

C 4/CR 91/30

Cour internationale
de Justice
LA HAYE

International Court
of Justice
THE HAGUE

YEAR 1991

Public sitting of the Chamber

held on Monday 27 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 lundi 27 mai 1991, à 10 heures, au Palais de la Paix,

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

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

COMPTE RENDU

Present:

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

Présents :

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

 - M. Valencia-Ospina, Greffier
-

The Government of El Salvador is represented by:

Dr. Alfredo Martínez Moreno,
as Agent and Counsel;

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

and

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

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

Assisted by

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

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

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

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

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Mme Berta Celina Quinteros, directeur général du Bureau des
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M. Francisco Roberto Lima, professeur de droit constitutionnel et
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M. David Escobar Galindo, professeur de droit, vice-recteur de
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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,
Lic. Ana Elizabeth Villata,

as Counsellors.

The Government of Honduras is represented by:

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Mr. Pierre-Marie Dupuy, Professor at the *Université de droit,
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Mr. Julio González Campos, Professor of International Law,
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Mr. Paul De Visscher, Professor Emeritus at the *Université de
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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. Arias de Saavedra y Muguelar, Minister, Embassy of Honduras to
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Mr. Gerardo Martínez Blanco, Director of Documentation, Sovereignty
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M. Derek W. Bowett, professeur de droit international à l'Université
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M. René-Jean Dupuy, professeur au Collège de France,

M. Pierre-Marie Dupuy, professeur à l'Université de droit,
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S. Exc. M. Max Velásquez, ambassadeur du Honduras à Londres,

M. Arnulfo Pineda López, secrétaire général de la Commission de
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M. Arias de Saavedra y Muguelar, ministre de l'ambassade du Honduras
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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
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: Please be seated. The sitting is open. The delegation of El Salvador is going to speak on the problem of *effectivités* and I give the floor to Professor Anthony Oakley.

Mr. A. J. OAKLEY:

ARGUMENTS OF A HUMAN NATURE AND THE "EFFECTIVITES"

Mr. President, distinguished Members of the Chamber, it is for me a wholly unexpected honour to have the opportunity of addressing the Chamber on behalf of the Republic of El Salvador on the subject of arguments of a human nature and the "effectivités" in so far as these affect the claims of El Salvador to the six disputed sectors of the land frontier. In the first place, Mr. President, I must express my gratitude to the Agent of El Salvador, Dr. Alfredo Martínez Moreno, and to the other members of the delegation of El Salvador for the confidence which they have placed in me. And in the second place, I must express my very great pleasure that on this, the first occasion upon which I have appeared before the International Court of Justice, I am able to see among the distinguished Members of the Chamber the person in whose classes I first made acquaintance with the principles of public international law, namely of course, President Sir Robert Jennings.

El Salvador has sought, Mr. President, to make this additional short statement to the Chamber on the subject of arguments of a human nature and the "effectivités" and I should say at this stage that I am using the expression "effectivités" in the sense in which it has been used throughout the hearings on the disputed sectors of the land frontier. El Salvador has sought to make this statement for three basic reasons: first, in order to try to synthesize the various observations on these questions which have already been made by the counsel who have already addressed the Chamber on behalf of El Salvador; secondly, in order to emphasize the very limited extent to which El Salvador is in fact relying on such arguments in its claims to the six disputed sectors of the land frontier; and, thirdly, to make a proposal to the Chamber which, in the event that it is acceptable to you, Mr. President, and to the other distinguished Members of the Chamber, may possibly assist you in dealing with the

massive quantity of legal arguments, factual arguments, evidence and maps which have been presented to you in the course of the last four weeks.

The justification for the introduction of arguments of this kind into these proceedings is to be found in Article 5 of the Special Agreement and Article 26 of the General Treaty of Peace of 1980. Article 5 of the Special Agreement, which is entitled "Applicable Law" is as follows and I am going to read this text in English using the translation which El Salvador presented to the Chamber at the commencement of these hearings:

"In accordance with the provisions of the first paragraph of Article 38 of the Statute of the International Court of Justice, the Chamber, in reaching its judgment, will take into account the rules of international law applicable between the Parties, including, where pertinent, the provisions of the General Treaty of Peace."

Now, that reference to the provisions of the General Treaty of Peace is, of course, a reference to Article 26. And for present purposes, the relevant part of this Article is its second sentence, which is as follows and this time I am going to use the English translation to be found in the Counter-Memorial of El Salvador (para. 4.1, p. 129):

"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."

