itself to some general observations regarding the legal position in the waters of the Pacific Ocean, subject, of course, to the fullest reservation of its right to revert to the matter in such manner as may be necessary to respond appropriately to the Memorial of Honduras.

By Presidential Decree of 28 July 1950, approved by Congressional Decree No. 25, 17 January 1951, Honduras defined the area of its claims to continental shelf and the waters covering it as follows:

"ARTICLE 3. The protection and supervision of the State is hereby declared to extend in the Atlantic Ocean over all waters lying within the perimeter formed by the coast of the mainland of Honduras and a mathematical parallel drawn at sea 200 sea miles therefrom. With regard to the islands of Honduras in the Atlantic, such delimitation shall enclose the zone of sea contiguous to their coasts and extending for two hundred sea miles from every point thereon.

(UN Legislative Series, Laws and Regulations on the Regime of the High Seas, Vol. I (1951), p. 303)

This provision, which appears in the UN volume under the heading of "Continental Shelf", suggests that the claims of Honduras are limited to the Atlantic and do not extend to the Pacific.

Subsequent to the Presidential Decree of 28 January 1950, i.e. on 16 March 1950, and by a decree the relationship of which to the Congressional Decree of 17 January 1950, is not clear, Congressional Decree No. 103 provided as follows:

(b) CONGRESSIONAL DECREE No. 103. AMENDING THE AGRARIAN LAW, 7 MARCH 1950. "La Gaceta: DIARIO OFICIAL DE LA REPUBLICA DE HONDURAS". VOL. 75, No. 14,055 (16 MARCH 1950), p. 2. TRASLATION BY THE SECRETARIAT OF THE UNITED NATIONS

ARTICLE 1. The first article of the Agrarian Law is amended, and shall read as follows: "ARTICLE 1. The property of the land, in its double aspect of soil and subsoil, as well as the waters included in its territory, belong originally to the State, which has the right to transfer the dominion to individuals, establishing thereby private property.

"The following belong to Honduras:

"(1) The land situated on the continent within its territorial limits, and all the islands and keys in the Pacific which have been considered Honduran.

"(2) The following islands: Cisne (Swan), Viciosas, Misteriosas and Mosquitos; the following keys: Gorda, Vivorillos, Cajones, Becerro, Cocurucuma, Caratazcá, Falso, Gracias a Dios, Los Bayos. Pichones, Palo de Campeche; and others islands, banks and reefs

situated in the Atlantic, over which Honduras exercises dominion and sovereignty, in addition to the Islands of Bahía.

"(3) Its submarine platform or continental and insular shelf and the waters which cover it, in both the Atlantic and Pacific Oceans, at whatever depth it may be found and whatever its extent may be."

ARTICLE 2. The present decree shall be constitutionally ratified by the next legislature and shall enter into force immediately after its publication in La Gaceta.

(UN Legislative Series, op. cit., P. 12)

Whether this amounts to any claim to waters of the Pacific beyond the closing line of the Gulf of Fonseca is not evident.

At the same meeting of the Second Committee of UNCLOS to which reference has been made in paragraph above, the delegate of Honduras said:

19. In connexion with the question of the outer limit of the territorial sea, he said that he considered the method using the arc of a circle best suited to the different geographical characteristics of different coastlines and also the most desirable, since it would facilitate navigation. With regard to the delineation of the limits between the territorial sea of Honduras and that of adjacent States, his delegation believed that the system that should be used, unless otherwise agreed by the

parties, concerned, was that of the median line equidistant from the closest points on the baseline of the adjacent territorial seas, which in the Pacific ocean was the line between the geographical points in the entrance to the Gulf of Fonseca and in the Atlantic ocean the line following the general direction of the coast including the archipelago of Las Islas de la Bahía. Honduras recognized the traditional concept of the territorial sea and the right of "innocent passage" of ships of any nationality; but the concept of "innocent passage" applied to navigation within the territorial sea and not within the internal waters of a State. That was important in connexion with the provision of article 5 of the Geneva Convention on the Territorial Sea and the Contiguous Zone, which ignored the difference between two areas which were basically different because the principle of innocent passage did not apply to one of them.

