

Cour internationale
de Justice
LA HAYE

International Court
of Justice
THE HAGUE

YEAR 1991

Public sitting of the Chamber

held on Tuesday 7 May 1991, at 10 a.m., at the Peace Palace,

Judge Sette-Camara, President of the Chamber, presiding

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

VERBATIM RECORD

ANNEE 1991

Audience publique de la Chambre

tenue le mardi 7 mai 1991, à 10 heures, au Palais de la Paix,

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

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

COMPTE RENDU

Present:

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

Présents :

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

 - M. Valencia-Ospina, Greffier
-

The Government of El Salvador is represented by:

Dr. Alfredo Martínez Moreno,
as Agent and Counsel;

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

and

H. E. Dr. José Manuel Pacas Castro, Minister for Foreign Relations,
as Counsel and Advocate.

Lic. Berta Celina Quinteros, Director General of the Boundaries'
Office,
as Counsel;

Assisted by

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

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New York and the District of Columbia,

Mr. Elihu Lauterpacht C.B.E., Q.C., Director of the Research Centre
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College, Cambridge,

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

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

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

as Counsel and Advocates;

and

Dr. Francisco José Chavarría,

Lic. Santiago Elías Castro,

Lic. Solange Langer,

Lic. Ana María de Martínez,

Le Gouvernement d'El Salvador est représenté par :

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S. Exc. M. Roberto Arturo Castrillo, Ambassadeur,
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S. Exc. M. José Manuel Pacas Castro, ministre des affaires
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comme conseil et avocat;

Mme Berta Celina Quinteros, directeur général du Bureau des
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Président de la Cour internationale de Justice; ancien président
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comme conseils et avocats;

ainsi que :

M. Francisco José Chavarría,

M. Santiago Elías Castro,

Mme Solange Langer,

Mme Ana María de Martínez,

Mr. Anthony J. Oakley,

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as Counsellors.

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H.E. Mr. Max Velásquez, Ambassador of Honduras to the United Kingdom,

Mr. Arnulfo Pineda López, Secretary-General of the Sovereignty and
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Mr. Gerardo Martínez Blanco, Director of Documentation, Sovereignty
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M. Anthony J. Oakley,

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Le Gouvernement du Honduras est représenté par :

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M. Derek W. Bowett, professeur de droit international à l'Université de Cambridge, Chaire Whewell,

M. René-Jean Dupuy, professeur au Collège de France,

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M. Arnulfo Pineda López, secrétaire général de la Commission de Souveraineté et de frontières,

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Mrs. Olmeda Rivera,

Mr. Raul Andino,

Mr. Miguel Tosta Appel

Mr. Mario Felipe Martínez,

Mrs. Lourdes Corrales,

as Members of the Sovereignty and Frontier Commission.

M. Richard Meese, conseil juridique, associé du cabinet Frère
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Mme Olmeda Rivera,

M. Raul Andino,

M. Miguel Tosta Appel,

M. Mario Felipe Martínez,

Mme Lourdes Corrales,

comme membres de la Commission de Souveraineté et des frontières.

The PRESIDENT: Please be seated. The sitting is open. We continue our hearings on the third sector of the land frontier which is disputed, that is the sector called Arcatao Sazalapa by one Party and Sazalapa-

La Virtud by the other Party and I give the floor to President Jiménez de Aréchaga.

Dr. JIMENEZ DE ARECHAGA:

ARCATAO

Mr. President, Members of the Court, it is my duty to answer the statement made yesterday by my distinguished adversary, Professor González Campos.

I should say at the outset, that I was struck by what seemed to me a radical change of position in the Honduran approach to this case.

Up to now, counsel for Honduras were the champions of *uti possidetis juris* to the point of ignoring or wishing to delete the second sentence of Article 26 of the 1980 Treaty, and even accusing us of relying exclusively on *effectivités*. Professor González Campos, on the contrary, in his statement, put an emphatic accent on the question of effectiveness in this area.

This signifies, it seems to me, that the 1724 title to the commons of Arcatao causes serious difficulties to our adversaries.