In opening these proceedings before the Chamber on behalf of El Salvador in the session held on 18 April (C 4/CR 91/5, p. 28 *et seq.*), the Agent of El Salvador, Dr. Martínez Moreno, stated that the recourse by El Salvador to arguments of a human nature and the "effectivités" was in no sense a backing away from the doctrine of *uti possidetis juris* but was based on the decision of the Chamber of the International Court of Justice in the *Burkina Faso/Mali* case, in which three eventualities were contemplated and I now quote from the pleading of Dr. Martínez Moreno the three possibilities (p. 34):

- " (i) that historical title and effective possession might both support a given result;
- (ii) that historical title might go one way and effective possession might go another way; and

(iii) that effective possession comes to bear when there is no demonstrable historical title on either side".

Dr. Martínez Moreno then went on to say that the position of El Salvador is that in this case effective possession, and once again I use his own words (*ibid.*):

"only comes into play in this case in the first and third instances just mentioned: where *effectivités* are *confirmatory* of historic legal title, or where *effectivités* can be introduced where there is no clear *historic title* - but never in the second instance, where there is an apparent *conflict between historic title and effectivités*".

These points were re-emphasized by President Jiménez de Aréchaga in his statement to the Chamber in the session held on 19 April last (C 4/CR 91/5, p. 62). He said, and I am going to quote quite a long passage from his pleading because he expresses it far better than I possibly could:

"El Salvador relies on the second sentence of Article 26 of the General Treaty of Peace and the human arguments contained therein in two ways. First, in general, in support of its claims based on the títulos ejidales. In this respect, El Salvador relies on the first eventuality indicated by the Chamber in the *Burkina Faso/Mali* case. ... But in respect of certain well defined and marginal areas where there is no title, El Salvador relies on the third eventuality indicated by the Chamber where it said [and President Aréchaga quoted then from the Judgment of the Chamber]:

'In the event that the *effectivité* does not co-exist with any legal title, it must invariably be taken into consideration (*I.C.J. Reports 1986*, p. 587.)'

...

The claim is based on the grounds that these small areas which round up the Commons have continuously been occupied by Salvadoreans and have been continuously administered and serviced by Salvadorean authorities and public services, so that to segregate these areas from the basic settlement within the original Commons, after centuries of integration, would cause unnecessary human hardship and distress."

Now, Mr. President, in this further statement to the Chamber, El Salvador will concentrate its attention exclusively on what President Jiménez de Aréchaga described as those "well defined and marginal areas where there is no title", in other words on those areas where the third eventuality contemplated by the Chamber in the *Burkina Faso/Mali* case comes into play.

The areas in question are of course shown on the maps which El Salvador has presented to the Chamber in the course of these proceedings. I do not propose to examine these Maps yet again during this session but I do hope, Mr. President, that the references which I have included in my text

will enable the Maps to be taken into account at the appropriate time.

Before I actually embark on my individual consideration of the six disputed sectors of the land frontier, I must, however, make one further observation of a general nature which applies, Mr. President, to a greater or lesser extent to all the disputed sectors of the land frontier other than the sixth one, the Estuary of the Goascorán River.

During the oral phase of this case, El Salvador has concentrated its arguments on the scope and effect of the Formal Title-Deeds to Commons which it has presented and has relied on arguments of a human nature and the "*effectivités*" to a much lesser extent than in its written pleadings. As President Jiménez de Aréchaga said in the course of the session held on 14 May last (C 4/CR 91/22 at p. 22),

"El Salvador has adjusted its arguments based on the '*effectivités*' and has chosen to rely on such arguments only in respect of certain marginal areas."

In the same pleading (at p. 27), President Jiménez de Aréchaga gave a brief explanation of the serious difficulties which the Government of the Republic of El Salvador has experienced in furnishing to the Chamber that full evidence of its "*effectivités*" which it would ideally have liked to be able to present and without which it is obviously extremely difficult, if not actually impossible, for the Chamber to reach a full understanding of the true situation. Again, I would like to read some words from the pleading of President Jiménez de Aréchaga (*ibid.*):

"These difficulties have arisen as a consequence of sporadic acts of violence which have been occurring in some of the disputed areas. These have not only produced a certain amount of interference with some of the governmental activities normally carried out by the Government of El Salvador in these areas, but have also brought about a significant exodus on the part of the normal population thereof; these features have particularly occurred in certain mountainous areas."

