

Cour internationale
de Justice
LA HAYE

International Court
of Justice
THE HAGUE

YEAR 1991

Public sitting of the Chamber

held on Friday 14 June 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 vendredi 14 juin 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
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College, Cambridge,

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

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

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

as Counsel and Advocates;

and

Dr. Francisco José Chavarría,

Lic. Santiago Elías Castro,

Lic. Solange Langer,

Lic. Ana María de Martínez,

Le Gouvernement d'El Salvador est représenté par :

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

Mme Berta Celina Quinteros, directeur général du Bureau des
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assistés de :

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Président de la Cour internationale de Justice; ancien président
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M. Keith Highet, professeur adjoint de droit international à la
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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,

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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. Julio González Campos, professeur de droit international à
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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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M. Gerardo Martínez Blanco, directeur de documentation de la
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Mrs. Olmeda Rivera,

Mr. José Antonio Gutiérrez Navas

Mr. Raul Andino,

Mr. Miguel Tosta Appel

Mr. Mario Felipe Martínez,

Mrs. Lourdes Corrales,

as Members of the Sovereignty and Frontier Commission.

The Government of Nicaragua is represented by:

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Assisted by

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comme conseils;

M. Guillermo Bustillo Lacayo,

Mme Olmeda Rivera,

M. José Antonio Gutiérrez Navas

M. Raul Andino,

M. Miguel Tosta Appel,

M. Mario Felipe Martínez,

Mme Lourdes Corrales,

comme membres de la Commission de Souveraineté et des frontières.

Le Gouvernement du Nicaragua est représenté par :

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S. Exc. M. Enrique Dreyfus Morales, ministre des affaires étrangères;

assisté par

Mr. Ian Brownlie, Q.C., F.B.A., professeur de droit international
public à l'Université d'Oxford, titulaire de la chaire Chichele,
Fellow de l'All Souls College, Oxford,

comme conseil et avocat;

et

Dr. Alejandro Montiel Argüello, ancien ministre des affaires
étrangères,

comme conseil.

The PRESIDENT: Please be seated. The sitting is open. Before we begin I wish to welcome here a distinguished group of members of the Court of Justice of the Andean Pact. It is for us an honour that they have come to these hearings. By coincidence we are concluding today the oral proceedings in a case between two Latin-American countries - a very important case for both countries - and so for us it is a satisfaction that we have here the presence of those distinguished judges of a Tribunal which I think is the youngest permanent international jurisdiction, and one which I know has been very successful in its work. In the name of the Chamber I bid you all welcome.

We now turn to our business of today and I give the floor to the Agent of Honduras.

Mr. VALLADARES SOTO: Mr. President, Honourable Judges, the oral statement made by Professor Derek W. Bowett concludes Honduras's oral pleadings in the present case. Therefore, as Honduras's Agent, and according to Article 60, paragraph 2, of the Rules of Court, I proceed to read the final Submissions of Honduras, the text of which has been communicated some moments ago to the Court and transmitted to the other Party.

2. However, before reading the Submissions, I would like, Mr. President, to make three short statements on behalf of the Government of Honduras.

First, the Government of Honduras sincerely believes that, in accordance with the General Peace Treaty of 1980 and the Special Agreement of 1986, both Parties in the present case have instituted proceedings before the Court to reach a complete and definitive judicial solution of their disputes over land, islands and maritime frontiers inside and outside the Bay of Fonseca. The Honduran Government sincerely believes that the time of dispute and confrontation between El Salvador and Honduras is over. It is time for co-operation and progress for both States and their peoples. Therefore, whatever the result of the Judgment may be, the Government of Honduras is ready to take all necessary steps to implement the sentence of this Court in order to increase the spirit of brotherhood between the two countries and to strengthen future co-operation.

Second, the Government of Honduras is aware that in the sectors in dispute of the land frontier, as well as in the Island of Meanguera, human beings live and work, or have properties

within these sectors. The Government of Honduras has provided ample demonstration of the presence of Honduran nationals in all land sectors in dispute (RH, Ann. IX). In the Island of Meanguera the population is not exclusively Salvadorian. Many residents have Honduran nationality and many other families, including the Salvadorian witness to these proceedings, are of Honduran descent and can claim that nationality. But, of course, for the purposes of this Court the composition of the present population of these disputed territories is not a relevant factor. Their nationality, their economic situations, their political affiliations are not relevant to the task of the Court precisely because the Court has to apply the *uti possidetis juris* of 1821. Both Parties are committed to that principle, and the Court's task is therefore to identify the boundaries of the administrative districts as they existed in 1821. This does not mean, however, that the two Parties are indifferent to the needs and wishes of the people of these areas as they exist today.