May I reiterate, Mr. President, that the Arcatao title of 1724 constitutes the basic document relied upon by El Salvador as establishing the *uti possidetis juris* of 1821 in this sector.

Admittedly, it does not cover the whole area claimed by El Salvador. It has to be completed with certain data which results from the measurements of San Juan de Lacatao relied upon by Honduras.

Professor González Campos tried to give the impression that there is a great disproportion between the area covered by the title of Arcatao and the area claimed in the final conclusions of El Salvador.

This is not the case. First of all account must be taken of the fact that in this sector El Salvador is not maintaining a claim to tierras realengas, which are only claimed in the Nahuaterique sector.

Secondly, the area to the west of this violet line in the map is not to be taken into account because it is not claimed by Honduras. This zone is not in dispute, it belongs exclusively to El Salvador.

The fundamental question in this sector consists in:

I. The Correct Interpretation of the Formal Title-Deed to the Commons of Arcatao

The written pleadings of Honduras have, in the course of their discussion of this sector, introduced both considerable confusion and an excess of irrelevant detail.

El Salvador, in an attempt to simplify the issues which have to be decided by the Chamber, will concentrate on what it considers to be the fundamental question which has to be considered and decided in relation to this sector, namely the correct interpretation of the Formal Title-Deed to the Commons of Arcatao. I am afraid that this is a very wearisome subject but it is necessary to deal with it.

The lengthy chapters on this sector contained in the written pleadings submitted by Honduras devote very considerable space to precisely this question, thus recognizing the decisive importance of this Formal Title-Deed to Commons. As a matter of fact, Honduras in its Reply (in para. 24 at p. 274) bases the boundary line which it is claiming fairly and squarely on "*le titre salvadorien d'Arcatao de 1724 correctement interprété*".

Three main questions have to be determined in order to reach this correct interpretation of this Formal Title-Deed: first, the line of the boundary between the Manaquila River and the Chupadero de Agua Caliente; secondly, whether or not the judge and the other persons accompanying him crossed the Zazalapa River; thirdly, the line of the boundary running from north to south and, particularly, where that line began. Those are the three subjects I will deal in this interpretation of the Title of Arcatao.

(A) *The line of the boundary between the Manaquila River and the Chupadero de Agua Caliente*

The Parties coincide in their interpretation of the Formal Title-Deed in the segment of the boundary which runs from Jicaro to the Manaquila River (see the Official Hondureñan Map entitled

Sazalapa La Virtud Number 2358 II-III). There is agreement on this sector on both Parties; as you see the two lines red and violet coincide.

But shortly after the Manaquila River, the line of the boundary claimed by Honduras changes direction and adopts a line running from east to west; as you see, here the two lines deviate. This is the Honduran interpretation, this is ours. Now, there is no apparent reason for this change of direction taken by the Honduran line since the Formal Title-Deed clearly states that the measurement was "following the Guayampopo River that comes from south to north, till reaching the Headwaters of Gualmoro River" (CMES, Annexes, Vol. III, p. 7). I will ask the cartographer to indicate the Guayampopo River. The title says that the surveyor took from south to north along this line. There is no explanation for this line by Honduras, no explanation at all. At that point, the measurement was interrupted and, upon being recommenced from the Gualmoro River on the following day, the Formal Title-Deed states that the judge and the other persons accompanying him "went from the south to the north, getting with thirty cords to the Gorge of Colomariguan" (*ibid.*). That is what the Title says. They have ignored the Honduran line - it was left aside.

Since the Formal Title-Deed thus clearly states that the line of the measurement ran from south to north, it is obviously incorrect for the line of the boundary claimed by Honduras to adopt a direction running from east to west.

It is even more difficult to understand how Honduras was able to suppress completely the Guayampopo River, which runs from south to north for approximately 70 cords. In the interpretation of the Formal Title-Deed advanced by Honduras, this river, the Guayampopo, disappears without trace. Honduras neither regards it as constituting the boundary nor proposes any alternative location for it.

