

Cour internationale
de Justice
LA HAYE

International Court
of Justice
THE HAGUE

YEAR 1991

Public sitting of the Chamber

held on Thursday 23 May 1991, at 3 p.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 jeudi 23 mai 1991, à 15 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

Présent :

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

 - M. Valencia-Ospina, Greffier
-

The Government of El Salvador is represented by:

Dr. Alfredo Martínez Moreno,
as Agent and Counsel;

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

and

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

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

Assisted by

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

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

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

S. Exc. M. Alfredo Martínez Moreno
comme agent et conseil;

S. Exc. M. Roberto Arturo Castrillo, Ambassadeur,
comme coagent;

S. Exc. M. José Manuel Pacas Castro, ministre des affaires
étrangères,

comme conseil et avocat;

Mme Berta Celina Quinteros, directeur général du Bureau des
frontières,

comme conseil;

assistés de :

M. Eduardo Jiménez de Aréchaga, professeur de droit international
public à l'Université de l'Uruguay, ancien juge et ancien
Président de la Cour internationale de Justice; ancien président
et ancien membre de la Commission du droit international,

M. Keith Highet, professeur adjoint de droit international à la
Fletcher School de droit et diplomatie et membre des barreaux de
New York et du District de Columbia,

M. Elihu Lauterpacht, C.B.E., Q.C., directeur du centre de recherche
en droit international, Université de Cambridge, *Fellow* de Trinity
College, Cambridge,

M. Prosper Weil, professeur émérite à l'Université de droit,
d'économie et de sciences sociales de Paris,

M. Francisco Roberto Lima, professeur de droit constitutionnel et
administratif; ancien vice-président de la République et ancien
ambassadeur aux Etats-Unis d'Amérique,

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

comme conseils et avocats;

ainsi que :

M. Francisco José Chavarría,

M. Santiago Elías Castro,

Mme Solange Langer,

Mme Ana María de Martínez,

Mr. Anthony J. Oakley,
Lic. Ana Elizabeth Villata,

as Counsellors.

The Government of Honduras is represented by:

H.E. Mr. R. Valladares Soto, Ambassador of Honduras to the
Netherlands,

as Agent;

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

as Co-Agent;

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

Mr. Derek W. Bowett, Whewell Professor of International Law,
University of Cambridge,

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

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

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

Mr. Luis Ignacio Sánchez Rodríguez, Professor of International Law,
Universidad Complutense de Madrid,

Mr. Alejandro Nieto, Professor of Public Law, Universidad
Complutense de Madrid,

Mr. Paul De Visscher, Professor Emeritus at the *Université de
Louvain,*

as Advocates and Counsel;

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

Mr. Arnulfo Pineda López, Secretary-General of the Sovereignty and
Frontier Commission,

Mr. Arias de Saavedra y Muguelar, Minister, Embassy of Honduras to
the Netherlands,

Mr. Gerardo Martínez Blanco, Director of Documentation, Sovereignty
and Frontier Commission,

Mrs. Salomé Castellanos, Minister-Counsellor, Embassy of Honduras to
the Netherlands,

M. Anthony J. Oakley,

Mme Ana Elizabeth Villata,

comme conseillers.

Le Gouvernement du Honduras est représenté par :

S. Exc. M. R. Valladares Soto, ambassadeur du Honduras à La Haye,

comme agent;

S. Exc. M. Pedro Pineda Madrid, président de la Commission de
Souveraineté et des frontières,

comme coagent;

M. Daniel Bardonnnet, professeur à l'Université de droit, d'économie
et de sciences sociales de Paris,

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

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

M. Pierre-Marie Dupuy, professeur à l'Université de droit,
d'économie et de sciences sociales de Paris,

M. Julio González Campos, professeur de droit international à
l'Université autonome de Madrid,

M. Luis Ignacio Sánchez Rodríguez, professeur de droit international
à l'Université Complutense de Madrid,

M. Alejandro Nieto, professeur de droit public à l'Université
Complutense de Madrid,

M. Paul de Visscher, professeur émérite à l'Université catholique de
Louvain,

comme avocats-conseils;

S. Exc. M. Max Velásquez, ambassadeur du Honduras à Londres,

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

M. Arias de Saavedra y Muguelar, ministre de l'ambassade du Honduras
à La Haye,

M. Gerardo Martínez Blanco, directeur de documentation de la
Commission de Souveraineté et de frontières,

Mme Salomé Castellanos, ministre-conseiller de l'ambassade du
Honduras à La Haye,

Mr. Richard Meese, Legal Advisor, Partner in Frère Cholmeley, Paris,

as Counsel;

Mr. Guillermo Bustillo Lacayo,

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
Cholmeley, Paris,

comme conseils;

M. Guillermo Bustillo Lacayo,

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: The sitting is open. We continue our hearings on the sixth and last sector of the disputed land frontier. I give the floor to Ambassador Martínez Moreno.

