

Cour internationale  
de Justice  
LA HAYE

C 4/CR 91/12

International Court  
of Justice  
THE HAGUE

YEAR 1991

*Public sitting of the Chamber*

*held on Thursday 2 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)*

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VERBATIM RECORD

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ANNEE 1991

*Audience publique de la Chambre*

*tenue le jeudi 2 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))*

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COMPTE RENDU

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*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

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*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:*

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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'  
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*as Counsel;*

Assisted by

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Mr. Keith Highet, Adjunct Professor of International Law at The  
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Mr. Elihu Lauterpacht C.B.E., Q.C., Director of the Research Centre  
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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  
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*as Counsel and Advocates;*

and

Dr. Francisco José Chavarría,

Lic. Santiago Elías Castro,

Lic. Solange Langer,

Lic. Ana María de Martínez,

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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,

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

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ainsi que :

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M. Santiago Elías Castro,  
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Mr. Alejandro Nieto, Professor of Public Law, Universidad Complutense de Madrid,

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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,

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M. Derek W. Bowett, professeur de droit international à l'Université  
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M. Pierre-Marie Dupuy, professeur à l'Université de droit,  
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Mme Olmeda Rivera,

M. Raul Andino,

M. Miguel Tosta Appel,

M. Mario Felipe Martínez,

Mme Lourdes Corrales,

*comme membres de la Commission de Souveraineté et des frontières.*

The PRESIDENT: The sitting is open. We continue the hearings on the second dispute to settle the land frontier. It is for the delegation of El Salvador to speak this morning and I give the floor to President Jiménez de Aréchaga.

Dr. JIMENEZ DE ARECHAGA:

*CAYAGUANCA AND LAS PILAS*

*I. Cayaguanca or Las Pilas?*

Mr. President, Members of the Chamber, I can begin this statement on behalf of El Salvador by indicating a few points of agreement with what was said yesterday by my distinguished adversary Professor Sánchez Rodríguez.

Professor Sánchez Rodríguez put very well and in a few words what is the fundamental issue in this area, namely, to determine which is "le cadre physique", the physical frame of the sector in dispute.

He stated that, in a geographical description, the area has the rough shape of a triangle. We agree with that; the geographical description coincides. However, we observe that it is the "ejido" of La Palma which has the shape of a triangle with its apex in the confluence of the Sumpul River with the Quebrada del Copantillo. I will ask my colleague, Mr. Elias, to show this triangle in the first map on display that we have placed here, which is the official Honduran map 2359 Nuevo Ocotepeque. This is a Honduran map: will you please indicate the triangle? This is the Quebrada del Copantillo junction with the Sumpul River, La Peña de Cayaguanca, and from this point on the frontier has been agreed.

Professor Sanchez Rodrigues has said that this triangular area is crowned by the Cerro El Pital, with an altitude of 2,730 metres.

We also agree with this, but that is where our agreement ends.

Professor Sanchez Rodriguez made an identification which is the source of the problem that we have in this sector, and the essence of the dispute we have concerning this sector.

He identified the Cerro El Pital with the mountain of Cayaguanca, asserting that the Cerro El

Pital is known under the name of "mountain of Cayaguanca". However, the recognized toponymy does not allow this identification and confusion.

The Cerro El Pital is the Cerro El Pital, and has always been recognized under that name, and, consequently, it is not to be identified with the Cayaguanca mountainous area.

The Parties disagree as to the name to be given to the area in dispute in this sector, Honduras designating it as Cayaguanca and El Salvador referring to it as Las Pilas.

But this dispute is not just a question of names. The fundamental issue in this sector, I repeat, is the identification and location of the area described as the mountain of Cayaguanca.

Honduras contends that a Formal Title-Deed issued in 1742 in favour of the inhabitants of Citalá also granted, as a sort of compensation, the whole of the mountain of Cayaguanca to the inhabitants of Ocotepeque. Honduras further contends that the mountain of Cayaguanca thus granted to the inhabitants of Ocotepeque is the land which is in dispute in this sector of the frontier. According to Honduras, as a result of the grant of the mountain of Cayaguanca to the inhabitants of Ocotepeque, this indigenous community acquired a vast mountainous area, virtually a chain of mountains extending as far as the Sumpul River. The whole triangle would belong to Honduras, according to their thesis.