Professor González Campos responded to these remarks in the course of the session held on 16 May (C 4/CR 91/25 at pp. 39-40). He first of all stated that both the Government of Honduras and he himself as a Spaniard sincerely regretted these circumstances, and I should say, Mr. President, that that is a remark for which the Government of El Salvador is extremely obliged.

After that he said, and I am going to quote his original words in French, and I ask your indulgence, Mr. President, if my accent in French is less good than it should be:

"Mais ceci dit, le compromis arrêté pour soumettre à la Chambre de la Cour le différend terrestre, insulaire et maritime, a été signé en 1986, lorsque ces circonstances existaient déjà."

Pausing there momentarily, Mr. President, I could answer that observation by saying that, although these unfortunate circumstances did indeed exist at the time of the Special Agreement in 1986, the Government of El Salvador could perhaps have been excused if they had hoped that this would not still be the case at the time of the oral hearings, which are, after all, taking place no less than five years later. But, I am the first to admit that this would not be an appropriate response.

Professor González Campos then continued:

"Et vu qu'il s'agit de la preuve des actes relatifs à des communautés humaines et à l'exercice de fonctions étatiques, même en admettant la difficulté d'accès à certaines régions et en tenant compte de l'exode des populations, il est indéniable, d'une part que ces preuves, loin d'être seulement présentes dans des zones litigieuses affectées par ces événements douloureux, le sont également dans d'autres registres et archives centrales d'El Salvador."

No one, Mr. President, would be more delighted than the Government of El Salvador if that was really the case, if duplicate records were indeed available in Central Registries and Archives in El Salvador. However implausible this may sound, this is simply not the case for all sorts of reasons that it is not feasible for me to go into now. The fact remains, Mr. President, that because of the difficulties to which I have already referred, El Salvador has simply not been able to present to the Chamber full evidence of its "*effectivités*".

Now, El Salvador is obviously aware, Mr. President, that observations of the kind which I am at present making do not constitute a satisfactory substitute for the missing evidence and, of course, the claims of Honduras to the disputed sectors of the land frontier cannot be dismissed or prejudiced just because sporadic acts of violence in El Salvador have prevented the necessary evidence from being collected. And it is in fact precisely for this reason, Mr. President, that at the end of this statement the Government of El Salvador will be making the proposal to which I have already

alluded.

That concludes my observations of a general nature, Mr. President. I will now turn my attention to each of the six disputed sectors of the land frontier and first, to Tepangüisir.

(A) Tepangüisir

In this disputed sector, El Salvador has based its claims primarily on the Formal Title-Deed to the Commons of Citalá of 1776. Having listened to the arguments of Honduras, El Salvador submitted to the Chamber that none of the Title-Deeds nor the alleged "*effectivités*" presented by Honduras cast the slightest doubt on either the validity of this Formal Title-Deed to Commons, or of the boundaries established therein. But, El Salvador admitted in its Reply (in para. 3.9 at p. 42) that a small triangle in the extreme north-west of this disputed sector is not included within the boundaries of the Commons which were adjudicated to the inhabitants of Citalá in 1776. The boundaries of this small triangle run from the tripartite boundary marker between El Salvador, Guatemala and Honduras on the Cerro de Montecristo and the two lines of the triangle run one to the Cabecera de Pomola and the Quebrada de la Chicotera, both those latter two places being boundary markers of the Commons of Citalá. And this triangle is very clearly identifiable on the maps which were presented to the Chamber by both Parties during the hearings on the sector of Tepangüisir.

Honduras has recognized in its Counter-Memorial (in the Annexes thereto at p. 295) that this area is inhabited entirely by citizens of El Salvador. This recognition is to be found in a document signed by the Honduran Ambassador in London, Max Velásquez Díaz, which has been presented to the Chamber as one of the Annexes to the Counter-Memorial of Honduras. Ambassador Velásquez Díaz recognizes in this document that:

"les terrains de la zone en litige de Tepangüisir se trouvent faire partie de la propriété des habitants de la municipalité de San Francisco de Citalá du Salvador, mais le droit sur ceux-ci appartient à la République du Honduras".