Mr. MARTINEZ MORENO: Thank you Mr. President.

THE ESTUARY OF THE GOASCORAN RIVER

Mr. President, distinguished Members of the Chamber, I now have the honour to appear before you again to present the oral rejoinder of El Salvador in respect of the sixth and last disputed sector of the land frontier, that of the Estuary of the Goascorán River.

In this oral rejoinder, Mr. President, El Salvador will be dealing with the contents of both the opening statement of Honduras, made in the session held on 21 May last, and the reply of Honduras made yesterday afternoon. It was not of course possible for El Salvador to make any comments on the opening statement of Honduras in my previous statement, for the simple reason that there was, according to the Verbatim Record, an interval of only ten minutes between the two opening statements (C 4/CR 91/27, at p. 48). For this reason my distinguished opponent, Professor Bardonnnet, was perhaps a little unfair in his reply yesterday afternoon when he commented adversely on my failure to respond in my opening statement to the arguments of Honduras expounded in his own opening statement. I obviously do not know, Mr. President, whether he will be any more satisfied with the contents of this oral rejoinder, but I do want to reassure him that I will conclude by making a general statement of the basis of the claims of El Salvador in this disputed sector.

In this oral rejoinder, Mr. President, I propose to deal with the different matters which require discussion in the same basic order as that which I employed in my opening statement. I will therefore commence by making some observations on what the reply of Honduras yesterday afternoon had to say about the comments in my first statement on the application in this sector of the principle of *uti possidetis juris*.

I wish to start my consideration of this question, Mr. President, by observing that in its opening statement Honduras, in the words of Professor Bardonnnet "fonde sa thèse ... sur le principe

de *l'uti possidetis juris*" (C 4/CR 91/27, p. 26). Professor Bardonnnet then went on to say that Honduras had in its written pleadings presented the necessary proof, by means of the appropriate Spanish colonial documents, that the Goascorán River constituted the boundary of the jurisdictions of the colonial province of San Miguel and the "Alcaldía Mayor" of Tegucigalpa. El Salvador is totally in agreement with Honduras on this point; that is to say, Mr. President, that the Goascorán River constituted the boundary of the jurisdictions of the colonial province of San Miguel and the "Alcaldía Mayor" of Tegucigalpa. What El Salvador does not accept is that this gives Honduras any rights over the former territory of the "Alcaldía Mayor" of Tegucigalpa under the principle of *uti possidetis juris*. This is simply because, as I said in my opening statement, at the date of the independence of Central America, the "Alcaldía Mayor" of Tegucigalpa did not belong to the Province of Honduras. None of the documents presented by Honduras (Professor Bardonnnet mentioned documents of the civil and ecclesiastical colonial administration and title-deeds to land) gives Honduras any rights whatsoever over the former territory of the "Alcaldía Mayor" of Tegucigalpa. Nor, for that matter, do these documents establish the subsequent proposition made by Professor Bardonnnet in his opening statement, namely that the boundary between the jurisdictions of the colonial province of San Miguel and the "Alcaldía Mayor" of Tegucigalpa was the present course of the Goascorán River. I will return to this last question later on. For the moment, Mr. President, I will continue to concentrate my attention on the application to this sector of the principle of *uti possidetis juris*.

I showed in my first statement, Mr. President, that prior to 1791 the "Alcaldía Mayor" of Tegucigalpa was part of the colonial province of Guatemala. Professor Bardonnnet did not mention this question at all in his reply yesterday afternoon, so it seems reasonable to assume that on this point at least the two Parties are in agreement. Both the Parties are also in agreement that in 1791 the "Alcaldía Mayor" of Tegucigalpa was, by virtue of a "Real Cédula" of that year, annexed to the Intendency of Comayagua and thus became part of the Province of Honduras (I stated this in my opening statement, and Professor Bardonnnet stated this in his reply yesterday afternoon). Honduras thus exercised administrative jurisdiction over the "Alcaldía Mayor" of Tegucigalpa as from 1791.

The disagreement between the two Parties is, Mr. President, as to the effect of the "Real Cédula" of 1818, to which I made extensive reference in my opening statement (C 4/CR 91/27, pp. 55-57). In this "Real Cédula" the King of Spain ordered that the "Alcaldía Mayor" of Tegucigalpa should be separated from the Intendency of Comayagua and should become independent, subject to the jurisdiction of the Presiding Governor of Guatemala. El Salvador contends that the situation created by that "Real Cédula" of 1818 was the situation in which the "Alcaldía Mayor" of Tegucigalpa remained, that is to say, separated from Honduras, from 1818 until the critical date of 1821. Honduras, on the other hand, relies on a passage in the Award of the King of Spain of 1906, in the Arbitration between Honduras and Nicaragua cited by Professor Bardonnnet in his reply yesterday afternoon; it should immediately be noted, Mr. President, that this award was issued the best part of a century after the independence of Central America.