El Salvador for its part contends that this Formal Title-Deed of 1742, issued in the dispute between Citalá and Ocotepeque, does not apply to the land which is in dispute in this sector, but instead refers to land within an area whose delimitation has already been agreed between the Parties, namely the second sector of the frontier line from the mountain of Zapotal to the peak of Cayaguanca, delimited by virtue of Article 16 of the General Treaty of Peace of 1980.

Thus the crucial point here consists in identifying and locating the area described as the "mountain of Cayaguanca" in order to determine whether the Formal Title-Deed of 1742 relied on by Honduras is relevant to this sector or instead, as contended by El Salvador, is completely irrelevant.

El Salvador submits that there are three main considerations which demonstrate the lack of foundation of the thesis of Honduras. The first is of a cartographical nature. The second results from a comparison between the Formal Title-Deed relied on by Honduras and the Formal Title

Deeds to Commons of Ocotepeque of 1818. The third consideration is of a legal nature, based on detailed consideration of the Formal Title-Deed relied on by Honduras.

*(A) Considerations of a cartographical nature*

These considerations emerge as a result of the merest glance at the Official Honduran Map entitled "Nuevo Ocotepeque 2359 II". The peak (or "Peña") of Cayaguanca appears on that map as the terminal point of the second sector of the boundary line agreed in 1980, namely the sector between El Zapotal and La Peña de Cayaguanca. This part has been agreed. This official Honduran Map denotes by the name of Cayaguanca the mountainous area surrounding the peak of the same name. This peak is a geodesic point, and I will now ask the cartographer to point out its exact location, that is to say the exact location of the Peak of Cayaguanca. As may be seen, the Cayaguanca area lies on both sides of the agreed boundary line, to the west of the Peak on the Honduran side of the boundary and towards the south of the Peak on the Salvadorean side of the boundary.

What is significant, however, is that the mountainous area both to the west and to the south so described by the name of Cayaguanca fall clearly within the area whose boundary line has already been agreed. Moreover, the official Honduran map there shows that on both sides of the agreed boundary line there are two "caseríos", *poblados* was the word used by Professor Sánchez Rodríguez, named Cayaguanca. It is in the view of El Salvador very important that these conclusions emerge from an official Honduran map.

Further, the Reply of Honduras expressly recognizes, at page 223, that at least "une partie de la montagne de Cayaguanca se situe *au nord du Rocher de Cayaguanca ...*" (emphasis added) does not mention the east.

*(B) The comparison between the various formal title-deeds*

If the thesis advanced by Honduras were the correct one, then the land awarded to the inhabitants of Ocotepeque, according to their claim, by way of compensation in 1742 would necessarily have appeared in the global and definitive formal title-deed to the Commons of Ocotepeque which was issued in 1818. This formal title-deed was delivered to the Indian community

at its own request - of Ocotepeque - in order to be able to proceed to a re-establishment of the relevant boundary markers: this was necessary because the ancient title-deeds were in such a state that they could only be read with great difficulty (see MH, Ann., pp. 1691 *et seq.*).

The judge, accompanied by the surveyor and by the authorities of the town of Ocotepeque, commenced the measurement by starting from the top of the peak of Cayaguanca (*op. cit.*, p. 1718) and going in the direction of the Cerro San Antonio, namely towards the north-east. At the Cerro San Antonio, according to the formal title-deed of Ocotepeque, "se trouve une autre borne ancienne que j'ai ordonné de remettre en état": he referred to another marker which was there and which was re-established. At this boundary marker of the Cerro San Antonio, the direction of the measurement was changed so as to go towards the north-northeast (*op. cit.*, p. 1718).

The result of this measurement is reflected clearly in the official Honduran map we have on show. If a line is drawn between the peak of Cayaguanca and the Cerro San Antonio, as I will now ask the cartographer to do, such a line marks the furthest projection towards the east of the Commons of Ocotepeque.

The merest glance at this map shows that the area in dispute in this sector clearly lies beyond the straight line between the peak of Cayaguanca and the Cerro San Antonio. This line in red, which has been drawn, thus constitutes the closing line, that is to say the furthest extension towards the east, of the alleged concession of an undetermined area of the mountain of Cayaguanca to the inhabitants of Ocotepeque. This obviously confirms the previous conclusion already drawn from this official Honduran map, namely that the formal title-deed issued in favour of the inhabitants of Ocotepeque in 1742 is completely irrelevant to the determination of the boundary line in this disputed sector, since the area that El Salvador calls "Las Pilas", which is the triangle, never belonged to Ocotepeque.