The Honduran Government is conscious of the fact that, in the interests of humanity, it has to be concerned with the welfare of the people who now inhabit these territories. I can assure the Court of the commitment of the Honduran Government to respect the dignity of all men living in those sectors, Honduran or Salvadorian; the protection of their fundamental rights and their social welfare will always be of paramount consideration for my Government to be taken into account after the sentence of the Chamber has been rendered. It is precisely for that reason that President Duarte, of El Salvador and President Azcona, of Honduras, signed on 31 July 1986 a joint declaration in which, after undertaking to implement in good faith the Judgment to be delivered by the Court, they agreed on:

"the advisability of setting up a Special Commission entrusted with the task of studying and suggesting solutions to such human, civil and economic problems as may affect their nationals once the boundary problem is settled" (RH, Ann. VII.18).

Third, Mr. President, I turn, finally, to the question of delimitation inside and outside the Gulf. The Honduran Government has been profoundly shocked by the denial, by El Salvador, that this is part of the dispute. We have negotiated for nearly 20 years on the basis that this is an important part of the dispute.

The Honduran Government - indeed the whole Honduran people - have been even more shocked by the argument that Honduras has no Pacific coast, that it is now essentially land-locked on the Pacific side by the new claims of its neighbours. Since the dawn of our independence we have believed ourselves to be a Pacific Ocean coastal State.

And we have so acted, without protest from any nation. From 1950 onwards we have claimed our equitable share in the continental shelf, without protest from any nation.

This new claim from El Salvador shocks and dismays us, for it tends to prevent the exercise of a friendly competition between two brother States and the development of a close future co-operation. The Court will be clear that the Honduran claim is not excessive. We demand a modest part of the closing-line across the Gulf, and a very modest maritime sector in the Pacific. We base our claim on equity, not charity. For we have a coast in the Gulf, and the closing-line represents that coast just as it does that of our neighbour. And from the closing line into the Pacific we expect only that maritime area which, in equity, fairly represents our coast. The recognition of the rights of Honduras will strengthen the faith of the Honduran people in the Tribunals that solve disputes by a sound application of international law.

But, Mr. President, as I said at the beginning, Honduras has confidence in this distinguished Court. We close this case with gratitude to each and every member of this Court. Gratitude for the many days of work you have undertaken and will continue to undertake. And gratitude born of the conviction that this Court will ensure that fairness, equity and law will prevail.

Mr. President, I will now proceed to state the final Submissions of the Government of Honduras, as provided by the Rules of Court:

The Government of the Republic of Honduras in relation with the territorial dispute confirms and maintains unchanged its Submissions as set forth in the Honduran Reply.

Accordingly, may it please the Chamber to adjudge and declare:

A. With regard to the land dispute, that the frontier line between the Republic of Honduras and the Republic of El Salvador in the disputed areas runs through the points described in the Submissions of the Reply of the Government of Honduras of 12 January 1990, paragraph A, points

1 to 6.

B. With regard to the island dispute, to adjudge and declare that only Meanguera and Meanguerita Islands are in dispute between the Parties, and that the Republic of Honduras has sovereignty over them.

C. With regard to the maritime dispute Honduras makes two new Submissions, which will follow as Submissions 1 and 2, and otherwise confirms its Submissions as contained in its Reply, subject to one minor modification, as will be explained in Submission 3. These numbers are simply to identify the changes for the purpose of this intervention. They do not, of course, maintain those numbers in the final, formal Submissions.

(1) That the régime of the waters in the Bay of Fonseca, the delimitation of the maritime areas in that Bay, and the rights of Honduras beyond the closing line of the Bay of Fonseca, in the Pacific Ocean, and the delimitation of the maritime areas attaching to the two Parties by means of a line are matter of dispute to be decided by the Chamber of the Court in accordance with the Special Agreement concluded by the Parties in 1986.

(2) That the closing-line across the mouth of the Bay from Punta Amapala to Punta Cosiguina is the baseline from which a delimitation line outside the Bay shall be projected into the Pacific, and further to determine that this should be from a point which lies 3 miles from the low-water mark on the coast of El Salvador.

(3) Finally, to adjudge and declare in accordance with the Submissions contained in the Reply of Honduras of 12 January 1990, paragraph C, points 1 and 2 with the following modification, namely that the delimitation should be, not necessarily by a line on a bearing of 215.5°, but on such a bearing as will give to Honduras a maritime area which is equitable and proportionate to the length of the Honduran coast.

These are the final Submissions of the Government of the Republic of Honduras.