At the risk of unnecessary repetition, Mr. President, I would like to emphasize that El Salvador has presented to the Chamber a "Real Cédula" promulgated by the King of Spain in 1818 by means of which the "Alcaldía Mayor" of Tegucigalpa was separated from the Intendency of Comayagua, that is to say, the Province of Honduras, to which it had been aggregated by virtue of the earlier "Real Cédula" of 1791. Honduras, in its reply yesterday afternoon, seems to have abandoned the position which it has sustained and reiterated so many times in its written pleadings, namely that it is the boundaries of provinces which have to be taken into account for the purposes of the establishment of the *uti possidetis juris* of 1821 and that these boundaries can only be changed by "Reales Cédulas". It seems appropriate to recall what Honduras has stated in this respect in its Reply - and I am going to beg the indulgence of the Court for I am going to read French quotations, and as you all know my French is very bad; but I want to be as faithful as possible to Professor Bardonnnet's quotations - that "*les documents antérieurs à 1821 n'indiquent pas les limites de provinces de façon 'générale' ou 'ambiguë', mais de façon concrète et claire*" (RH, Vol. I, p. 79, original emphasis). Honduras also added that these documents "*se référant à une zone géographique concrète située précisément d'un côté ou de l'autre des anciennes limites administratives*" (*ibid.*, original emphasis).

The "Real Cédula" of 1818 relied on by El Salvador not only separated in a precise and clear manner the "Alcaldía Mayor" of Tegucigalpa from the Intendency of Comayagua but was also fully respected by the Governor Intendent of Comayagua, who complied with all the provisions contained therein.

Consequently, this "Real Cédula" removed from the boundaries and the jurisdiction of the Province of Honduras not only a precise geographical area but also the administrative control over the "Alcaldía Mayor" of Tegucigalpa, which returned to the Presiding Governor of the Province of Guatemala. Honduras, Mr. President, is nevertheless attempting to establish the continued attribution of the "Alcaldía Mayor" of Tegucigalpa to the Province of Honduras; an "Alcaldía Mayor" is not a reduced physical area such as that enclosed within the boundaries of an "ejido" but a complete administrative area clearly established by Spanish colonial legislation. Yet the only evidence which Honduras offers in support of its contention is an award issued the best part of a century after the independence of Central America.

It would be extremely helpful to me, Mr. President, and I imagine that it might also be helpful to you and to the other distinguished Members of the Chamber if Honduras would explain exactly how the colonial provincial boundaries came to be modified in favour of Honduras in the case of the "Alcaldía Mayor" of Tegucigalpa, given that the "Real Cédula" of 1818 reincorporated this "Alcaldía Mayor" into the Province of Guatemala and given that Honduras has affirmed in its Counter-Memorial (at p. 152) that:

"la modification du tracé des limites interprovinciales relevait de la seule compétence de la Couronne espagnole, c'est-à-dire du pouvoir central, à l'exclusion des autorités provinciales locales"

and added

"la modification du tracé des limites interprovinciales impliquait l'adoption d'une 'Real Cédula'".

According to its current attitude, Honduras, in the disputed sectors of Tepanguisir, Las Pilas, Zazalapa, Nahuaterique and Poloros, should have accepted the Formal Title-Deeds to Commons presented by El Salvador, Formal Title-Deeds adjudicated by the "Real Audiencia" of Guatemala,

Formal Title-Deeds which adjudicated to indigenous communities "ejidos de reducción", over which administrative control has been exercised from the colonial period until the present day by Salvadorian authorities. Why did Honduras instead affirm the position which it has traditionally adopted in these proceedings, namely that provincial limits could not be modified in this way?

It is also interesting to mention the position adopted by Honduras in relation to the references made by El Salvador in its written pleadings to the Judgment of the Tribunal of Arbitration presided by Chief Justice Hughes. Honduras stated in its Reply (at p. 32) that

"Il n'est pas inutile de rappeler que la sentence du 23 janvier 1933, prononcée dans un *différend qui opposait le Guatemala au Honduras* ne revêt pas l'autorité de la chose jugée dans le présent litige qui oppose El Salvador au Honduras." (Original emphasis.)

Consequently, Honduras, having based itself on a position that provincial boundaries are what determine territorial limits and that provincial boundaries are in their turn determined by "Reales Cédulas", has not presented any "Real Cédula" subsequent to the "Real Cédula" of 1818 which is being relied on by El Salvador and consequently has not presented anything which satisfactorily proves, according to its own criteria, that the "Alcaldía Mayor" of Tegucigalpa still formed part of the Province of Honduras.

