

C 4/CR 91/9

Cour internationale
de Justice
LA HAYE

International Court
of Justice
THE HAGUE

YEAR 1991

Public sitting of the Chamber

held on Thursday 25 April 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 jeudi 27 avril 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

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 Bardonnet, 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: Please be seated. This sitting is open. We continue the hearings on the disputed areas of the land frontier and I give the floor to President de Aréchaga who is going to deal with the Tepanguisir Mountain zone.

Dr. JIMENEZ DE ARECHAGA: Mr. President, Members of the Chamber, thank you for giving me the floor.

TEPANGUISIR MOUNTAIN

As you will see, we are presenting here a map which corresponds to the maps submitted with the Memorial but which have been prepared following the suggestions as we understood coming from you Mr. President. This is a map not a "croquis" in a bigger scale indicating the scales and having co-ordinates. The only other difference is that it is in two colours in order to distinguish the area El Salvador invokes on the basis of title and the marginal area not covered by the title in yellow which we rely upon on the basis of *effectivités*. This map will be presented to you today with the assistance of my colleague Engineer Cartographer for the Government of El Salvador, Mr. Santiago Elías.

But first I have to deal with certain matters of a legal nature.

The Reply of Honduras recognizes (in para. 4, pp. 96-97) that "the 1776 *titulo ejidal* adjudicated lands in the Tepanguisir Mountain to the Indian community of Citalá, undoubtedly located in the Province which was then the Alcaldia Mayor de San Salvador".

Honduras equally admits that this Formal Title-Deed to Commons of 1776 is the determining title in this sector (RH, para. 5, p. 97) and Honduras has never questioned the validity of this document.

In the light of these admissions, it seems appropriate to ask how any dispute can possibly still be pending in respect of Tepanguisir Mountain.

I. The Disputed Point of Law

The basic argument relied on by Honduras in support of its claim to Tepanguisir Mountain in spite of the adjudication of this land to the inhabitants of Citalá is that the Formal Title-Deed of

1776 "has not modified the limits of the jurisdiction between El Salvador and Honduras" (RH, para. 24, p. 111). Honduras contends that since these lands, before being adjudicated to Citalá, were located in the Spanish colonial Province of Gracias a Dios, they continued to remain in that jurisdiction despite their adjudication in a Formal Title-Deed to Commons.

This discrepancy raises a point of law which goes to the core of the fundamental divergence between the Parties as to the legal effect of Formal Title-Deeds to Commons.

The basic argument adduced by Honduras in order to deny legal effect to the adjudication made in favour of the Indian community of Citalá is that "this adjudication may be analysed as a simple fragmentary and specialized assignation of these lands, in order that they may be exploited by the inhabitants of Citalá" (RH, p. 116). The reason advanced by Honduras in support of this argument is "Because the ejidos are the object of a patrimonial relationship of private property in order to benefit collectively a community of inhabitants" (*ibid.*)

In other words, Honduras is presenting the legal situation produced by the adjudication of these lands to the Indian community of Citalá as nothing more than a grant of private proprietary rights to them so that in effect they became nothing more than absentee landlords of the lands in question subject to the jurisdiction and administrative control of the authorities of Gracias a Dios.

Needless to say, there is no trace in the contemporaneous records of any such arrangement; indeed, on the contrary, there is ample evidence that the Indian community of Citalá, including its Commons in Tepanguisir Mountain, continued to be under the jurisdiction and administrative control of its "Alcalde de Indios" or its "Cabildo" and, through them, was subject to the supervisory control of the "Alcaldia Mayor" of San Salvador.

This argument of Honduras, describing the legal situation produced by the adjudication as nothing more than a grant of private proprietary rights, that is to say of "droit foncier", ignores the distinction established by the experts on Spanish law whose opinions have been presented by the Parties in these proceedings, namely the distinction between, and I apologize for insisting on this point, on the one hand, "ejidos de reducción" and, on the other hand, "ejidos de composición" or sale. According to these experts the "ejidos de reducción" constituted municipal territories which

belonged to the authorities of each settlement, the "Cabildos"; their declaration as Commons made them lands of "public utility" for the favoured settlement, which were intended to be utilized in common, and they were consequently subject to the administrative and financial control of the respective "Cabildo" and of the superior authorities of the colonial province of which the settlement formed part for the purpose of preserving their inalienable character and of ensuring the collection of the appropriate taxes.