20. He stressed the fact that his delegation's position on the breadth of the territorial sea was indissolubly linked to the right of the State in an area in which it would control, protect and exploit resources-an area extending for 200 nautical miles from the baseline of the territorial sea of Honduras.

(Ibid., pp. 100-101)

In response the delegate of El Salvador said:

1. Mr GALINDO POHL (El Salvador), speaking in connexion with the statement by the representative of Honduras at the preceding meeting concerning the Gulf of Fonseca, said that the effects of applying the concept of a 12-mile territorial sea and the rule of equidistance to determine the outer limits were

not at all as the Honduran representative had described them. If the concept of a 12-mile territorial sea accepted by Honduras was applied, two of the three coastal State situated on the gulf would completely close off the entrance to the gulf; moreover, all the distances measured from Honduran territory to the line of entry to the Gulf exceeded the 12-mile limit of the territorial sea, whereas those from the land territory and islands of El Salvador fell within the radius of 12 nautical miles.

2. Since the Salvadorian islands of Conchaguita, Meanguera and Meanguerita were situated between Honduran terra firme and the entrance to the Gulf, he wondered whether Honduras was seeking to assert some claim over them. If that were the case, he must state categorically that El Salvador exercised sovereignty over those islands and was not prepared to accept any hypothesis that could affect its territorial integrity.

The Delegate of Honduras replied:

54. Mr. Herrera Cáceres (Honduras), speaking in exercise of the right of reply, said that his delegation had been conforming to the wish of the Conference in referring to specific situations in its general statement at the preceding meeting. The matter of the Gulf of Fonseca illustrated a common situation in the law of the sea, and it was therefore appropriate to make reference to it in connexion with the regime of internal seas, the territorial sea, baselines, and historic bays, and in order to determine its status vis-a-vis the international community and not as a function of the internal regime of the Gulf, as the representative of El Salvador had done at the beginning of the meeting, when he had attempted to deny the sovereignty of Honduras over its islands

and waters. Honduras maintained that the waters of the bay possessed the status of the internal waters and, as a consequence, it was logical that the baseline of the territorial sea should be that line which united the natural geographical points of the bay. He agreed with the representative of El Salvador that a dispute existed regarding the territorial and maritime boundaries between Honduras and El Salvador; Honduras, for its part, had always manifested its willingness to settle those boundaries as soon as possible.

(Ibid. p.108)

The delegate of El Salvador responded:

55. Mr. Galindo Pohl (El Salvador), speaking in exercise of the right of reply, stressed that the Conference was not an appropriate forum for airing bilateral disputes, and maintained that referring to particular cases to support general ideas was different from formulating positions which encroached upon the established rights of other States. That was what the representative of Honduras had done when he had referred at the previous meeting to the delineation of waters between adjacent State and, at the current meeting, to historic bays, and he cited in that connexion a judgement of the Central American Court of Justice on 1917. On whatever theory the delineation of either the territorial or internal waters was based. Honduras would be deprived of access to the line of entry to the Gulf. What was more, the Honduran Representative had even referred to problems of territorial and maritime boundaries, which would only raise further problems. If the Committee agreed, El Salvador intended to pursue the controversy.

(Ibid. p.108)

14.3 The maritime claims of El Salvador and Nicaragua meet and overlap.

Although El Salvador and Nicaragua are not territorially contiguous their maritime claims meet at a point on the Pacific closing line of the Gulf of Fonseca equidistant from their respective base lines. That point represents the eastern (or landward) terminus of the boundary line that separates their maritime claims in the Pacific in accordance with the prevailing standards of international law.

14.4 The legal basis of the maritime claims of El Salvador and Nicaragua.

The legal basis of these maritime claims by the two Pacific coastal states which lie on either side of the seaward opening of the Gulf of Fonseca is the possession by them of actual coasts.