In the light of all these inconsistencies in the arguments adopted by Honduras El Salvador has no hesitation in reaffirming its position that the "Real Cédula" of 1818 separated the "Alcaldía Mayor" of Tegucigalpa from the Intendency of Comayagua and returned it to the Province of Guatemala and that this was the situation in which the "Alcaldía Mayor" of Tegucigalpa remained, that is to say, separated from Honduras, from 1818 until the critical date of 1821.

Of course, it will already be apparent both to you, Mr. President, and to the other distinguished Members of the Chamber, that this disagreement between the Parties as to the effect of the "Real Cédula" of 1818 has no relevance whatever to the disputed sector at present under discussion if the dividing line between the jurisdictions of the colonial Province of San Miguel and the "Alcaldía Mayor" of Tegucigalpa was, as El Salvador contends, the old course of the Goascorán River whose mouth is in the de La Cutú Estuary. This is for the somewhat obvious reason that, if it

was that branch of the Goascorán River which formed the dividing line, the disputed sector at present under discussion was entirely within the jurisdiction of San Miguel and it is therefore completely irrelevant to which Province the "Alcaldía Mayor" of Tegucigalpa belonged in 1821. It is only if, as Honduras contends, the dividing line between the jurisdictions of the colonial Province of San Miguel and the "Alcaldía Mayor" of Tegucigalpa was some branch of the Goascorán River other than that which has its mouth in the de La Cutú Estuary that it becomes relevant for the purposes of the sector at present under discussion to decide to which Province the "Alcaldía Mayor" of Tegucigalpa belonged in 1821. Consequently, I will now turn my attention, Mr. President, to the question of which of the various mouths of the Goascorán River constituted the dividing line between the jurisdictions of the colonial Province of San Miguel and the "Alcaldía Mayor" of Tegucigalpa.

In the final part of my opening statement (C 4/CR 91/27 at pp. 65-70), I expounded the position of El Salvador, namely that, where the course of a river which constitutes an international or provincial boundary changes as a result of what is known as avulsio or avulsion, the boundary in question remains the middle of the abandoned course of the river. In support of this conclusion, El Salvador relies on Principles of Roman Law which have been incorporated into Spanish colonial legislation, the Code Napoléon, and the laws of the United Kingdom, the United States of America and the majority of the Latin American States, as documented in the Pleadings of Mexico in the *Arbitration of El Chamizal* of 1911 where, as I showed in my opening statement, this rule was actually applied.

In his opening statement in the session held on May 21 last (C 4/CR 91/27 at p. 33), Professor Bardonnet commented on the *Arbitration of El Chamizal* and the application there of the rule on which El Salvador is relying, namely that violent and sudden changes in the course of a boundary river do not produce any change in the boundary in question. In this respect, Professor Bardonnet stated (*ibid.*) that

"c'est là une question extrêmement controversée dans la doctrine comme dans la pratique des Etats. Le moins qu'on puisse dire ... c'est que 'cette solution n'a guère valeur de règle coutumière'".

In support of this proposition, he cited the Judgment of the Tribunal of Arbitration presided by Chief Justice Hughes, a judgment on which, as Professor Bardonnet himself stated, El Salvador has placed considerable emphasis in the course of these proceedings. Professor Bardonnet stated that "In the interest of a definite and satisfactory settlement to secure a lasting peace between the Republics" (RES, Vol. II, p. 1362), the Tribunal has provided that a river boundary established by the judgment should not alter "in the event of changes in those streams in the course of time, whether due to accretion, erosion or avulsion" (*ibid.*). Professor Bardonnet did not of course suggest that this decision reached by the Tribunal of Arbitration presided by Chief Justice Hughes was of any general application. This becomes even more apparent when the very special powers given to this particular Tribunal of Arbitration are taken into account. According to the Special Agreement in that case, the Parties agreed "that the only juridical line which can be established between their respective countries is that of the *uti possidetis juris* of 1821". However, the Tribunal was authorized to modify this line "if it finds that one or both Parties have established, beyond that line, interests which should be taken into account in establishing the definitive boundary". It is evident from the context of the passage from the judgment cited by Professor Bardonnet that the fixing of the river boundary in question constituted an exercise of these special powers. Consequently, there is no conceivable way in which this particular part of the decision of the Tribunal can have created any rule of general application or indeed have any effect whatsoever save in the case of a special agreement of similar characteristics.

In his reply yesterday afternoon, Professor Bardonnet returned to the subject of the Arbitration of Chamizal and attempted to argue, for the first time, that the adjudication of the land in question to Mexico had a "base conventionelle". Whether or not this was in fact the case, Mr. President, the power of this Chamber to reach a decision based on the general principles of law utilized by the Tribunal who decided the *Arbitration of Chamizal* or indeed any other established principle of public international law cannot be doubted.