El Salvador submits that, what matters for the purpose of determining the *uti possidetis juris* in this case is by whom and from where administrative and judicial control was exercised over the territory in question as from the date of its measurement and adjudication, not in which former colonial province the lands in question were situated prior to that date. There is no doubt whatsoever that such judicial and administrative control was, from the date of the measurement and adjudication of these lands on Tepanguisir Mountain, exercised from the settlement of Citalá.

El Salvador is not really contending that, in the words used yesterday by Professor Sánchez Rodríguez to describe its thesis, the Formal Title-Deed to the Commons of Citalá of 1776 "aurait pour effet de modifier les limites provinciales". The effect of this Formal Title-Deed of 1776 was not to bring about an automatic modification of the provincial boundaries. Its real effect was to place the mountain of Tepanguisir under the jurisdiction of Citalá. Once the Formal Title-Deed was duly approved, the mountain of Tepanguisir became an area which was to be exploited exclusively by the Indian community of Citalá; it also became subject to the authority of the "Cabildo" and of the "Alcalde de Indios" of Citalá, thus becoming part of the municipality of Citalá.

From then on, it was the "Alcalde de Indios" of Citalá, and not the "Alcalde de Indios" of Ocotepeque, who exercised policing and taxation functions on the mountain. Consequently, as the formal title-deed expressly states, the Indians of Ocotepeque withdrew from the mountain and went back to their own distant lands (I refer to the reproduction in extenso of the formal title-deed, page 1805 of the Annexes to the Memorial of Honduras, Annex IX 1-2, at pp. 1795 et seq.).

Professor Sánchez Rodríguez, like Professor Bardonnnet before him, insisted on the fact that

the authority granted by the "Juez Privativo de Tierras" to the delegate judge Jiménez Rubio was wholly exceptional, "pour une seul fois", adding that this authorization, "s'est éteinte avec la fin des opérations en question". Both counsel for Honduras thus tried to suggest that the measurement which that judge carried out constituted no more than a transitory arrangement. But in no sense was this arrangement in any way transitory. The effects of the adjudication of the mountain of Tepanguisir to the inhabitants of Citalá lasted for a considerable number of years, at the very least up until 1821, the year in which, as Professor Sánchez Rodríguez reminded us so many times yesterday, the clock stopped running.

Professor Sánchez Rodríguez also contended that the "ejido" granted to the inhabitants of Citalá in 1776 was an "ejido de composición". He argued that, although in their petition to the "Juez Privativo de Tierras" the Indian community of Citalá asked for the "ejido de reducción" to which they were clearly entitled, they added that "s'il restait encore une parcelle, nous sommes disposés à suivre la procédure d'octroi par Sa Majesté". All this shows is that the inhabitants of Citalá were in such desperate straits that, in the event that the "ejido" which was to be measured turned out to be larger than the area which they were entitled to receive gratuitously, they were prepared to pay for the excess or the "demasia", but in fact, as the formal title-deed clearly shows, they were never asked for any payment since they were awarded the entire area gratuitously.

Thus, in this formal title-deed, no "composición" or payment is shown to have been made by the Indian community other, of course, than the payment of moderate judicial expenses. Consequently, this formal title-deed necessarily granted an "ejido de reducción" and therefore had the legal consequences and the legal characteristics explained by Professor Nieto García and Professor López Rodó which were considered early in the oral argument of El Salvador as to the law applicable.

El Salvador is not, I repeat, contending that this formal title-deed of 1776 brought about an automatic modification of the provincial boundaries. What El Salvador is contending is that the discovery and resurrection of ancient colonial provincial boundaries is not the objective nor the purpose which was intended by the first sentence of Article 26 of the General Peace Treaty of 1980.

What are supposed to be established under this provision are the boundaries between territories and "poblaciones"; and this means, in relation to the present sector, the boundary between Ocotopeque and Citalá.

In refusing to give legal effect to the formal title-deed of 1776, Honduras is thus failing properly to apply Article 26 of the General Treaty of Peace of 1980, at least in two respects.

First, because what is relevant under Article 26 are the boundaries established between "poblaciones", for present purposes those between the Indian communities of Citalá and Ocotopeque and not the unknown boundaries between ancient Spanish Colonial Provinces, such as Gracias a Dios and Chalatenango. I refer to the Memorial of Honduras in paragraph 11 at page 324, where Honduras recognizes that between Chalatenango and Gracias a Dios there is an absence of indication of any precise geographical points for that alleged boundary.