14.5 Claims to territorial sea.

It is beyond question that it is the land or the coastal possession of a State that generates maritime entitlements. Historically, the concept of the territorial sea has always been regarded as dependent upon the possession of the contiguous shore line. The point was made in the following terms by Lord (then Sir Arnold) McNair in the Fisheries case:

"To every State whose land territory is at any place washed by the sea, international law attaches a corresponding portion of maritime territory.International Law does not say to a State: 'You are entitled to claim territorial waters if you want them.' No maritime State can refuse them. International Law imposes upon a maritime State certain obligations and confers upon it certain rights arising out of the sovereignty which it exercises over its maritime territory. The possession of this territory is not optional, not dependent upon the will of the State, but compulsory." (1)

Sir Gerald Fitzmaurice commented on this statement as follows:

"The principle that where any territory is washed by the sea, a portion of that sea not only does, but must, attach to the land domain, and be under its jurisdiction, was stated in the Fisheries case by Sir Arnold (now Lord) McNair...[in a passage] which, though delivered in the course of a dissenting Opinion, sets out a general principle of great importance, the validity of which can scarcely be contested. The point involved was not dealt with by the majority of the Court, but the view expressed is entirely consistent with the decision of the majority, and indeed implicit in it." (2)

Sir Gerald then drew from this principle a series of consequence of which the first three merit extended quotation:

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- (1) ICJ Reports 1951, p.160
 - (2) The Law and Procedure of the International Court of Justice (1986), I.P.202

"i. Any cession or other transfer of territory automatically involves a cession or transfer of the appurtenant territorial waters: it is not necessary either to effect, or subsequently to prove, any express or separate transfer of the waters as such.(1)

ii. Similarly, the acquisition of territory which is res nullius automatically involves the acquisition of a belt of territorial sea appurtenant thereto. No separate assertion of jurisdiction over such belt is necessary, nor need any specific display of sovereignty over it be proved, provided there is an adequate display of sovereignty over the land territory.

iii. Conversely, sovereignty over sea waters cannot be claimed except on the basis of their being territorial sea (or internal waters - e.g. in a bay)(2) appurtenant to land territory over which sovereignty exists or is claimed: alternatively a claim to the waters necessarily implies a claim to the adjacent land.(3) Except on this basis, the waters must be high seas, and therefore incapable of appropriation."

The third of these comments has a special pertinence to the present case in its emphasis on the total dependence of claims to sea waters upon appurtenance to land territory over which sovereignty exists. Thus, whatever may be the position within the Gulf of Fonseca, the position seaward of the Pacific closing line is that maritime claims must depend upon the adjacent coast lines - and the only adjacent coast lines are those of El Salvador and Nicaragua. Conversely, as Sir Gerald points out, "a claim to waters necessarily implies a claim to the adjacent land". There is no geographical connection between

(1) Footnote not reproduced

(2) I.e. where there is a closing line, which causes the waters behind it to become internal or national waters.

(3) Thus stated, the point may seem obvious, but it was the basis of a considerable controversy in the Minquiers and Echréhos case.

any possible claim by Honduras to waters in the Pacific and any "adjacent" land.

14.6 Claims to continental shelf and EEZ

In examining the position regarding the continental shelf and EEZ, it is appropriate to recall the words of the Court in the Libya-Malta case:

"As the 1982 Convention demonstrates, the two institutions - continental shelf and exclusive economic zone - are linked together in modern law." (1)

The same dependence upon adjacency to a coast is as true of claims to continental shelf and the EEZ as it is of claims to the territorial sea. Though the concept of natural prolongation is applicable only to the continental shelf and in the case of EEZ is replaced by the criterion of distance, both standards of definition start from the title of the claimant State to the adjacent coast. This is clearly accepted by the Court in the Libya-Malta case (2) - and was indeed emphasized there in the repetition of a passage from its judgement in the Libya-Tunisia case:

"The coast of each of the Parties therefore constitutes the starting line from which one has to set out in order to ascertain how far the submarine areas appertaining to each of them extend in a seaward direction, as well as in relation

(1) ICJ Reports 1985 p.33 para.33

(2) See ICJ Reports 1985, pp.33-34, paras 33 and 34.