This total suppression of the river and, what is more, one of considerable length, ensures that the map presented by Honduras positions all the subsequent boundary markers much further to the south than their real location towards the north.

Thus the official Honduran Map number 2358 II-III, presented in these proceedings by Honduras, proposes alternative locations for the headwaters of the Gualmoro River, the

Colomariguan Gorge and the Chupadero del Agua Caliente. Chupadero del Agua Caliente as placed by El Salvador is here and here as placed by Honduras. All that arises from this deviation - this deviation into Salvadorian territory, because this is Salvadorian territory - is intended to bring to the south the boundary established by the title. That is the purpose of this operation here and this ignoring of the Guayampopo River. Because this is Salvadorian territory it does not cost anything to Honduras to present the line here. It already belongs to El Salvador.

Now, these alternative locations: I do not think it is appropriate to ask the Chamber to descend to the level of detail involved in choosing between the alternative locations of these boundary markers.

The toponomy of the different places mentioned in the Formal Title-Deed may of course well have changed in the course of time; nevertheless, the identification and the location of the various geographical features will easily be able to be carried out by a Commission of Demarcation once the proper instructions therefor have been established. That would undoubtedly produce answers to questions such as the existence or disappearance of the Guayampopo River and the exact direction of the course of the Gualmoro River. Such a Commission would also easily be able to identify and locate the confluence between the Gualquire River and the Zazalapa River.

(B) Whether or not the judge and the other persons accompanying him crossed the Zazalapa River

The Formal Title-Deed states that the judge and the other persons accompanying him arrived at "a little gorge that so far there were eight cords, the which descends to the confluence of the Gualquire and Zazalapa Rivers" (CMES, Annexes, Vol. III, p. 8). Subsequently they continued "following the same course above the Zazalapa [arriba de Zazalapa], bordering the Province of Gracias a Dios" (*ibid.*). I will now ask the cartographer to indicate on the map the entire course of the Zazalapa River from its headwaters to the point of confluence with the Gualquire River. This is the course of the Zazalapa which is relevant now.

From this passage in the Formal Title-Deed I recall, the little gorge descends to the confluence of the Gualquire and Zazalapa Rivers. From this place it can be deduced that the judge and the persons accompanying him did indeed cross the Zazalapa River. Were this not the case, it would be

difficult to understand how they could possibly have reached a little gorge "which descends to the confluence of the Gualquire and the Zazalapa Rivers" (*ibid.*). The Spanish word "baja", translated as "descends", indicates without giving any room for the slightest doubt that at this point the judge and the other persons with him must have been at a place situated to the north of the confluence of these two rivers and thus must have been to the north of the Zazalapa River.

Honduras in its Reply (para. 44, p. 293) observes that the line taken by the measurement was from west to east rather than from north to south. But this is simply not the question in issue. Even if at that particular point the judge and the other persons accompanying him did not actually walk towards the south and so did not themselves descend along the line of the little gorge, that does not alter the fact that the little gorge itself nevertheless did descend to meet the Zazalapa River. And this necessarily means that the judge and the other persons were at this point of the measurement to the north of the Zazalapa River, that is to say above the line of that river.

And this is confirmed by another passage of the Formal Title-Deed, which states that the judge and the other persons accompanying him walked arriba the Zazalapa River, which means that the river had been crossed. The Spanish phrase is "arriba de Zazalapa", which has been translated "above" the river.

According to the Formal Title-Deed, the measurement was then continued "till getting to the top of some very high hills" (CMES, Annexes, Vol. III, p. 8). It follows from this passage that the Commons of Arcatao extended to the north as far as the mountainous area where the source of the Zazalapa River is located, and this mountainous area is in the Cerro del Fraile.