Before concluding my Statement, I want to make recognition of the dignified and courteous attitude of my counter-part the Agent of El Salvador, Dr. Alfredo Martínez Moreno and the rest of the members of the Salvadorian delegation. Their co-operation has made possible the normal

development of the present procedure.

Thank you, Mr. President, Honourable Judges, for your patient and courteous attention to this last Statement on behalf of the Government of Honduras.

The PRESIDENT: I thank the Agent of Honduras, Ambassador Valladares Soto and I give the floor to the Agent of El Salvador, Ambassador Martínez Moreno.

Mr. MARTINEZ MORENO: Thank you, Mr. President, distinguished Members of the Chamber, I now have the honour to appear before you for the last time in these proceedings to make the closing speech on behalf of the Government of the Republic of El Salvador.

Before I read the Submissions of the Government of El Salvador to the Chamber, Mr. President, I wish to make certain observations of an essentially procedural character.

First, Mr. President, as regards the intervention by Nicaragua. El Salvador has no objection to the manner in which Nicaragua has exercised the rights accorded to it by the Judgment of 13 September 1990 and indeed declares that El Salvador is in agreement with many of the points which Nicaragua has made.

Secondly, Mr. President, El Salvador wishes to make a very brief reply to the objection made at the beginning of the session held on 12 June last (C 4/CR 91/47, p. 10) by the distinguished Agent for Honduras to the production by El Salvador of the additional documentary evidence listed but not actually included in the Meanguera Dossier; this additional documentary evidence was mischaracterized or totally ignored by counsel for Honduras during the hearings on the juridical status of the islands.

The original request made by Professor Highet in the course of the session held on 30 May last (C 3/CR 91/35, p. 31) was that "in view of the comments made by Professor Sánchez Rodríguez, we would ask Honduras to concede or to agree that the documents referred to in the Meanguera Dossier *do exist as we have asserted and certified*" (emphasis added).

It was the same request which was reiterated by Professor Lauterpacht at the end of the session held on 11 June (C 4/CR 91/46, p. 56).

In his response to this request at the beginning of the session held on 12 June last (C 4/CR 91/47, p. 10), the Agent for Honduras seems to have misunderstood the point which had been made. Honduras is apparently not prepared to agree that these certifications are correct and that these documents do therefore exist.

El Salvador therefore has no alternative but to prepare complete certified copies of all of the additional documents and to submit them to the Chamber subject to Article 56 of the Rules of Court, solely for the purpose of completing the record and setting things straight.

El Salvador would of course have no objection to Honduras examining these documents and commenting on them in due course.

Thirdly, Mr. President, I would like to recall to the Chamber that, at the close of the oral arguments on the disputed sectors of the land frontier, the Government of El Salvador requested the Chamber to consider making a 'descente sur les lieux' with a view to the obtaining of evidence *in situ*. The Government of El Salvador would like to reaffirm this invitation and to say that it would welcome such a visit from the Chamber or from an expert or experts appointed by it.

Fourthly, Mr. President, the Government of El Salvador would like to reiterate at the end of the oral proceedings in this case its total confidence in the Chamber, composed of such learned and honourable judges, and at the same time to confirm its commitment to comply with the terms of the judgment to be handed down.

Judgments are given in order that they should be complied with and complied with in good faith. For this reason, on this solemn occasion, when two brother countries are entrusting the decision in respect of important territorial rights to the learning and wisdom of such eminent judges, I wish to recall with patriotic pride the Central American Court of Justice, the first permanent international tribunal of justice to exist in the world. Its short but worthy period of activity undoubtedly played a substantial part in the development among the members of the international community of the notion that they might decide to entrust the solution of important disputes to the impartial decision of international tribunals of justice. What is more, this was at a time when the more powerful members of this community had adopted a concept of sovereignty of an absolute

nature.

Fifthly, and lastly, Mr. President, I wish to make certain acknowledgements which are richly deserved.

In the first place, I wish to express the gratitude of the Government of El Salvador to the Registrar of the International Court of Justice, the distinguished Colombian jurist, Dr. Eduardo Valencia Ospina, to the highly competent staff of the International Court of Justice, and to the highly valued interpreters. All of these persons have made substantial contributions to the fundamental objective of enabling two neighbouring countries to settle their differences and to restore and recreate their brotherly relationship.

In the second place, I wish to express my respect for the patriotic and exemplary manner in which the Agent and Co-Agent for Honduras and the Agent for Nicaragua have acted in defence of the interests of their respective countries.

In the third place, I wish to express my most profound gratitude to the distinguished counsel who have assisted El Salvador in these proceedings, for their highly valued contributions.