I would also like to observe that Professor Bardonnet drew the attention of the Chamber to the fact that the Treaty between Guatemala and El Salvador concerning the Paz River expressly

provided that no change in the course of the river should alter the frontier. However, El Salvador did not refer to the Paz River for any other purpose than to illustrate the "Law of Babinet or of Baer". This is extremely clear from the passage in my opening statement to be found on page 67 of the Verbatim Record (C 4/CR 91/27, p. 67). The return by El Salvador to Guatemala of the land occupied by citizens of El Salvador does nevertheless show that El Salvador is in the habit of honouring its treaty obligations.

Nothing in either of the statements by Professor Bardonnet causes me to withdraw any part of my opening statement. Consequently, El Salvador maintains that the boundary between the colonial province of San Miguel and the "Alcaldía Mayor" of Tegucigalpa was the old bed of the Goascorán River whose mouth is in the de La Cutú Estuary in the Gulf of Fonseca.

I will now, Mr. President, make a brief consideration of a few of the other comments made by Professor Bardonnet in his two statements.

First, the matter of acquiescence by El Salvador as to the actual course of the Goascorán River constituting the frontier. Honduras relied on the Conference of Saco in 1880, a meeting at Tegucigalpa in 1985, and certain items of diplomatic correspondence between the two Parties. None of these citations made regarding these events proves anything as to which of the various branches of the Goascorán River forms the international frontier. None of the citations does more than refer to the river by its name; there is not one single reference to precisely where it flows into the Gulf of Fonseca.

Secondly, I would like to mention the map produced yesterday by Honduras, that of the so called "*Brick Activo*", the only map presented by Honduras which it is able to allege was produced prior to the date of the independence of Central America in 1821 (in fact, Mr. President, I have been unable to discover any date anywhere on this map). I have to say, Mr. President, that this map contains no line whatever showing the course of the Goascorán River. Consequently this document does not cause me to change any part of my earlier remarks to the Chamber on the subject of maps.

Thirdly and lastly, Mr. President, I would like to say a few words on the subject of arguments of a human nature. As Professor Bardonnet said in his opening statement, a large part of the

disputed area is uninhabited; this disputed sector is in fact populated only by a few hundred persons, mostly fishermen, occasional farmers and smugglers. In these circumstances, it does not seem to me, Mr. President, that either side is able to adduce convincing arguments of a human nature.

Finally, Mr. President, I would like to comment that the relevance of several of the observations made by Professor Bardonnnet both in his first statement to the Chamber in relation to this sector in the session held on 21 May and in his reply yesterday is not restricted to the disputed sector of the land frontier which is at present under discussion; these observations also have considerable relevance to the other questions which you, Mr. President, and the other distinguished Members of the Chamber have to decide, that is to say both to the delimitation of the land frontier in the other disputed sectors and to the other issues in this litigation, namely the determination of the juridical status of the islands and the maritime spaces.

The first of these observations to which I wish to make reference, Mr. President, relates to one of the most fundamental differences of opinion between the Parties in this litigation, namely the difference between "ejidos de reducción" and "ejidos de composición" and precisely which documents fall into which category. In his first statement to the Chamber in relation to this sector in the session held on 21 May (C 4/CR 91/27, pp. 29-30), Professor Bardonnnet asked:

"comment El Salvador peut-il placer sur le même plan des titres concédant des terres à un simple particulier ... et des "titulos ejidales" attribuant des terres à des communautés indiennes? Comment El Salvador peut-il tirer de ces deux catégories de titres des conséquences identiques au regard du tracé des frontières internationales actuelles?"

Professor Bardonnnet then referred to the title-deeds of 1694 and 1711 conferring private proprietary rights over certain lands within this disputed sector on Juan Bautista de Fuentes. El Salvador did not make any reference whatever to these title-deeds in its opening statement to the Chamber in respect of this sector, a fact which Professor Bardonnnet in his statement yesterday used as one of his three examples of what he described as "la tendance de nos adversaires (that is to say El Salvador) à choisir le terrain sur lequel ils entendent répondre et à refuser de rencontrer l'argumentation hondurienne".

The fact that El Salvador did not make any reference whatever to these title-deeds in its

opening statement to the Chamber in respect of this sector will, I am sure, already have made it clear to you, Mr. President, and to the other distinguished Members of the Chamber, although obviously not to Professor Bardonnnet, that El Salvador does not attach any particular relevance to these title-deeds. This is not because these title-deeds are, as Honduras claims, imaginary; they do of course exist and were obtained by El Salvador from the Central American Archive in Guatemala City. I do not know whether Professor Bardonnnet thought that it would be easier to demonstrate that these title-deeds were imaginary if he canonized the person to whom the lands in question were adjudicated and placed him in heaven rather than in Los Amates. For whatever reason, he referred to him as a saint, San Juan Bautista de Fuetes. El Salvador would certainly have no objection to this elevation and would be delighted to dedicate a church to him in Los Amates once the present proceedings have been resolved. However, I doubt whether the people of Honduras would have much devotion for this new Salvadorian saint.