This document amounts to the clearest possible evidence of the "*effectivités*" of El Salvador in this very small part of this first disputed sector. In the light of the existence of this document, El Salvador did not consider that it was necessary to file any additional evidence in respect of

"effectivités" in relation to this sector. Thus in this sector at least the acts of sporadic violence to which I have already referred have made no difference whatsoever.

It should also be noted that in this triangular area the Government of El Salvador has established a forestry reserve, which constitutes the only wet forest within the territory of El Salvador. Laws have been promulgated prohibiting the cutting of trees such as oaks and pines and protecting the original fauna and flora; the reserve in fact contains a number of especially rare birds in the course of extinction, such as the quetzal, and a particularly important family of orchids. The land which forms the largest part of this triangle, the Hacienda de Montecristo, was indeed donated to the Government of El Salvador by its former owners precisely with a view to the setting up of this forestry reserve.

Those points I have just made were indeed made by Professor Jiménez de Aréchaga in the course of the session held on 25 April (C 4/CR 21/9, pp. 27-28). In his reply, in the session held on the following day (C 4/CR 21/10, pp. 20-23), Professor Sánchez Rodríguez stated that it did not necessarily follow that just because these lands were owned by inhabitants of Citalá they were within the territory of El Salvador. In other words, they could just as easily be citizens of El Salvador who happened to own land in Honduras.

In his rejoinder during the same session (*ibid.*, pp. 33-34), however, President Jiménez de Aréchaga pointed out that the Constitution of Honduras forbids foreign nationals from owning property within 40 kilometres of any of its frontiers. If this triangular area really forms part of the territory of Honduras, why have the authorities of Honduras not taken advantage of this provision in their Constitution which makes any legal transaction or contract relating to such land null and void. Why have they not evicted these foreign landowners? Now, they could not, admittedly, have done so since 1980, because of the provision in the General Treaty of Peace of that year (Art. 37), which obliges both sides to respect the *status quo* pending the resolution of this dispute. But they could certainly have done so at any time prior to 1980: provisions of this type have been found in at least the last two Constitutions of Honduras, those of 1957 and 1965. The only possible answer to this question is that Honduras has never had sufficient administrative control over this area to enable this

to be done.

The existence of this provision in the existing 1982 Constitution of Honduras (it is, in fact, Article 107, the Spanish and English versions of which can be found in the pleading of President Jiménez de Aréchaga to which I have already referred), the existence of this provision, Mr. President, puts into an entirely new light the claims of Honduras to these disputed sectors of the land frontier. The consequences of the adjudication to Honduras of any land which is at present owned by citizens of El Salvador will bring about their immediate eviction. This actually happened to citizens of Nicaragua following the delimitation of the boundary between Nicaragua and Honduras as a result of the Laudo of the King of Spain. So the existence of even a few Salvadorian landowners in a disputed sector claimed by Honduras produces a strong argument of a human nature for not delimiting the boundary in such a way that that land becomes part of the Republic of Honduras. On the other hand, there is no similar provision in the Constitution of El Salvador. Consequently the presence of any number of Honduran landowners in a disputed sector claimed by El Salvador does not produce any similar arguments for not delimiting the boundary in such a way that that land becomes part of the Republic of El Salvador.

That concludes, Mr. President, my discussion of the first disputed sector of Tepangüisir, in which I have to say that the "effectivités" of El Salvador are overwhelming. I now turn to the second disputed sector of Las Pilas, or Cayaguanca.

(B) Las Pilas or Cayaguanca

In this disputed sector, El Salvador has once again based its claims primarily on a formal title-deed to commons, this time the Formal Title-Deed to the Commons of La Palma of 1829. Equally once again, having listened to the arguments of Honduras, El Salvador submitted to the Chamber that none of the title-deeds nor the alleged "effectivités" presented by Honduras cast any doubts at all on the validity of the formal title-deed to commons or the boundaries established therein.

The only part of this disputed sector which is not included within the boundaries of the Commons of La Palma is a narrow strip to the north-west. One side of this strip is formed by the

boundary of the Commons of La Palma running from the boundary marker placed in the vicinity of the Peak of Cayaguanca towards the east as far as the confluence of the Sumpul River with the Copantillo Gorge. The other side of the strip is formed by a straight line from the same boundary marker placed in the vicinity of the Peak of Cayaguanca to the headwaters of the Sumpul River, and from there downstream along the Sumpul River to its confluence with the Copantillo Gorge. This area can be seen clearly on Map 3.1, which was in fact the map utilized by both Parties in the earlier discussion of this disputed sector.