Honduras objects on the grounds that the Formal Title-Deed states that at this point the judge and the other persons accompanying him went from west to east, rather than towards the north. That is the main point of Honduras's objection. The title says that the surveyor went from west to east, not towards the north. But what did the title say? The Formal Title-Deed specifies that the measurement was continued "up waters the Zazalapa" (*ibid.*) and, as may be observed by looking at the map, the Zazalapa River bends slightly towards the north. I would say more than slightly, it bends towards the north. The line of the measurement obviously had to follow the direction of the

river. This is a crucial point since it is entirely on the basis of this unsound objection that Honduras concludes in its Reply (at p. 293) that the Chupadero de Agua Caliente, Sicagüite, and the subsequent boundary markers "ne se trouvent pas au nord mais au sud de la rivière Sazalapa".

(C) The line of the boundary running from north to south and, in particular, where it began

At the most northerly point of the measurement, at the top of some very high hills, a boundary marker was erected there in the form of a cross placed, the title says, next to a tree of guanacaste. In this respect, I must draw the attention of the Chamber to a point which needs to be remembered. It was at this particular marker, the cross was placed next to the tree of guanacaste, where the direction of the measurement changed and began to proceed from north to south. So the tree of guanacaste was located at the same level to the north as the Sazalapa River. This is a crucial point. The same direction, namely from north to south, was maintained at the following marker of Arcataguera. There is Arcataguera - slightly towards the south, from the tree of Guanacaste.

The problem which arises in relation to this segment of the measurement which runs from north to south is that the Parties disagree radically as to the location of the boundary markers identified in the Formal Title-Deed to Commons, which are in the order in which they appear in the march towards the south, the following: Arcataguera, the Lomo del Sapo, Guanpa, the Talpetates Blancos, the Cerro del Caracol, Ocotal, a cerro without a name (Cerro "sin nombre"), and the Portillo del Camino Real. You will notice then that between Arcataguera and Caracol there are three intermediate boundary markers; Lomo del Sapo, Guanpa and Talpetates Blancos. This also is another crucial point to be remembered. It should be emphasized that the Parties are in complete agreement as to the names given to all these boundary markers. That is where our agreement reaches. But they disagree as to the location of those markers on the ground.

Honduras places these boundary markers at a considerable distance to the south and to the west of the location claimed by El Salvador. The contention of El Salvador is that, since the line of the boundary running towards the south began at the boundary marker in the form of a cross placed next to the tree of guanacaste, the boundary markers in question - the successive boundary markers - must be located to the north and to the east of where Honduras places them. This is for the

following reason: given that this segment of the measurement runs from north to south, the first four boundary markers mentioned above, namely Arcataguera, Lomo del Sapo, Guanpa and Talpetates Blancos, must obviously be situated to the north of the fifth boundary marker mentioned, which is the Cerro del Caracol, whose location, as will be shown in due course, is in fact clearly established. This is a crucial point on which there cannot be disagreement and which determines the position of the other boundary markers.

As a consequence of this disagreement as to the location of the markers the Map presented in these proceedings by Honduras, which was examined yesterday, offers to the Chamber a choice of locations for all these boundary markers. I will indicate the different locations.

Honduras also introduces a completely new boundary marker, which it calls Guanacaste, contending that such an alleged boundary marker formed part of the line of the boundary running from north to south. Honduras contends that this is the place referred to in the Formal Title-Deed as the boundary marker placed next to the tree of guanacaste (RH, p. 323). Here is where Honduras locates *their* Guanacaste, while the title says that it was *here*. You should remember, it was placed at the same level up north as the Sazalapa. Not only do they invent a boundary marker which is not in the title, but they place it here, so the tree of guanacaste descended on this way, according to Honduras. I cannot understand how they locate it there. So, Honduras introduces this completely new boundary marker, which is called Guanacaste and contends that such an alleged boundary marker formed part of the line of the boundary running from north to south. Honduras contends that this is the place referred to in the Formal Title-Deed as the boundary marker placed next to the tree of guanacaste.

The interpretation adopted by Honduras in respect of this whole section of the Formal Title-Deed to Commons is entirely built around this identification between an alleged new boundary marker of Guanacaste and the earlier reference in the Formal Title-Deed to a boundary marker placed next to a tree of guanacaste.