On a less frivolous note, Mr. President, the reason why El Salvador does not attach any particular relevance to these title-deeds is because they conferred only private proprietary rights, obtained as the result of a "composición". The Party which has chosen to attempt to rely in these proceedings on such title-deeds conferring private proprietary rights is not El Salvador but Honduras. The majority of the title-deeds which Honduras has presented to the Chamber in the course of these proceedings are similar to the title-deeds conferring private propreitary rights on Juan Bautista de Fuentes in that they possess the following characteristics. First, such title-deeds were granted in favour of a private individual and not in favour of an indigenous community. Secondly, the title to the land in question conferred thereby was of a private nature obtained by means of the process of "composición". And, thirdly, such title-deeds did not confer "ejidos de reducción" but merely what the counsel of Honduras throughout these proceedings have chosen to describe as "droit foncier".

Why then did El Salvador make reference in its written pleadings to the title-deeds in favour of Juan Bautista de Fuentes? Simply because, Mr. President, these title-deeds expressly state that the lands being measured and adjudicated to Juan Bautista de Fuentes, whose location, in Los Amates,

can be seen on map 3.K in the Counter-Memorial of El Salvador (immediately after p. 127), were situated within the jurisdiction of San Miguel. Thus these title-deeds reinforce the argument of El Salvador to the effect that the territorial jurisdiction of San Miguel extended during the colonial period as far as the old river bed which finished in the de La Cutú Estuary in the Gulf of Fonseca.

Following his reference in his first statement to the Chamber in respect of this sector to these title-deeds of 1694 and 1711 in favour of Juan Bautista de Fuentes, Professor Bardonnet then continued (C 4/CR 91/27, p. 30):

"En définitive, on ne sait pas, ... si les deux catégories de titres de terres sont ou non, pour El Salvador, de même nature. Mais ce qui est certain, c'est que les uns et les autres entraînent, pour la Partie adverse, les mêmes conséquences sur le plan du tracé de la ligne divisoire".

Nothing could be less "certain" or further from the truth. In the session held on 19 April, President Jiménez de Aréchaga, in the first of his many short, precise and brilliant plaidoiries in these proceedings, stated (C 4/CR 91/5, p. 37):

"El Salvador has consistently maintained since the middle of the 19th century ... that it is not legally possible to classify a Formal Title-Deed to Commons on the same level as a Title-Deed to Private Property which confers only a private proprietary right over land upon someone who has made a payment in order to acquire the piece of land in question."

Later in the same plaidoirie (pp. 54-55), President Jiménez de Aréchaga, in his discussion of the correct interpretation of Article 26 of the General Treaty of Peace of 1980, said:

"To determine the limits between the municipal territories of these Indian 'poblaciones' or settlements and between ancient Spanish provinces or the limits of private land properties, is what has been agreed in Article 26, as the method to be applied in order to implement in this case the principle of *uti possidetis juris*. And this may be done only on the basis of the 'títulos ejidales' invoked by El Salvador.

To sum up, ... Article 26 refers to boundaries of 'territorios o poblaciones'. ... The deeds of private property invoked by Honduras do not indicate limits between territories or 'poblaciones': they only mark limits between private land properties. Now, if according to Honduras and to the opinion of Professor Nieto García, the 'títulos ejidales de composición' only confer a right of property, a 'droit foncier', then such an effect would apply *'a fortiori'* to the deeds of private property.

Therefore, if one excludes the 'títulos ejidales de composición', and believes that, then one must also exclude - under Honduras's own formulation, the private deeds of transfer.

There is nothing that would distinguish them, for the present purposes, from one another."

I simply do not see, Mr. President, how Professor Bardonnnet can possibly, in the light of such clear pronouncements, say that he does not know what the position of El Salvador is; nor do I see how he can speak, as he also did in his opening statement in respect of this sector, of "confusion dans l'analyse théorique d'El Salvador" (C 4/CR 91/27, p. 30). The only possible explanation which I can find, Mr. President, is that the passage in the plaidoirie of President Jiménez de Aréchaga to which Professor Bardonnnet referred (C 4/CR 91/5, p. 56) does not actually contain any statements as to the position of El Salvador but rather a discussion by President Jiménez de Aréchaga of what he described as three wrong assumptions which had been made by Professor Bardonnnet in his own plaidoirie on the previous day!