This marginal area is totally occupied by citizens of El Salvador, and is administered and run by the authorities and the public services of El Salvador. As President Jiménez de Aréchaga said in the session held on 2 May (C 4/CR 91/12, pp. 28-29), the existence of Salvadorian "effectivités" in this area has been admitted in the Reply of Honduras, in the following passage, which again I will read in the original French:

"Postérieurement à la date critique de 1821, la pratique en vigueur dans ce secteur s'avère, en elle-même, incomplète et peut-être insuffisante pour revendiquer, de façon autonome et indubitable, la souveraineté du Honduras sur le secteur de la montagne de Cayaguanca. Mais là n'est pas, en l'occurrence, le propos du Honduras. Il s'agit, au contraire, de présenter à la Chambre de la Court des arguments complémentaires *a posteriori* pour confirmer - et non pas pour remplacer - *l'uti possidetis juris* ." (RH, p. 238, para. 54.)

This is clearly sufficient to prove the existence of the "effectivités" of El Salvador in this part - again a very small part - of the disputed sector which is not included within the boundaries of the Commons of La Palma. I now turn, Mr. President, to the third sector, Arcatao.

(C) Arcatao or Zazalapa

Now, once again in this disputed sector, El Salvador has based its claims primarily on a Formal Title-Deed to Commons, that of Arcatao of 1724. And once again, having listened to the arguments of Honduras, El Salvador submitted to the Chamber that nothing in those arguments cast the slightest doubt on the validity of, or the boundaries established by, this Formal Title-Deed to Commons.

However, there are two areas of this disputed sector which are not included within the

boundaries of the Commons of Arcatao.

The first of these is the area to the north and west of that part of the boundary of the Commons of Arcatao which runs from the Colomariguan Gorge to the Cerro del Fraile (I should perhaps point out that that is a very indented part of the boundary of the Commons of Arcatao. There are a considerable number of boundary markers between these two points and that accounts for the many changes in the direction of this section of the boundary of the Commons of Arcatao). So far as concerns maps, there is a sketch-map of the disputed sector among the group of sketch-maps which immediately follows Chapter 7 of the Memorial of El Salvador and the boundaries of the Formal Title-Deed to Commons are shown on map 6.III in the Book of Maps also annexed to the Memorial of El Salvador.

Now, it is in this area, the north-west of the disputed sector of Arcatao, Mr. President, that the Government of El Salvador has experienced the greatest difficulties of all in collecting the evidence of its "effectivités" which it would ideally have liked to be able to present to the Chamber. The only document which El Salvador has been able to present which clearly relates to this area, as distinct from the rest of this disputed sector, are some registrations of births and deaths in the Canton of Zazalapa. And these can be found in the Annexes to Chapter 7 of the Memorial of El Salvador. That is the first area not included within the boundaries of the Commons of Arcatao.

The second one is the part of the disputed sector to the south and east of that part of the boundary of the Commons of Arcatao which runs from the point where the disagreement between the Parties as to the frontier commences, that is, just to the south of the boundary marker of the Talpetates Blancos, to the point on the Pochota Stream where the disagreement between the Parties as to the frontier ends. And this area can be seen on the same two maps which I have already mentioned.

Now in this area, Mr. President, El Salvador does not need to rely on any "effectivités" since, as President Jiménez de Aréchaga stated in the session held on 7 May (C 4/CR 91/16, pp. 28-30), the documents presented by Honduras to the Chamber relating to the three measurements of San Juan de Lacatao demonstrate that the Gualcuquín River was at least at this point the traditional

boundary between the Spanish colonial Provinces of Gracias a Dios and San Salvador and that this river consequently constitutes the line of the *uti possidetis juris* of 1821.

That is all I want to say about this third sector. I now turn to the fourth one, that of Nahuaterique.

(D) Nahuaterique

In this disputed sector, as in the previous three, El Salvador has based its claims primarily on the Formal Title-Deeds to the Commons of Torola of 1743 and of Arambala and Perquín of 1815 and also on its rights to an area of royal landholdings ("tierras realengas") referred to in the Formal Title-Deed to the Commons of Arambala and Perquín. Having listened to the arguments of Honduras, El Salvador saw nothing that cast doubt on those primary claims, nothing that cast the slightest doubt on either the validity or the boundaries established by the Formal Title-Deeds to Commons or on the rights of El Salvador to these royal landholdings.