However, a simple observation will suffice to demonstrate the error of Honduras in identifying the boundary marker characterized by the presence of a tree of guanacaste with the place where

Honduras locates what it claims to be the boundary marker of Guanacaste (Map No. 2458 II-III).

The Formal Title-Deed establishes that the boundary marker placed next to the tree of guanacaste was erected "following the same course", that is to say "from west to east above the Zazalapa" and naturally following its course which bends slightly towards the north (CMES, Annexes, Vol. III, at p. 8).

Thus the Formal Title-Deed clearly establishes that the tree of guanacaste cannot be to the south of the Sazalapa River. Yet, Honduras places what it claims to be the boundary marker of Guanacaste 3 kilometres to the south of the Sazalapa River. This demonstrates that a supposed boundary marker of Guanacaste cannot possibly be located in the position alleged by Honduras, which is of course where Honduras would like it to be.

The erroneous location given by Honduras to the boundary marker placed next to a tree of guanacaste affects the whole interpretation of this section of the Formal Title-Deed adopted by Honduras by projecting this section towards the south and the west. This same error also leads Honduras arbitrarily to identify the boundary marker placed next to the tree of guanacaste with other places such as El Platanar or La Cañada which do not appear at all in the detailed description contained in the Formal Title-Deed to the Commons of Arcatao (RH, p. 298).

In order to support this arbitrary location and identification, Honduras has produced a multitude of title-deeds conferring private proprietary rights, such as those of San Juan Lacatao, Gualcimaca, Colopele, Zazalapa, and so forth, in an attempt to displace or avoid the boundary markers set out in the Formal Title-Deed to the Commons of Arcatao.

However, the identification and location of boundary markers which then define the territorial rights of the States Parties to this litigation cannot be based on this sort of incomprehensible puzzle which attempts to combine various title-deeds conferring private proprietary rights, which were issued at different times, to completely different persons, without the Indian community of Arcatao being summoned to defend their rights, and many of which lacked the necessary approval of the "Real Audencia" of Guatemala.

According to the Spanish law of the colonial period, these title-deeds conferring private

proprietary rights can neither affect nor detract from the Commons granted to the Indian communities by means of Formal Title-Deeds.

The protection of these Commons of the Indian communities against attempts by Spanish or other settlers from Europe to usurp them is one of the leitmotifs of the "Derecho Indiano".

For instance, the title-deed conferring private rights over the land of Gualcimaca is also relied on by Honduras as the most important document (RH, p. 331). Yesterday, we heard a lot about Gualcimaca. This is relied on by Honduras as the most important document in order to attempt a penetration into the Commons of Arcatao. This attempt is made on the basis of the directions taken by the measurements to the east, to the west, to the south, to the north, which are recorded in this alleged title-deed of Gualcimaca. However, Honduras does not appear to have realized that the title-deed of Gualcimaca was rejected by the "Real Audiencia" of Guatemala - not only not approved but rejected by the "Real Audiencia" of Guatemala, and therefore never approved by that supreme judicial authority (MH, Annexes, p. 1943). What is more, the actual reason for this rejection, as set out in the Annexes to the Memorial of Honduras at page 1941, was that "les directions n'étaient pas conformes et que le sous-délégué avait fait une erreur importante, au moment d'indiquer les directions en faisant une confusion". So there is no title-deed of Gualcimaca: Gualcimaca is only a population which has no "ejido". That is conclusive as to Gualcimaca.

Another title they invoked is the title of *San Juan de Chapulin*, which of course has nothing to do with this area. It was issued at the request of a private person, Norberto Serrano, and is clearly a "titre de composition". However, this private title was extended without summoning any representative from Arcatao or from the neighbouring parts of El Salvador - because this is Salvadorian land. To the south of the land claimed by Honduras there is no dispute: this is Salvadorian. No representatives from Arcatao or from San Salvador were summoned.

Professor González Campos observes that this area was not "limítrofe" with Arcatao. I agree, but since it was not "limítrofe" with Arcatao, by definition it is irrelevant for any interpretation of the title of Arcatao.