This fact also explains why, when the area in dispute in this sector was subsequently awarded as Commons to the Indian community of La Palma, the inhabitants of Ocotepeque, who were duly notified that the measurement of these Commons was being carried out, did not make any objection to the adjudication of the relevant area to the inhabitants of La Palma.

That means, Mr. President, that Honduras has already received the mountainous area in dispute surrounding the peak of Cayaguanca; it cannot claim that area twice over. That area, which Honduras has already received, is clearly situated within the zone limited by the red line which the cartographer has drawn on Map 2359 II.

*(C) Considerations of a legal nature*

I come now to considerations of a legal nature which lead to the same conclusion. They confirm the conclusions reached above as to the location and identification of the area described as the mountain of Cayaguanca.

In this sector, as has already been mentioned, Honduras, in support of its claim, has relied on the formal title-deed issued in 1742 in favour of the inhabitants of Citalá. However, Honduras presented only a single page of this formal title-deed. It is easy to understand why Honduras did not choose to present the full text of this formal title-deed once that document has been studied as a whole. This whole document was presented by El Salvador among the Annexes of its Counter-Memorial (CMES, Vol. I, Ann. II.3, pp. 130 *et seq.*).

This formal title-deed was the result of a measurement which was carried out jointly by two judges, one from San Salvador, the other from Gracias a Dios. They had been entrusted by the "Juez Privativo de Tierras" of the "Real Audiencia" in Guatemala with the task of resolving the dispute between the inhabitants of Citalá and the inhabitants of Ocotepeque over an area known as the Jupula lands (see RH, para. 14, p. 211).

The Jupula lands are described in the Memorial of Honduras (para. 14, p. 348) as a triangle "dont le côté nord serait la ligne qui va, depuis le mont du Zapotal au rocher de Cayaguanca". This is this line representing the north of the Jupula lands which were in dispute. It is clear then that the lands of Jupula fall entirely within the second sector of the frontier line, which runs precisely between those two points, the mountain of Zapotal and the peak of Cayaguanca. This is one of the sectors whose delimitation was agreed between the Parties by virtue of the 1980 Treaty.

The two judges awarded the lands of Jupula to the inhabitants of Citalá, having found that the inhabitants of Ocotepeque "have more than enough land" (CMES, Anns., Vol. I, Ann. II.3,

pp. 130-131), while the inhabitants of Citalá had "rough and sterile land where there is no place for ploughing cornfields" (*ibid.*, p. 131). The inhabitants of Ocotepeque agreed with this decision, but "merely beg to be left free for them a mountain called Cayaguanca which is above the Jupula river (*ibid.*, p. 132).

The communication addressed by the two judges to the "Juez Privativo de Tierras" of the "Real Audiencia" of Guatemala reads as follows, and every word in that communication is important (*ibid.*, at p. 134):

"it was found (said the two judges) that the Ocotepeque town had between useful plain fields and irrigable land something more than fifty cabellerías, without those they have of mountain ... and that those of Citalá did not have of it, which is why, accomplishing with the commands of Your Excellency, we protected the last ones (those of Citalá) in the possession of their Title-Deed of common lands ... and those of Ocotepeque were informed of the lack of justice with which they have pretended to disturb those of Citalá".

Nothing whatever is said in this final communication in relation to any land awarded by way of compensation to the inhabitants of Ocotepeque either in the mountain of Cayaguanca or anywhere else.

Further, the operative part of this Formal Title-Deed, which is the part thereof adopted by the "Juez Privativo de Tierras" of the "Real Audiencia" in Guatemala, makes reference only to the adjudication to the inhabitants of Citalá of the lands of Jupula and the withdrawal of any title to those lands which had previously been vested in the inhabitants of Ocotepeque; there is no mention at all of any land being vested to the inhabitants of Ocotepeque, never mind any adjudication of any land in their favour. The decision of the "Juez Privativo de Tierras" reads (*ibid.*, p. 135):

"It is confirmed the possession of the contentious lands, given to the Indians of the town of Citalá in presence of those of Ocotepeque ... considering the poverty which they at present suffer and let the inhabitants of Ocotepeque return the title-deed issued to them."

The original in Spanish says "recojase", in other terms they withdrew the title which had been invoked by those of Ocotepeque.