But there are two small strips of land in this disputed sector which are not included within the land area I have just mentioned, not included within the boundaries of the Commons of Torola and of Arambala and Perquín or within the boundaries of the royal landholdings.

The first of these strips is situated in the extreme south-western corner of the sector. One side of the strip is formed by a line which runs from the starting-point of this sector, which is the source of the La Orilla Stream, to El Volcancillo and the Cajón de Champate, then along the course of the de las Cañas or Yuquina River as far as the point where that river starts to constitute the boundary of the Commons of Torola, and then from north to south along the boundary of these Commons in the direction of the Portillo de San Diego. That is one side of the strip. The other side of the strip is formed by a line running from the same starting-point, the starting-point of the sector at the source of the La Orilla Stream, to the Colina del Jobo, the Cueva Hedionda, Champate, Portillo Blanco, Obrajito and Laguna Seco, and from there the line goes in the direction of Amatillo until the point where it intersects with the other line, the last part of the other line, the boundary of the Commons of Torola. There is a sketch-map of the disputed sector among the group of sketch-maps immediately

following Chapter 7 of the Memorial of El Salvador and the boundaries of the Formal Title-Deeds to Commons are shown on map 6.IV in the Book of Maps annexed to the Memorial of El Salvador.

The principal basis of the claim of El Salvador to this small strip is the fact, as President Jiménez de Aréchaga stated in the course of the sessions held on 10 and 14 May (C 4/CR 91/20, pp. 33-35; C 4/CR 91/22, pp. 14-16), that the formal Title-Deed to the Commons of Torola stated that the de las Cañas or Yuquina River was the traditional boundary between the Spanish colonial Provinces of San Miguel and Comayagua. Now, in the event that this claim is acceptable to the Chamber, El Salvador does not need to rely on any "*effectivités*" in respect of this small strip. That is the first strip of this disputed sector not within the Commons or the royal landholdings.

The second of these strips is situated in the extreme north-eastern corner of the sector. One side of this strip is formed by a line running from one of the boundary markers of the Commons of Arambala and Perquín, the Montaña de la Isla, and that line goes to the old boundary marker of La Loma, then to the Malpaso de Similatón, and the Malpaso, and then by a straight line from the Malpaso towards Las Pilas. The other side of the strip is formed by the boundary of the Commons of Arambala and Perquín running from north to south from the same boundary marker, the Montaña de la Isla, as far as the point where it intersects with the last part of the other side, the line running from the Malpaso towards Las Pilas. Once again this area can be seen on the same two maps. El Salvador has presented in the Annexes to Chapter VII of its Memorial 19 Registered Title-Deeds to Land in the whole of this disputed sector. Of those 19, 7, those which are numbered 3, 5, 6, 7, 8, 9 and 10, relate to land situated in the strip which I am at present discussing. These landowners, Mr. President, are those who will lose their properties under Article 107 of the 1982 Constitution of Honduras in the event that the boundary is delimited in such a way that this strip becomes part of the territory of Honduras. Thus, Mr. President, El Salvador has shown both its "*effectivités*" and a substantial argument of a human nature in respect of this second strip in the sector of Nahuaterique.

I now turn to the fifth disputed sector, Polorós.

(E) Polorós

In this disputed sector, El Salvador has based its claims primarily once again on the Formal Title-Deed to Commons, the Formal Title-Deed to the Commons of Polorós of 1760. And once again, El Salvador has not found in the arguments of Honduras anything to cast doubt on that title either on its validity or on the boundaries established therein.

The only part of this disputed sector which is not included within the boundaries of the Commons of Polorós is a very small strip in comparison with the whole area of the Commons, a very small strip in the extreme north-western corner of the sector. One side of this strip is formed by the boundary of the Commons of Polorós from the Cerro de López in the south-westly direction as far as the confluence of the Torola River with the Manzapucagua Gorge. The other side is formed by a line also running from the Cerro de López to the boundary marker Alto de la Loza and then following the course of the Manzapucagua Gorge as far as its confluence with the Torola River. There is again a sketch-map of this sector among the group of sketch-maps immediately following Chapter 7 of the Memorial of El Salvador and the boundaries of the Formal Title-Deed to Commons are shown on Map 6.V in the Book of Maps annexed to the Memorial of El Salvador.