The title of *Concepción de las Cuevas* of 1741 was an *ejido de composición* - a piece of land

bought by a private petitioner, José López. These lands were "limítrofe" to Salvadorian lands. However, no one from these Salvadorian lands was summoned for this measurement.

The title of *San Francisco de Sazalapa*, issued at the request of Ramón Perdomo, is again land bought by composition which cannot affect or detract from "tierras ejidales" according to "Derecho Indiano". That is why it has less probative force than the Arcatao title, which is a title to an "ejido de reducción" which is protected against invasion or usurpation by Spanish colonizers under Spanish Indian law.

Professor González Campos questioned that the title of Arcatao was that of an "ejido de reducción" and contended that it was an "ejido de composición". However, this title reads, in the words of the "Juez privativo", when approving it - I will read first in Spanish, then in English:

"mediante la adjudicación que les hago de 16 caballerías para ejidos y el remate celebrado a favor de dicho pueblo de las seis caballerías restante ... todos sean para el referido pueblo de los indios de que actualmente y en adelante se compusiera" (p. 38 of the Title).

In English:

"through the adjudgement I make them (the Indians) of 16 caballerías for their use as commons and the auction performed for the remaining six caballerías ... they are all awarded to the above referred Indian community as it is constituted now and as it will be constituted in the future" (p. 12).

By these phrases the six additional caballerías were incorporated into the "ejido" and became subject to the same legal régime of "títulos ejidales": in other words, they became inalienable and had to be exploited in common. So it is clearly a "título ejidal" of "reducción".

Professor González Campos said we invented this distinction. It results from Spanish law and is based on the opinions - on the coincident opinions - of Professors Nieto García and López Rodó. Coming back to the title of Sazalapa, we agree that part of the Sazalapa River is a boundary between the "ejido de reducción" of Arcatao and the "ejido de composición" of Sazalapa, so the ecclesiastical document we received yesterday was unnecessary if it wanted to prove that point.

As to the alleged title of *Colopele* of 1779, it is true it was requested by an Indian community, but this document was never issued, and consequently it does not fulfil the requirements of Article 26 of the 1980 Treaty.

At page 1912 of the Honduran Annexes to the Memorial, it is stated: "les terres correspondant aux actes d'arpentage de l'endroit appelé Colopele n'étant pas adjudgées en faveur des habitants de Guarita ...". The next page explains why this title was not issued: "parce que ces Indiens ne possédaient pas ces terres ... parce qu'ils n'ont pas payé au Trésor et pour qu'ils puissent avoir un titre ils doivent payer". In other words, those of Guarita were unable to pay the composition they had asked for so the title was not issued. On page 1918 it is said that those Indians, "ayant renoncé aux droits qu'ils avaient sur cette propriété". So the lands were sold to private parties in 1842, so the alleged title of Colopele is a Republican title, not one appropriate for defining the 1821 *uti possidetis juris*. It would therefore not be legitimate for the boundaries and boundary markers clearly established in considerable detail by the Formal Title-Deed to the Commons of Arcatao to be corrected or to be altered on the strength of a sort of mosaic - the word used yesterday by Professor González Campos: I would say "cocktail" of quotations drawn from the numerous title-deeds conferring private proprietary rights invoked by Honduras, some of which were issued after independence, others were never issued, others were issued after the end of the Central American Federation.

There is a much more simple and much more equitable method of solving the disagreements of the Parties in respect of the location and identification of the boundary markers enumerated in the Formal Title-Deed to the Commons of Arcatao.

Once the basic legal concepts have been established by the Chamber, the Commission of Demarcation anticipated in the Special Agreement would have no difficulty in identifying and locating on the ground the various boundary markers enumerated in this Formal Title-Deed to Commons.

It is of course true that the toponymy, the names of the places where the boundary markers were established, may have changed in the intervening 267 years.

There are, however, certain boundary markers where the Formal Title-Deed contains sufficient detail to permit their identification even today; examples are the exact location of the Zazalapa River and of the Cerro Caracol.