The fact that I did not mention in my opening statement in respect of this sector these title-deeds conferring private proprietary rights on Juan Bautista de Fuentes demonstrates extremely clearly that El Salvador has maintained the same juridical position during the whole of the discussion of the disputed sectors of the land frontier, namely that expounded by President Jiménez de Aréchaga in his plaidoirie in the session held on 17 April last. As a Salvadorian citizen, I wish, Mr. President, to place upon record to the Chamber the enormous debt of gratitude which I and all my fellow countrymen owe to that eminent and noble Uruguayan jurist; not one word of any of his plaidoiries is being withdrawn by El Salvador and I cannot and do not accept, Mr. President, that any part of the oral arguments which I have made to the Chamber in respect of this sector is in any way inconsistent with anything previously said by President Jiménez de Aréchaga.

That concludes, Mr. President, my comments on the first of the observations made by Professor Bardonnnet in relation to this sector which has general relevance to these proceedings as a whole. The second of these observations on which I would like to comment, Mr. President, relates to the reference made by Professor Bardonnnet to the Cruz-Letona Convention in the course of his first statement in relation to this sector in the session held on 21 May (C 4/CR 91/27, p. 42).

In this section of his plaidoirie, Professor Bardonnnet stated that the Cruz-Letona Convention of 1884 had established as an undisputed and undisputable frontier the Goascorán River from its

mouth in the Golfo de Fonseca as far as its confluence with the Guajiniquil or Pescado River. As I have already observed, Mr. President, this does not actually prove anything at all in relation to the sector at present under discussion, simply because the Convention fails to mention to which of the various mouths of the Goascorán River it was referring. However, Professor Bardonnnet continued:

"Et s'il est bien vrai que cette convention n'est pas entrée en vigueur, c'est, il faut le rappeler ... On ne doit pas oublier que, dans des conditions similaires, la Cour a, dans son arrêt du 20 juin 1959 rendu dans l'affaire de la *Souveraineté sur certaines parcelles frontalières* observé que 'Sans doute la convention non ratifiée de 1892 n'a créé ni droits ni obligations, mais les termes de la convention elle-même et les événements contemporains montrent qu'à cette époque la Belgique affirmait sa souveraineté sur les deux parcelles et que les Pays-Bas ne l'ignoraient pas ...'" (*ibid.*)

This is exactly the attitude, Mr. President, which El Salvador feels that the Chamber should apply to the provision of the Cruz-Letona Convention of 1884 relating to the disputed sector of Polorós. In that sector, one of the boundary markers whose location is disputed between the two Parties to this litigation is the boundary marker of the Cerro Ribitá. However, as President Jiménez de Aréchaga stated to the Chamber in the session held on 15 May last (C 4/CR 91/24, p. 31), its identity and location was clearly established at the Third Conference held by the Plenipotentiaries and experts of El Salvador and Honduras in 1884 and this location was subsequently incorporated into the Convention. El Salvador is delighted, Mr. President, to note the fact that, as a result of the incorporation of this location for the Cerro Ribitá into the Cruz-Letona Convention, Honduras recognizes that it was not ignorant of the fact that this was where the Cerro Ribitá was and is located.

The third of the observations made by Professor Bardonnnet in relation to this sector which has general relevance to these proceedings as a whole on which I would like to comment, Mr. President, refers to the question of maps. Nothing said by Professor Bardonnnet in his reply yesterday cast the slightest doubt on what I said in my opening statement to the Chamber in the session held on 21 May about the effect of the substantial number of maps presented by Honduras on these proceedings as a whole. With your permission, Mr. President, I propose to repeat a part of what I said on that occasion:

"The important fact in question is that the lengthy expositions of cartographical questions made by Honduras in its Reply do undoubtedly serve as proof and recognition of the sovereign rights of El Salvador over other territories which are in dispute in this litigation. Many of the maps which have been presented by Honduras in support of this claim over the estuary of the Goascorán River, adjudicate in the clearest possible manner to El Salvador not only the Isla de Meanguera and the Isla de Meanguerita but also other islands in the Golfo de Fonseca or Bahía de la Unión which have been traditionally recognized as belonging to El Salvador. (C 4/CR 91/27, p. 63.)

Following these remarks, Mr. President, I then specified a number of maps which illustrate this proposition.

In his reply yesterday afternoon Professor Bardonnet referred to the passage in my opening statement which I have just repeated but, understandably eager to concentrate on the matter in hand, correctly stated that, "pour l'instant, il n'est pas question des îles". However, I can hardly believe, Mr. President, that he would have failed to draw to the attention of the Chamber any error in my argument which he had been able to perceive. It must therefore follow, Mr. President, that Honduras has at least tacitly acknowledged that the maps which it has presented in respect of the sector which is at present under discussion adjudicate in the clearest possible manner to El Salvador not only the Isla de Meanguera and the Isla de Meanguerita but also other islands in the Golfo de Fonseca which have been traditionally recognized as belonging to El Salvador.