to neighbouring States situated either in an adjacent or opposite position."(1)

The G/ES is therefore unable to identify in the current law of the sea - whether as a matter of customary international law or otherwise - any basis for recognizing the possession by Honduras of any rights in the waters of the Pacific beyond the closing line of the Gulf of Fonseca different from those of any other non-littoral State. In other words, Honduras enjoys to the full and without any restriction freedom of navigation to and from the waters of the Gulf of Fonseca, as do the vessels of all other States on their way to or from Honduras. However, rights of exploration and exploitation of the maritime areas of the Pacific lying off the coasts of El Salvador and Nicaragua belong exclusively to those States, though qualified of course by such rights of other States to access to the living resources of the exclusive economic zone as are reflected in Article 62 of the UN Convention on the Law of the Sea 1982.

14.7 The relationship between the claims of Nicaragua and the present proceedings

Nicaragua is not a party to the Special Agreement which confers jurisdiction upon the Court in this case. Nor is Nicaragua a necessary party to the case in so far as the Court is requested to determine the legal status of the islands and of the maritime areas between the Parties inter se. Although it is true that El Salvador refers to the rights of Nicaragua as an element in exclu-

(1) ICJ Reports 1982, p.61 para.74, cited by the Court in ICJ Reports 1985, p.40. para.47.

ding the claims of Honduras to waters seawards of the Pacific closing line that reference is solely for the purpose of demonstrating that between them El Salvador and Nicaragua exhaust the possible maritime claims in that area. The G/ES recalls that the second question put to the Court is formulated not in terms of delimiting a frontier line but only in terms of "determining a legal situation". This determination must lay down the legal foundation upon which a subsequent delimitation (if, in the light of the Court's judgement one should be required) can be agreed between the Parties.

SUBMISSIONS

Delimitation of the land frontier.

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

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

Tecpanguisir Mountain

Paragraph 6.1 Paragraph 6.13 above;

Las Pilas or Cayaguanca

Paragraph 6.14 Paragraph 6.22 above;

Arcatao or Zazalapa

Paragraph 6.23 Paragraph 6.29 above;

Perquin, Sabanetas or Nahuaterique

Paragraph 6.30 Paragraph 6.49 above;

Monteca or Dolores

Paragraph 6.50 Paragraph 6.58 above;

The Estuary of Goascorán

Paragraph 6.59 Paragraph 6.68 above.

and Conclusion; and Chapter 6 The Human Arguments (Effectivités).

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

II. The Juridical Position of the Islands.

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

III. The Juridical Position of the Maritime Spaces.

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


A. Within the Gulf of Fonseca.

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

B. Outside of the Gulf of Fonseca.

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

The Hague, 1st. of June 1988.


FRANCISCO ROBERTO LIMA
Agent of the Government of
El Salvador

LIST OF SKETCHES AND MAPS INCLUDED IN THE
PRESENT VOLUME

CHAPTER 2

- 1 - Map 2.1 Relative position between Honduras and El Salvador.
- 2 - Map 2.2 Joint Vision of the borderline El Salvador- Honduras according the General Peace Treaty of October, 1980.
- 3 - Map 2.3 Joint Vision of the non-delimited zones.

CHAPTER 6

- 4 - Map 6.1 Interpretation of the Commons Land Title of Citalá which protects the zone of Tecpanguisir.
- 5 - Map 6.2 Interpretation of the Commons Land Title of La Palma, which protects the zone of Las Pilas or Cayaguanca.
- 6 - Map 6.3 Interpretation of the Commons Land Title of Arcatao which protects the zone of Zazalapa.
- 7 - Map 6.4 Interpretation of the Common Land Title of Perquín-Arambala and Torola which protects the zone of Nahuaterique or Sabanetas.