The exact location of the Cerro Caracol is important because this boundary marker was recognized both by the Indian community of Arcatao and by the Perdomo family, the owners of the land of Suan Juan de Lacatao, as a common boundary of their lands (MH, Annexes, pp. 1988-1991).

According to all the references thereto in the Formal Title-Deed to the Commons of Arcatao, the boundary marker at the Cerro Caracol appears, in the line of the boundary running from north to south, and it appears to the south of the boundary marker of Arcataguera, Lomo del Sapo, Guanpa, and Talpetates Blancos. So the exact location of the Cerro Caracol will allow us to give the exact location of remaining boundary markers.

Yet the Reply of Honduras places the Cerro Caracol to the north of Arcataguera, stating, on the basis of the documents which Honduras presents, that the boundary should proceed "*de la borne de Guanacaste ou El Platanar, en direction sud, par la crête de la montagne nommée El Caracol, jusqu'à un mont, point où se trouve un 'col' dit Arcataguera*" (RH, para. 4, p. 349). So Cerro Caracol will be above Arcataguera.

Now, you see what was the predicament of Honduras. They wanted to project the markers to the south thus annexing more Salvadorian land. But they encountered the difficulty that there was in Honduran territory a real Cerro Caracol to the north of where they wanted it to be. That was the obstacle for the projection to the south because according to this map which is the real official map of Honduras, Cerro Caracol is located there.

Now, the solution dredged up by Honduras in order to solve this predicament was to invent a second Cerro Caracol, both in the text of the Reply (para. 5, p. 349) and on the official Honduran Map entitled (Zazalapa-La Virtud Number 2458 II-III) which was presented yesterday; here we have two Cerros Caracol. I will ask the cartographer to indicate the two Cerros Caracol according to this map. There is a Cerro Caracol here and there is a Cerro Caracol here.

The two "cerros" with the identical name are postulated to be subsequent boundary markers separated by a distance of more than four kilometres. It is self-evident that such a duplication in toponomy cannot possibly occur in documents which are intended to identify boundary markers for

the purposes of a delimitation. The confusion engendered by Honduras results in the boundary markers being projected four kilometres to the south of their real location.

I will ask the cartographer again to show the location of the two Cerros Caracol. Now, I will ask you, which is the real one?

We cannot accept this duplication postulated by Honduras; what we may call, adapting a phrase of Professor Scelle, "*le déboulement fonctionnel du Cerro Caracol*".

So, the question before us is to determine which of the two hills is the real Cerro Caracol, in English Snail Hill, in French "colline de l'escargot". Which is the real Cerro Caracol; which is the imaginary one?

In order to solve this question let us go to the Honduran Map 2458 and I will ask our cartographer to show it, Caracol - it appears there. He has already shown it but he will reiterate.

Well, I will ask the cartographer: Is there a second Cerro Caracol in the official Honduran Map? He tells me no: there is no other Cerro Caracol on the official Honduran Map. There is a single Cerro Caracol.

Now I will ask him: To which of the two Cerros Caracol in the small Map corresponds the one in the large official Map?

"Cuál de los dos es el de aquél? El de arriba?"

So the real Cerro Caracol according to Honduras is this, not this. This is the real Cerro Caracol according to the official Map.

How many kilometres to the north is the real Cerro Caracol separated from the imaginary one? Four kilometres.

Now in this other Map, to which geographical accident corresponds the imaginary Cerro Caracol? To a place called Loma Redonda.

With your permission Mr. President, I will make a rather frivolous observation to our adversaries.

If one makes such a confusion between Cerro Caracol (Snail Hill or Escargot Mountain) on one side, and Loma Redonda on the other side, we might be liable to get "escargot" when ordering

Round Steak in a French restaurant.

II. The Gualcuquin River as part of the Boundary

The River Gualcuquin, this is the point where the River ends, this is the River Gualcuquin. Now, in the final section of the boundary line in this sector, immediately prior to the Poza del Cajón, which is the agreed final boundary marker of this disputed sector, El Salvador affirms that the traditionally established frontier is the Gualcuquin River and that this is the established frontier not only between the properties of San Juan de Lacatao and Nombre de Jesús but also between the former Colonial Provinces of San Salvador and Gracias a Dios.