This small strip contains two farms called the Sitio de las Ventas and the Sitio de San Juan, and their proprietors will similarly lose their lands in the event that the boundary is delimited in such a way that this strip becomes part of the territory of Honduras. The strip forms part of the Canton of Lajitas, which in its turn is part of the Municipality of Polorós. In respect of this Canton, the Canton of Lajitas, El Salvador has presented in the Annexes to Chapter VII of its Memorial two Mortgage Deeds relating to the canton. It is obviously unfortunate, Mr. President, that El Salvador has not been able to present any more documents in relation to this area but it is at least possible to combine the effect of the two documents which have been presented with the substantial argument of a human nature arising out of Article 107 of the 1982 Constitution of Honduras.

I now turn, last of all to the sixth disputed sector, the Estuary of the Goascorán River.

(F) The Estuary of the Goascorán River

I mentioned when I began to talk about the sectors that the situation of this sector is quite

distinct from that of the other five. And that was extremely obvious, Mr. President, from the arguments which were presented by the two Parties in relation to this sector last week.

In the first place, only in this sector is El Salvador not relying on a Formal Title-Deed to Commons. As the Agent of El Salvador, Dr. Martínez Moreno, said in his pleading on 23 May (C 4/CR 91/29 at p. 29), El Salvador has no Formal Title-Deeds to Commons in respect of this sector. He then went on to demonstrate that Honduras does not have any either.

Dr. Martínez Moreno also stated (*ibid.*, at p. 20) that, because a large part of the disputed area is uninhabited, being populated only by a few hundred persons, mainly fishermen, occasional farmers and smugglers, it did not seem to him that either side is able in this sector to adduce convincing arguments of a human nature.

The position of El Salvador in this sector, Mr. President, is therefore that neither side has either any Formal Title-Deeds to Commons or any arguments of a human nature in this sector. Consequently, the delimitation of this sector must therefore be established in accordance with those Spanish Colonial Documents which establish territorial limits. And so it is not necessary for me to say anything further about this sector on this occasion.

That concludes my discussion of the six individual disputed sectors of the land frontier. I now, Mr. President, will make the proposal to the Chamber to which I have already alluded on two occasions.

The examination of the six disputed sectors of the land frontier which I have just carried out shows very clearly, Mr. President, the limited extent to which El Salvador has actually relied on arguments of a human nature and the "*effectivités*" in the oral phase of this case relating to the six disputed sectors of the land frontier. Even so, even with that limited reliance, during the course of these oral arguments, the delegation of El Salvador has become more and more conscious of the extent to which the difficulties to which I have already referred have restricted the ability of El Salvador to present full evidence of its "*effectivités*". Throughout these hearings, both Parties have repeatedly stated that they are exercising authority over these disputed sectors and both Parties have maintained that these sectors are populated by inhabitants of their respective nationality and

origin. How then is the Chamber to decide on these conflicting claims when one of the Parties, through no fault whatsoever of the other Party, has been unable to present full evidence of its "*effectivités*"?

For these reasons, the delegation of El Salvador has therefore carried out consultations with its Government at the highest possible level with a view to asking the Chamber to exercise the power which it has under Article 66 of the Rules of Court to engage in a *descente sur les lieux*, that is to say, in the actual words of Article 66, the power "to exercise its functions with regard to the obtaining of evidence at a place or locality to which the case relates". The Government of El Salvador, in the person of the President of the Republic, Alfredo Cristiani, has authorized the making of such a request.

Consequently, Mr. President, the Government of El Salvador hereby requests that the Chamber consider exercising its functions pursuant to Article 66 of the Rules of Court with regard to the obtaining of evidence in situ in the disputed areas of the land frontier. The objective would be to establish the true situation of these disputed territories, over which both Parties to this litigation have alleged that they maintain authority and control.