Secondly, because it is equally clear from the text of Article 26 that the relevant clauses in a formal title-deed to Commons are those which "señalan", that is to say, fix or mark definite geographical features or boundary markers rather than those containing vague and incidental references to ancient jurisdictions; such vague references would not allow the Chamber to fix the boundary, as it is specifically asked to do in the Special Agreement.

Professor Nieto García, as counsel for Honduras, contended earlier that, according to a law in the Recopilación de Indias, the limits of Colonial Provinces could not be altered or disregarded, except by means of a Royal Decree ("Real Cédula").

There are two answers to this objection. The first one is that there is such a Royal Decree, granted at El Pardo, in which the Spanish Crown empowered the "Real Audiencia" of Guatemala to grant Commons to the Indian communities (see, in the Annexes to the Counter-Memorial of Honduras, at pp. 70-71, F. de Solano: Cedulaario de Tierras, at pp. 274-275). This delegated authority was not restricted or qualified by any requirement to respect the divisions or limits of provinces or districts within the territory governed by the "Real Audiencia" of Guatemala. The Order of the "Juez Privativo de Tierras" Arredondo authorizing the sub-delegate Judge Jiménez Rubio of Chalatenango is the best answer to the contention advanced by Honduras; this Order

shows eloquently that such an authorization disregarding existing provincial boundaries could indeed be validly granted by the "Real Audiencia" in Guatemala. Honduras has never challenged the validity of this authorization.

The second answer to the contention advanced by Honduras as to the need for a Royal Decree is that Honduras itself, in its litigation with Nicaragua, has given a much less strict interpretation to the provision from the *Recopilación de Indias* on which it is now relying. In those proceedings Honduras admitted that there were four exceptional situations in which previous provincial boundaries could be disregarded, one of them being "the enactments of the Supreme Government of the Province". In this respect, it should be recalled that the adjudication of the mountain of Tepanguisir to Citalá was finally approved by the "Real Audiencia" of Guatemala. This supreme judicial authority possessed jurisdiction over the whole of the territory of the modern Republics of Guatemala, El Salvador and Honduras, and was empowered by Royal Decrees, such as that of El Pardo, to award Commons in all the territories under its government, totally disregarding for this purpose existing provincial jurisdictions.

As was mentioned in the Reply of El Salvador (p. 38, para. 3.4), this power has been recognized by Professor Nieto García in the Opinion which has been presented by Honduras.

Professor Sánchez Rodríguez invoked yesterday a law from the "Recopilación" which provides that "les Vice-Rois et Présidents ne pourront accroître ou réduire les villages, et territoires des Gouvernements ou Corregimientos qui relèvent de notre compétence". This law is not relevant to the question at present under discussion. It indeed prohibited the "Reales Audiencias" from increasing or diminishing their territorial jurisdictions. But the "Real Audiencia" of Guatemala, in granting authority to the delegate Judge Jiménez Rubio, was not increasing or reducing its own area of competence; it was merely exercising its existing jurisdiction within its own sphere of competence, which included both San Salvador, Chalatelango and Gracias a Dios.

II. The boundary line proposed by Honduras

The erroneous juridical thesis advanced by Honduras is reflected in the boundary line which it is proposing to the Chamber. The Reply of Honduras asserts that the boundary line which it submits

"is based on the correct interpretation of the 1776 title which grants the lands of the Mountain of Tepanguisir to the Indian community of Citalá ... without that measure having the effect of transferring the lands to the jurisdiction of El Salvador" (para. 16 at p. 106 thereof).

On the basis of this incorrect point of departure, the boundary line proposed by Honduras assigns the whole of the mountainous area of Tepanguisir to Honduras as if the award of that mountain to Citalá had never occurred.

To accomplish this amputation, the boundary line proposed by Honduras starts in a south-easterly direction and proposes a fluvial frontier based exclusively on certain rivers which denies any effect to the mountains and "cerros" existing in the area. Honduras seems to forget that the essential object of the adjudication of 1776 was to award to the inhabitants of Citalá Tepanguisir Mountain, which as the title said, they had always cultivated.

III. The Ocotepaque Title-Deed of 1818

In an attempt to give a partial answer to the arguments of El Salvador based on the Formal Title-Deed to the Commons of Citalá of 1776, the Reply of Honduras draws attention to a Title-Deed of Ocotepaque dated 1818, asserting that according to the title-deed the boundary line "pénètre en formant un triangle jusqu'au mont de Tepanguisir, au sud des limites des limites tracées par le titre de Citalá" (p. 133). This area is described in the Reply of Honduras as "the 1818 Triangle".