Honduras, on the other hand, denies completely that the Gualcuquin River forms part of the boundary and instead claims a boundary line to the west of the Gualcuquin River which, in the event that this boundary line were accepted, would thus become an integral part - this is the line claimed by Honduras, this is the Gualcuquin River - of the territory of Honduras.

Since the Title-Deed of the Commons of Nombre de Jesús was destroyed in a fire, El Salvador was, in the earlier stages of these proceedings, in some difficulty in presenting evidence to support its contention that the Gualcuquin River was indeed the boundary and in thus rounding off the whole of its territorial claims in this sector.

However, Honduras subsequently submitted to the Court as one of the Annexes to its Counter-Memorial (p. 151) a document which reproduces a part (pp. 1996-1998) of one of the Annexes to the Memorial which was originally omitted: *"et ensuite reproduit la suite du texte qui avait été omise"* (CMH, Annexes, p. 151). That was the completion of the title which had been submitted in the Memorial.

Now that this omission has been corrected, this Annex to the Counter-Memorial contains documents *"relatifs au réarpentage des terrains de San Juan de Lacatao in 1786"* (*ibid.*).

This remeasurement is not a Formal Title-Deed to Commons but it contains enough facts and circumstantial evidence to demonstrate that the Gualcuquin River was the traditional frontier between the Spanish Colonial Provinces and the private properties of Lacatao and Nombre de Jesús, at least for a large part of its course.

There were three measurements of San Juan de Lacatao. In 1662 a measurement was conducted and its provincial limit separating Gracias a Dios from San Salvador was established in the River Gualguis. That was the first measurement. This was allowed in this measurement of 1662 as the provincial limit between Gracias a Dios and San Salvador (MH, Annexes, p. 1967).

In 1766 there was another measurement, and there the limit arrived at was the Gualcuquin. So there was an increase - and by the way this shows that provincial limits are not sacrosanct, because this new measurement went beyond the original provincial limits and reached the Gualcuquin.

Finally, in 1786 there was another expansion of San Juan de Lacatao at the request of Perdomo.

There was objection and resistance from the part of the owner of Nombre de Jesús, a priest named Amaya.

Now, what was the dispute? Not the question whether or not there was a fluvial boundary. There was a fluvial boundary, on that there was agreement. There was also agreement as to the fact that the Gualcuquin River was part of the boundary, at least in a segment of the river.

The issue was whether or not, after going upwater of the Gualcuquin, it was necessary, as Perdomo contended, to deviate at the junction of the Gualcuquin with the rivulet named Tuquin or Palo Verde. That was the issue which remained pending, was not settled.

Honduras takes the *second alternative*, that the boundary should deviate, in its oral statement yesterday, at the Tuquin or Palo Verde. Honduras says that, but does not comply with it.

If you look at the green line claimed by Honduras, you will notice, Mr. President, Members of the Chamber, that neither the Gualcuquin nor the Palo Verde gorge are followed by Honduras. The boundary claimed by Honduras is proposed to be established on dry land, not on a river or even in a gorge. So, Honduras did not apply its own interpretation of the title, its own contention.

This is one of the facts of the case to which our adversary has professed to attach great importance, yet it is ignored in actual practice.

Thank you, Mr. President. With this I finish my statement.

The PRESIDENT: I thank you, President Jiménez de Aréchaga. I understand that President Aréchaga has concluded his presentation.

Dr. JIMENEZ DE ARECHAGA: As to Arcatao, yes.

The PRESIDENT: So I would like to enquire from the delegation of Honduras if they intend to present their reply on this at 10 o'clock tomorrow morning.

H.E. Mr. VALLADARES SOTO: If the President prefers we can present our reply tomorrow morning.

The PRESIDENT: So the sitting is adjourned until tomorrow at 10 o'clock.

The Chamber rose at 11.55 a.m.