- 8 - Map 6.5 Interpretation of the Commons Land Title of Polorós, which protects the zone of Monteca.
- 9 - Map 6.6 Delta of the River Goascorán.
- 10 - Map 6.7 Localization of Crown Lands (Tierras Realengas) Beyond the Common Land (Tierras Ejidales) described in the Title of Citalá (Tecipanguisir Mountain).
- 11 - Map 6.8 Localization of Crown Lands (Tierras Realengas) beyond the Common Land (Tierras Ejidales) described in the Title of La Palma.
- 12 - Map 6.9 Localization of Crown Land (Tierras Realengas) beyond the Common Land (Tierras Ejidales) described in the Title of Arcatao.
- 13 - Map 6.10 Localization of Crown Land (Tierras Realengas) beyond the Common Land (Tierras Ejidales) Described in the Title of Perquín-Arambala and Torola.
- 14 - Map 6.11 Localization of Crown Land (Tierras Realengas) beyond the Common Land (Tierras Ejidales) described in the Title of Poloros.
- 15 - Map 6.12 Delta of the River Goascorán.

CHAPTER 7

- 16 - Population Density according to the last Census.
- 17 - Curve of the Human Population of El Salvador.
- 18 - Human Settlements included in the non-delimited zones El Salvador-Honduras frontier Tecpanguisir Mountain sector.
- 19 - Human Settlement included in the non-delimited zones El Salvador-Honduras frontier Las Pilas or Cayaguanca sector.

- 20 - Human Settlements included in the non-delimited zones El Salvador-Honduras frontier Arcatao or Zazalapa sector.
- 21 - Human Settlement included in the non-delimited zones El Salvador-Honduras frontier Perquín-Sabanetas or Nahuaterique sector.
- 22 - Human Settlements included in the non-delimited zones, El Salvador-Honduras frontier Monteca or Polorós sector.
- 23 - Human Settlements included in the non-delimited zones El Salvador-Honduras frontier Estuary of the Goascorán.

CHAPTER 10

- 24 - Map of the Gulf of Fonseca with all of its Islands.

CHAPTER 12

- 25 - Municipalities in the Salvadoran Territory in the First Decades of the Colonial Time.



ANNEX CHAPTER 4

Annex 1 Explanation of the Envoy Don Francisco Cruz before the Honduran Congress of 1885, Refuting the Verdict of the Commission to whose Vote was submitted the Boundaries Treaty Between Honduras and El Salvador, signed in San Miguel by the General Lisandro Letona, Commissioned to the Effect by the Government of the Republic of El Salvador, and Mr. Francisco Cruz, by the Government of the Republic of Honduras.

ANNEXES CHAPTER 6

Annex 1 Certificate issued by Mr. Antonio Vallejo, Chief of the General Archives of the Republic of Honduras of the survey of the Mountain of Tecpanquisir, in behalf of the salvadoreñan township of Citalá, of the Province of San Salvador, which covers the zone of Tecpanquisir Mountain, Year of 1776 Pages 2 to 6.

Annex 2 Formal Commons Title Deed of La Palma, which covers the zone of Las Pilas or Cayaguanca, pages 11, reverse and 14 reverse.

Annex 3 Taken from "History of El Salvador: Its Towns, Villages and Cities" of Jorge Lardé y Larín. San Salvador, 1957.

Annex 4 Formal Commons Title Deed of Arcatao, which covers the zone of Zazalapa, pages 7 to 12.

Annex 5 Formal Commons Title Deed of Perquín, Arambala, which covers the zone of Perquín, Sabanetas or Nahuaterique, Year of 1776.

-Visual Inspection, from page 323, reverse to page 324, reverse.

-Act of Resurveying, from page 324 reverse. See page 331, reverse.

Annex 6 Formal Commons Title Deed of Torola, which covers the zone of Perquín, Sabanetas or Nahuaterique. Page 3 and pages 22 to 30.

Annex 7 Formal Commons Title Deed of Polorós, which covers the Zone of Monteca or Polorós. Page 3 to 11.

Annex 8 Formal Title Deed of Two and a Half Caballerías in the Hacienda Los Amates, in behalf of Juan Bautista de Fuentes, Year 1695. Page 11 pages 13 and 14 and pages 1 to 22.