However, the supporting document referred to by Honduras (set out on page 1719 of the Annexes to the Memorial of Honduras) does not say that the boundary line "pénètre en formant un triangle jusqu'au mont de Tepanguisir". I should explain, Mr. President, that there is Tepanguisir hill which gives its name to the whole area, and this Tepanguisir is located where my colleague will indicate, there. The document states that "on chercha la direction du mont de Tepanguisir où l'on arriva a 61 cordes et l'on remit en état l'ancienne borne".

The records thus show that this measurement of 1818, in favour of Ocotepaque, did not derogate or detract from the Title-Deed to the Commons of Citalá of 1776 and did not insert a triangle into its boundaries in the manner claimed by Honduras. On the contrary, the Title-Deed of

Ocotepeque ends by stating that, in the presence of "all the magistrates and principals of the village of Citalá with their titles", the judge ordered that all the 1776 boundary markers should be respected (Annexes to the Memorial of Honduras at page 1719). The judge could obviously not do otherwise than to respect a previous adjudication of municipal territory such as that carried out by the Formal Title-Deed to the Commons of Citalá of 1776 which had been approved at the time by the "Juez Privativo de Tierras" of the "Real Audiencia" of Guatemala. The fact that this measurement of 1818 received the assent of the representatives of Citalá re-emphasizes that the rights of the inhabitants of Citalá were fully preserved thereby.

The final confirmation that the Title-Deed of Ocotepeque of 1818 neither affected nor modified the Formal Title-Deed to the Commons of Citalá nor penetrated into the Commons of Citalá to the extent of a triangle in the manner claimed by Honduras emerges from a Title-Deed of Ocotepeque of 1914 issued by the authorities of Honduras. We have given to the Chamber and to our adversaries a reproduction of a map produced by Honduras which indicates the Republican titles and you will notice that this map which illustrates this Title-Deed of 1914 - it is a small map - includes among others the 1914 Title-Deed issued by the authorities of Honduras in favour of Ocotepeque. This map which illustrates this Title-Deed of 1914 does not make the alleged penetration into Tepanguisir Mountain. On the contrary, the authorities of Honduras who conducted the survey stated explicitly that "nous avons fait abstraction de la borne de Tepanguisir car elle se trouve aujourd'hui sur le territoire salvadorien" (Reply of Honduras at p. 166). Consequently, they admit that there was no such penetration of a triangle into the Title of Citalá.

IV. The Proper Criteria for the Geographical Interpretation of the Formal Title-Deed to Commons of 1776

Honduras not only denies all legal effect to the Formal Title-Deed to the Commons of Citalá but also contests the interpretation and geographical application of that Title-Deed which has been presented by El Salvador. Honduras does so by attempting to place a key geographical feature utilized in the course of the measurement, namely the headwaters of the Pomola River, in a position some distance to the south and to the east of its true location. (It does so in Honduran Map 2.1 which was annexed to the Counter-Memorial of Honduras immediately after page 132 thereof, where

Honduras places the headwaters of the Pomola River next to Peñasco Blanco.)

The disagreement concerns mainly, mostly, the boundary on your right, Mr. President, from Cerro Menuda. Here is where El Salvador places the headwaters of the Pomola River, while Honduras places them here - on the basis of a mistake relating to the river. I will explain this more carefully with the assistance of the cartographer.

The measurement started and also finished at a small hill Cerro Piedra Menuda. That is where the measurement started and the title says that it was in a place "*au vu de la montagne de Tepangüisir*" (au vu of the Tepanguisir hill). That means that the Tepangüisir hill which gives the name to the whole area was always in Citala. This is sufficient to dispose of the alleged 1818 triangle. So this starting point appears on the map with the name "a little hill of broken stones Cerro de Piedra Menuda".

At that place the Indians of Ocotepeque appeared with their own formal title-deed but when the measurement reached the first boundary marker they withdrew, declaring that the lands being measured were a very considerable distance from the boundaries of their own lands.

The measurement continued in the direction west-north-west and duly arrived "*au bas du torrent appelé Pomola*" where a second boundary marker was placed, the boundary marker of Talquezalar on the Pomola River.

At this point, the judge stated and the title says "changing direction and going towards the west upstream along the Pomola River", in French "en remontant le torrent du Pomola à travers une gorge profonde et des précipices", the measurement duly reached the headwaters of the Pomola River, the French title says "jusqu'à la source de Pomola".