In addition, the Government of El Salvador would welcome any order by the Chamber pursuant to Article 67 of the Rules of Court, arranging for an enquiry or an expert opinion on these matters and to the same ends. It is evident, Mr. President, from my earlier comments relating to the sporadic acts of violence which have been occurring in some of the disputed sectors of the land frontier, that the Members of the Chamber or its experts would, by visiting these areas, be placing themselves in a situation of some personal risk. The Government of El Salvador is however of the opinion is that this risk is in fact minimal. Observers of the organ of the United Nations known by the acronym ONUCA (which actually stands for "Observadores de las Naciones Unidas en Central América") and representatives of the International Committee of the Red Cross are continuously passing through these areas. What is more, on 20 May, last Monday, the Security Council of the United Nations, taking into account the progress of the negotiations for peace in El Salvador, ordered the creation of a Human Rights Division for El Salvador. This body, which will be commencing its

operations at the beginning of the forthcoming month of June - that is, of course, next week - will undoubtedly carry out some of its functions in these same areas with a view to avoiding further violence and preserving the human rights of the inhabitants of these areas.

Mr. President, the Government of El Salvador is conscious that the International Court of Justice has never yet exercised its powers under Article 66. The Permanent Court of course did so in the case concerning the *Diversion of Water from the Meuse* (*P.C.I.J., Series A/B, 1937, No. 70*), but the International Court has not yet done so. The matter has been considered by the Court on at least two occasions. In the Second Phase of the *South West Africa* cases (*South West Africa, Ethiopia v. South Africa, Liberia v. South Africa*) (*I.C.J. Reports 1966, p. 6*), the South African Government invited the Court (or what it described as "a committee thereof") to undertake a visit in the form of what it described also as an "inspection" to the then Mandated Territory of South West Africa - but not just there: also to the territories of the Applicant States, Ethiopia and Liberia, and to several other independent African States as well. This proposal was made before the existence of any Rule of Court similar to the present Article 66, and it was in fact in the end rejected by a majority of eight to six. The matter also seems to have been discussed in the case concerning *Military and Paramilitary Activities In and Against Nicaragua* (*Nicaragua v. United States of America, Merits, I.C.J. Reports 1986* (Judgment of 27 June), p. 14, para. 61), when the Court was considering the possibility of appointing an individual or body to conduct an enquiry. And the Court indicated that "such a body could be a group of judges selected from among those sitting in the case". Nothing actually came of that particular possibility either, Mr. President. Both those "descentes sur les lieux" to which I have referred - or those possible "descentes sur les lieux" - would have required visits to several different countries, and would therefore have been quite different from the "descente sur les lieux" which the Government of El Salvador is now requesting. Consequently the Government of El Salvador therefore hopes, Mr. President, that you and the other distinguished Members of the Chamber will be able to take a different, and therefore favourable, view of the request which is now being made.

With the making of that request, Mr. President, I have concluded my statement to the

Chamber. It therefore only remains for me to thank you, and the other distinguished Members of the Chamber, for the courtesy and the attention with which you have followed my exposition. Thank you very much.

The PRESIDENT: I thank Professor Oakley, and I would like to know whether the delegation of Honduras intends to reply to him; and if so, when.

Mr. VALLADARES SOTO: Mr. President, the delegation of Honduras will answer the statement of El Salvador of this morning tomorrow morning. But I want to make a reservation in regard to the proposal of El Salvador in connection with possible inspections *in situ* of the sectors of the land frontiers, which we will answer on a later occasion. Thank you very much.

The PRESIDENT: I thank the Agent of Honduras for his explanation. I would now like to enquire of both delegations whether we could start our work on the problem of islands so that we do not lose much time. If the two delegations are in agreement, when could we do it, if you are prepared in that way to tackle this next problem in our programme of work - this very morning, or this afternoon? Tomorrow we would interrupt to hear Honduras's reply to the statement just made by Professor Oakley.

Mr. VALLADARES SOTO: Mr. President, in connection with the islands, we could start tomorrow, in the afternoon.

Mr. MARTINEZ MORENO: Mr. President, El Salvador will be ready to answer immediately. We would be delighted if Honduras found the possibility of speaking on the islands *this* afternoon since they have already prepared their intervention, so that we will be able to gain time.

The PRESIDENT: Thank you.

Mr. VALLADARES SOTO: Mr. President, the problem is that the person who is going to answer this morning's statement by El Salvador on "effectivités" is going to be Professor Sánchez Rodríguez and he will need time to prepare his answer for tomorrow morning. So, for this reason, it will not be possible for us to deal with the islands this afternoon. We therefore maintain our proposal to speak tomorrow morning on "*effectivités*", and in the afternoon to begin on the islands.

THE PRESIDENT: I thank the Agent of Honduras. So we will adjourn now until tomorrow morning at 10 o'clock.

The Chamber rose at 11 a.m.