CHAPTER 7

Annex

In the controversial zones of Tecpanguisir, Las Pilas, Zazalapa, Nahuaterique, Monteca, and in the Island of Meanguera in the Gulf have been annexed certified Acts of Birth and Death. -

There have been annexed also:

- a) Certified Property Titles or Certificates of taxes collected upon them.
- b) Sketches where are indicated the properties of salvadoran citizens, asset in the Hypo-- thec and Property Registries of the respective territorial districts.
- c) Sketches where are indicated the high-voltage electric networks destined to the agroindus trial development of the disputed zones.

ANNEXES CHAPTER 11

- Annex 1 General Archives of Central America (GACA),
(Archivo General de Centro América) (AGCA).
Martz A 1.57 (3), file 699, expedient 6053 ,
year of 1766, pages 1 and 9-11.
- Annex 2 General Archives of Central América (GACA),
(Archivo General de Centro América) (AGCA).
Martz A 1.39, year 1769, pages 1 and 8.
- Annex 3 General Archives of Central America) (GACA),
(Archivo General de Centro América) (AGCA).
Martz A 1.40, file 4795, expedient 41454, pag.1
- Annex 4 Gazette of the Government of El Salvador in
Central America. pág. 3, Cojutepeque, thursday
21 of June 1855.
- Annex 5 Gazette of the Government of El Salvador in
Central America.
Cojutepeque, thursday 7th. August 1856
- Annex 6 Official Journal, Volume 7, number 284, 3rd. of
december 1879.
- Annex 7 Official Journal, Volume 34, number 94. 24 of
April 1893.
- Annex 8 Official Journal, volume 36, number 95. 24 of
April 1894.
- Annex 9a Official Journal, volume 76, number 95. 27 of
April 1914.
- Annex 9b Official Journal, volume 76. number 121.
Wednesday 27 May of 1914
- Annex 10 Official Journal, volume 80, number 145.
Thursday 27 June of 1916.
- Annex 11 Gazette of the Government of El Salvador in
Central América.
San Salvador, November 9th. 1849
- Annex 12 Gazette of the Government of Honduras, Tegucigalpa, D.C., 11 February 1966.

ANNEXES CHAPTER 12

- Annex 1 See Cartographic Annexes maps. No.1, The map of Mexico or Nueva España published by Sanson D'abbeville in París, 1656 and a series of ancient maps which were published in 1980 by the Government of Colombia. (White Book, Republic of Colombia).
- Annex 2a Limits between Honduras and Nicaragua, Mediation 1920-1921 Brief of Honduras, pag.42.
- Annex 2b Limits between Guatemala and Honduras, mediation 1918-1919, pag. 71.
- Annex 3 General Archives of Central América (GACA). (Archivo General de Centro América) (AGCA). Martz A 1.23, file 1512, folio 327.
- Annex 4 General Archive of Central América (GACA), (Archivo General de Centro América) (AGCA). Martz A 1.23, file 1512, folio 332.
- Annex 5 Guatemala-Honduras - Special boundary tribunal opinion and award-Washington, D.C. 1933. pag. 17.
- Annex 6 Replication to the Dr. Policarpo Bonilla, Represent of Honduras mediation of limits between Guatemala and Honduras, Vol.I, P. 65 Spanish Edition Publication of the Comission of Limits, Republic of Guatemala No. 13, Vol. I Guatemala, march 1929.
- Annex 7 Mediation of Limits between Guatemala-Honduras p. 165 op cit.
- Annex 8 General Archives of Indies. Audiencias of Guatemala, file 236. (Archivo General de Indias. Audiencias de Guatemala, legado 236.
- Annex 9 General Archive of Central América (GACA) (Archivo General de Centro América) (AGCA) Marz A 1.23, file 1520, folio 85.
- Annex 10 Mediation of limits between Honduras and Guatemala p. 276 op, cit.

Annex 11

General State of the Province of San Salvador, Kingdom of Guatemala (1807) by Don Antonio Gutiérrez Ulloa, Intendant Magistrate of the Province of San Salvador.

ANNEX. CHAPTER 13

Article 84th of the Political Constitution of El Salvador, in vigoE