Now Honduras, takes a direction towards the west-south-west at Talquezalar rather than of the Pomola River and consequently locates the headwaters, the alleged headwaters, at this point on the map.

What happens is that Honduras follows the line of a totally different river, the river called Cipresales, Quebrada Cipresales, on the basis that the title says the survey went towards the west - "*changé de direction*" - went towards the west.

Now here you notice that it is not towards the west but towards the south-west. The position is at this point. Honduras takes this direction towards the west-south-west, that is, following the line of the Cipresales Quebrada rather than of the Pomola River and consequently locates the headwaters of the Pomola River in a place where the Pomola River does not exist.

Honduras follows the line of this totally different river on the basis of some extremely weak arguments, such as the number of cords utilized for the measurement and the fact that the initial direction - this is the main argument - the initial direction taken by the judge and the other persons accompanying him was towards the west rather than towards the north.

El Salvador has asserted in its Reply and still maintains that these secondary aspects, the number of cords utilized, the direction taken by the survey, cannot be the controlling factors for the proper interpretation and geographical application of the Formal Title-Deed of 1776.

It is not a convincing argument to place reliance on the precise number of cords utilized for the measurement. The surveyors of that time and in that part of the world lacked modern equipment and their measurements, particularly in a mountainous area such as that of Tepangüisir, could not possibly have been expected to have had absolute precision, constituting in reality estimates made "*à vue d'oeil*", as the crow flies. And as to the fact that the judge and the other persons accompanying him set off towards the west, this was indeed the initial direction taken by the measurement from Talquezalar on the Pomola, the initial direction was towards the west as you can see, but the title-deed then adds that it then immediately continued "en remontant le torrent de Pomola" (MH, Annexes, pp. 1805-1806). The course of the measurement obviously had to follow the sinuosities of the course of the river.

The proper criteria for a correct interpretation and application of the Formal Title-Deed of 1776 are of a more substantial geographical character. The title-deed itself contains two fundamental indications of a geographical nature which determine how far north the Commons adjudicated to Citalá extended.

In the first place, account must be taken of the basic object and purpose of the whole exercise, which was to adjudicate Tepangüisir Mountain to Citalá. This basic objective would be defeated if

the title-deed were to be interpreted in the manner advocated by Honduras, for this would eliminate from the mountain its highest peaks such as the Cerro Oscuro and the Plan de los Martínez. To adjudicate the mountain without including its most important mountainous area would be like performing Hamlet without the Prince of Denmark.

After all, the mountain as such was awarded to Citalá and not to Ocotepeque, which already possessed extensive flat lands, as the title-deed itself indicates at page 1811 of the Annexes of the Memorial of Honduras.

Further, this projection towards the north is confirmed by a second geographical factor of great importance.

The title-deed relates that the measurement was continued "*en remontant le torrent de Pomola à travers une gorge profonde et des précipices*", thus arriving at the headwaters of the Pomola River ("*jusqu'à la source du torrent de Pomola*" (MH, Annexes, pp. 1805-1806)).

The fact that the judge and the other persons accompanying him thus arrived at the headwaters of the Pomola river indicates eloquently that the measurement which they were carrying out reached the highest peaks in the area; this is simply because it is at such peaks that "torrents" have their source or headwaters.

In any event, Mr. President, it would not be difficult for a Commission of Demarcation to determine the exact location of the headwaters of the Pomola River.

There is unimpeachable testimony constituting direct evidence that the measurement, and consequently, the boundary of the land adjudicated to Citalá reached the highest peaks in this area and, in particular, the mountainous area dominated by the Cerro Oscuro which has, the whole area has an average altitude of 2,500 metres as you can see by descriptions which indicate the orography of this area.

This testimony I am invoking emerges from the Arbitration Award made by the Tribunal presided by Chief Justice Hughes and is found in the following two passages concerning the tripartite boundary marker between Guatemala, Honduras, and El Salvador (UNRIAA, Vol. II, pp. 1345 and 1354).

The Award of the Tribunal presided by Hughes says:

"In 1908, the representatives of Guatemala, Honduras and El Salvador agreed upon

Cerro Brujo as the common boundary of the three Republics. In the course of the aerial survey ordered by the present Tribunal, information was received by the engineer in charge indicating the possibility that a claim might be made by El Salvador that Cerro Brujo was entirely within her territory."

"In view of the report of the aerial survey as to the location of Cerro Brujo, ... the definitive boundary should start at Cerro Montecristo."