Last and not least, Mr. President, I wish to express to you and to the other distinguished Members of the Chamber, the appreciation and deepest gratitude of the Republic of El Salvador for the patience and courtesy with which you have followed these lengthy oral proceedings.

With these acknowledgements, Mr. President, I have concluded my preliminary observations; I will now read the submissions of the Government of El Salvador to the Chamber.

The Government of El Salvador respectfully requests the Chamber of the International Court of Justice to adjudge and declare that:

A. CONCERNING THE DELIMITATION OF THE LAND FRONTIER

The line of the frontier in the zones or sectors not described in Article 16 of the General Treaty of Peace of 30 October 1980, is as follows:

- (i) in the disputed sector of Tepangüisir, in accordance with paragraph 6.69 and map 6.7 of the Memorial of El Salvador as set forth in Annex I to these Submissions;

- (ii) in the disputed sector of Las Pilas or Cayaguanca, in accordance with paragraph 6.70 and Map 6.8 of the Memorial of El Salvador, as set forth in Annex II to these Submissions;
- (iii) in the disputed sector of Arcatao or Zazalapa, in accordance with paragraph 71 and map 6.9 of the Memorial of El Salvador, as set forth in Annex III to these Submissions;
- (iv) in the disputed sector of Nahuaterique, in accordance with paragraph 6.72 and map 6.10 of the Memorial of El Salvador, as set forth in Annex IV to these Submissions;
- (v) in the disputed sector of Polorós, in accordance with paragraph 6.73 and map 6.11 of the Memorial of El Salvador, as set forth in Annex V to these Submissions; and
- (vi) in the disputed sector of the Estuary of the Goascorán River, in accordance with paragraph 6.74 and map 6.12 of the Memorial of El Salvador, as set forth in Annex VI to these Submissions.

B. CONCERNING THE LEGAL SITUATION OF THE ISLANDS

The sovereignty over all the islands within the Gulf of Fonseca, and, in particular, over the islands of Meanguera and Meanguerita, belongs to El Salvador, with the exception of the island of Zacate Grande and the Farallones islands.

C. CONCERNING THE DETERMINATION OF THE LEGAL SITUATION OF THE MARITIME SPACES

1. The Chamber has no jurisdiction to effect any delimitation of the maritime spaces.
2. The legal situation of the maritime spaces within the Gulf of Fonseca corresponds to the legal position established by the Judgment of the Central American Court of Justice of 9 March 1917.
3. The legal situation of the maritime spaces outside the Gulf of Fonseca is that:
 - (a) Honduras has no sovereignty, sovereign rights, or jurisdiction in or over them; and
 - (b) the only States which have sovereignty, sovereign rights, or jurisdiction in or over them are

States with coasts that directly front on the Pacific Ocean, of which El Salvador is one.

That concludes, Mr. President, the Submissions of the Government of El Salvador in this case. With the reiteration of my thanks to you Mr. President, and to the other distinguished members of the Chamber, I therefore conclude the oral proceedings in this case on behalf of the Republic of El Salvador. Thank you very much.

Mr. PRESIDENT: I thank the Agent for El Salvador, Ambassador Alfredo Martínez Moreno. We have thus come to the end of the oral proceedings in the case concerning the *Land, Island and Maritime Frontier Dispute (El/Salvador/Honduras: Nicaragua intervening)*. The Chamber is grateful to the Agents, counsel and advocates of the two Parties, and of the intervening State, for the assistance they have given to the Chamber in this complex case.

On 27 May 1991, counsel for El Salvador, in the presence of the Agent of El Salvador, submitted to the Chamber a formal request in the following terms

"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." (CR 91/30, p. 29.)

This invitation was confirmed and renewed this morning by the distinguished Agent of El Salvador.

The Chamber considers that it is not yet in a position to reach a decision on whether it would be appropriate in this case to exercise its powers under Article 66 or Article 67 of the Rules of Court. The Chamber will therefore proceed to begin its deliberation on the case, in accordance with Article 54, paragraph 2, of the Statute of the Court, and will announce in due course its decision on the requests of El Salvador.

At the end of these oral proceedings, which are among the longest in the Court's history, it is also my duty to express our gratitude to the Registrar and Registry, particularly to the interpreters and translators and the typing pool, who have made it possible to conduct and record successfully

these marathon hearings.

As is customary, I request the Agents of the Parties and the Agent of the intervening State to remain at the disposal of the Chamber for any further information or assistance it may require. With that reservation, I declare the oral proceedings closed.

The Chamber rose at 10.30 a.m.