This emerges even more clearly from the fourth and last of the observations made by Professor Bardonnet in relation to this sector which has general relevance to these proceedings as a whole, on which I would like to comment. I refer to the wholly unexpected and somewhat questionable appearance yesterday afternoon, in what was supposedly a folder of maps, of one of the preparatory documents for the First Conference of the United Nations on the Law of the Sea held in 1958, accompanied by lists of some of the delegations present at the two Conferences held in Geneva in 1958 and 1960.

I must say, Mr. President, that I am far from clear that Honduras was really entitled to introduce these documents at this stage of the proceedings. Professor Bardonnet himself stated, rather coyly I thought, that he was producing "une nouvelle preuve avec un document qui n'est que partiellement cartographique" (C 4/CR 91/28, p. 30). However, El Salvador is not one of those

States which takes advantage of every possible opportunity to make a protest totally irrelevant to the merits of the case. I therefore do not propose, Mr. President, to say anything further about the procedural aspects of the introduction of this document.

In fact, neither on a personal level nor in my capacity as Agent of El Salvador do I find its introduction wholly negative. The report of Captain Kennedy, whose capacities were the subject of a lengthy and extravagant eulogy by Professor Bardonnnet, also provided a list of some of the islands in the Golfo de Fonseca which belong to El Salvador. He said (and I quote from the document presented yesterday by Honduras): "Meanguera, Conchagiüita, Martín Pérez, Isla Punta Sacate font partie du territoire salvadorien". El Salvador is once again delighted to note that a person for whose competence and experience Honduras has such high regard has thus adjudicated all these islands to El Salvador.

That, Mr. President, completes my comments on those observations of Professor Bardonnnet which have general relevance to these proceedings as a whole. I will now make my concluding remarks.

Yesterday Professor Bardonnnet, in his own words, permitted himself "de poser une dernière question à M. Martínez Moreno, a laquelle il serait important qu'il apporte une réponse dans sa prochaine plaidoirie" (C 4/CR 91/28, p. 35). I was under the impression, Mr. President, that the only essential questions which counsel had to answer were those asked by you and the other distinguished Members of this Chamber. However, since I have already said that El Salvador does not take its stand upon procedural niceties, I will answer Professor Bardonnnet's question, which was: "quels sont les titres sur lesquels la Chambre pourrait juridiquement se fonder pour juger que le secteur de Goascorán relève de la souveraineté d'El Salvador?" (C 4/CR 91/28, p. 35).

If Professor Bardonnnet's reference to "titres" means Formal Title-Deeds to Commons, my answer is simply that El Salvador has not got any; however, neither has Honduras. All that either side can produce are Title-Deeds conferring private proprietary rights, documents which, according to the thesis which El Salvador has consistently maintained throughout these proceedings, are not sufficient to fix the line of the *uti possidetis juris* of 1821. Nor, because of the

largely uninhabited nature of the sector, is either side able to demonstrate convincing arguments of a human nature. What therefore is left? Clearly, according to the wording of Article 26 of the General Treaty of Peace, those Spanish Colonial Documents which indicate territorial limits. El Salvador has cited two "Reales Cédulas", of 1563 and 1564, by means of which the King of Spain ordered that all the Golfo de Fonseca should be included in the Province of Guatemala and excluded from the Province of Honduras (see my opening statement to the Chamber C 4/CR 91/27 at pp. 57-58). I also demonstrated in my opening statement that the territorial extension of San Miguel extended during the colonial period as far as the old river bed which finished in the de La Cutú Estuary in the Golfo de Fonseca and that this boundary has not been affected by the changes in the course of the Goascorán River.

El Salvador believes, Mr. President and distinguished Members of the Chamber, that it has demonstrated clearly and definitively its territorial rights over the Estuary of the Goascorán River and that these rights are founded on the general principles of Public International Law. At the same time, El Salvador believes that Honduras has failed to demonstrate its rights thereto. El Salvador is therefore confident that its rights will be duly recognized by the Chamber in its Judgment.

That concludes the Oral Rejoinder of El Salvador in relation to this sixth disputed sector. I would like to thank my distinguished opponent, Professor Bardonnnet, both for his exemplary courtesy and for his generosity in revealing to the Chamber a part of my modest *curriculum vitae*. It only remains for me once again to thank you, Mr. President, and the other distinguished Members of the Chamber, for the attention and courtesy with which you have followed my exposition. Thank you very much.

The PRESIDENT: I thank Ambassador Alfredo Martínez Moreno and that concludes our hearings on the disputed sectors of the land frontier. I understand that the delegation of El Salvador wants to make a statement on the general problem of *effectivités* and that would be done on Monday morning. If the delegation of Honduras feel that they wish to reply to that, of course, they will be given the necessary time. So, we adjourn now until Monday at 10 o'clock.

The Chamber rose at 4 p.m.