We are not of course invoking this as *res judicata* in our favour - El Salvador was not a party; but as an indication, a testimony that the rights of El Salvador, the territory of El Salvador reached that mountainous area including Cerro Brujo, Cerro Montecristo, Cerro Oscuro.

A third consideration in support of the interpretation of the Title-Deed advocated by El Salvador is of course the acceptance, subsequent to the Arbitration Award just referred to, that the Cerro de Montecristo was indeed the tripartite boundary marker between Guatemala, Honduras, and El Salvador. Honduras thus recognized that the territorial rights of El Salvador reached the high mountainous area which it intends now to deprive.

This reference I think is sufficient to prove how relevant this Arbitration Award of 1933 is to the present proceedings. Rather than rely on African delimitation such as the *Burkian Faso/Mali* dispute, where other problems arose between the component parts of these Republics, El Salvador has preferred to rely on relevant precedents contained in awards involving Central American countries, in particular those which have involved Honduras and its other two neighbours, Guatemala and Nicaragua. In the case between Honduras and Nicaragua, the King of Spain, Alfonso XIII, had occasion to be guided by what he chose to call a demarcation, which was in fact nothing other than a measurement similar to those being relied on in the present proceedings. What is more, the International Court of Justice endorsed the Award of the King of Spain and repeated its terms when concluding that this Award was both clear and valid. In these proceedings of the King of Spain case, Honduras chose to rely on this demarcation, it did not abstain from so doing, despite the opinion of its present advocates who now assert that such documents refer only to "limites de terres".

V. The "*Effectivités*" and the Western Triangle

The final point, Mr. President is the question of "*effectivités*" on what they call the Western Triangle, which is in yellow there.

El Salvador has admitted in its Reply (para. 3.9, p. 42) that the small triangle which runs from the tripartite boundary marker on the Cerro de Montecristo to the Cabecera de Pomola and the Quebrada de la Chicotera, the triangle formed by these three points is not included within the boundaries of the Commons adjudicated to Citalá in 1776.

However, this triangular area is inhabited entirely by citizens of El Salvador, as is indeed recognized by Honduras in its Counter-Memorial (CMH, Annexes, p. 295). The document in question, presented in these proceedings by Honduras, is signed by the Honduran Ambassador, Max Velásquez Días, who I understand is part of the delegation of Honduras. Max Velásquez recognizes in this document filed in the proceedings that,

"les terrains de la zone en litige de Tepanguisir 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 recognition, in an official document presented by Honduras in this case, is the most complete and categorical answer to what Professor Sánchez Rodríguez said yesterday on the subject of "*effectivités*". It also explains why El Salvador did not consider that it was necessary to file any additional evidence in respect of "*effectivités*" in relation to this sector.

Further, in this small yellow triangle 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, especially rare birds in the course of extinction such as the quetzal as well as a most important family of orchids. It was precisely with a view to the setting up of this forestry reserve that the largest part of this triangle, the Hacienda de Montecristo, was donated by the former owners to the Government of El Salvador, which now runs it through its Ministry of Agriculture.

It is in relation to this small area that El Salvador is relying on the human arguments, by virtue of the second sentence of Article 26 of the General Treaty of Peace of 1980, in support of its claim that the citizens of El Salvador who inhabit this small triangle should not be separated from their co-nationals and from their present administration by the municipality of Citalá.

Finally, Mr. President, I should make it clear that I have not referred to two further questions

discussed by Professor Sánchez Rodríguez yesterday because I do not think that they are relevant for present purposes. The law applicable to this case is that contained in Article 5 of the Special Agreement and Article 26 of the General Treaty of Peace of 1980 and not that contained in ancient Treaties dating from the last century whose provisions have been superseded or are obsolete. Nor have I dealt with the question of royal landholdings or "tierras realengas" because in this sector El Salvador is not basing its claims on any such lands. This question of "tierras realengas" will be dealt with in due course in relation to the sector of Nahuaterique, which is where the question of royal landholdings actually arises.

This puts an end to my statement Mr. President, thank you very much for your attention.

Mr. PRESIDENT: I thank President Jiménez de Aréchaga. The Chamber takes a break now and I wonder if the delegation of Honduras would decide to reply this morning or would prefer to wait until tomorrow.

H.E. Mr. VALLADARES SOTO: Mr. President, the Reply of Honduras we will leave until tomorrow morning.

Mr. PRESIDENT: So I adjourn the sitting until tomorrow morning at 10 o'clock.

The Chamber rose at 10.55 a.m.