Not a word is said in this operative part of the Formal Title-Deed to the Commons of 1742 invoked by Honduras as a basis of their claim, but nothing is said about any award to the inhabitants

of Ocoatepeque of the mountain of Cayaguaunca. No titles whatever were either adjudicated or attributed to the inhabitants of Ocoatepeque; on the contrary, they were ordered to return the Title-Deed which they had maliciously obtained.

The absence of any such consideration or adjudication by either the two delegate judges or the "Juez Privativo de Tierras" is easy to understand. If the lands described as lying to the east of the peak of Cayaguaunca were to be understood as extending as far as the Sumpul river (which is what Honduras is contending), then any award of such lands would have been *ultra vires* the jurisdiction which had been attributed by the "Juez Privativo de Tierras" to the two delegate judges. They had been given jurisdiction only to resolve the dispute between the inhabitants of Citalá and those of Ocoatepeque over the lands of Jupula, as described in the Memorial of Honduras and as we had pointed out earlier (p. 351).

The delegate judges were therefore not competent to exercise any jurisdiction in respect of land lying further to the east as far as the Sumpul river for the very simple reason that no such land had ever been in dispute between the inhabitants of Citalá and Ocoatepeque.

The land which, according to Honduras, was adjudicated to the inhabitants of Ocoatepeque lies beyond the line between the peak of Cayaguaunca and the Cerro San Antonio, the real line. That area was never claimed or occupied by the Indians of Citalá and so was never in dispute between the two communities. I repeat, if the area adjudicated to the inhabitants of Ocoatepeque in the Formal Title-Deed of 1742 were to be located in the position claimed by Honduras, then that adjudication by the two delegate judges would have been null and void for lack of jurisdiction.

Moreover, the alleged adjudication of what is to all intents and purposes an entire chain of mountains would not have satisfied the strict requirements established and the safeguards demanded by the relevant Spanish legislation for the valid attribution of an "ejido". The delegate judges did not have the power to adjudicate communal lands in such a manner, without having carried out any measurement, without having summoned any of the adjoining landowners, and without having erected or even indicated any boundary markers which would make it possible today to establish the boundaries of this alleged expanse of land extending to the east of the mountain of Cayaguaunca.

Finally, how is it possible, in the context of the considerations expressed by the three judges - the two delegate and the "Juez principal" - as to the existing availability of land to the two Indian communities in question, for Honduras to contend that these same judges awarded, in this casual "off-the-cuff" manner, to the inhabitants of Ocotepeque a mere 108 "cabellerías" in compensation for the award to the inhabitants of Citalá of the 16 "caballerías" which comprised the lands of Jupula? It simply defies common sense, in the light of the context of the Formal Title-Deed, to contend that the inhabitants of Ocotepeque were awarded in such a cavalier fashion what the Reply of Honduras describes (at p. 210) as "un ensemble montagneux avec des monts et plusieurs autres accidents", or what the Counter-Memorial of Honduras describes (at p. 233) as "tout le massif". Consequently, it also defies common sense to adduce, as Honduras does in its Reply (para. 47 at pp. 233-234), that "les références à la montagne de Cayaguanca ne se rapportaient pas à une hauteur ou un mont précis, mais identifiaient, au sens large, un secteur ou massif".

It is to be remarked, between brackets, that Professor Sánchez Rodríguez repeatedly relied on this passage of the "título ejidal", in that part which he claims is in favour of Ocotepeque, in order to contend that this document attributed the whole mountain of Cayaguanca lato sensu, to the Indians of Ocotepeque. Thus, he contends that such an attribution should be taken as the basis for establishing, by the Chamber, the international boundary line.

I may ask, is Professor Sánchez Rodríguez, abandoning the Honduran fundamental legal contention, namely, that the "títulos ejidales" merely confer a "droit foncier", and provide only for "des limites de terres" which should never be transformed into international boundaries? I leave the question open.

## *II. The Formal Title-Deed to the Commons of La Palma*

Now I come, Mr. President, to the Formal Title-Deed to the Commons of La Palma. In the absence of any valid title which may be relied on by Honduras as covering the area in dispute in this sector, the Formal Title-Deed to the Commons of La Palma of 1829, relied on by El Salvador, consequently gains in strength, despite the fact that it was issued a few years after independence from Spain had been obtained.

But I say it is better to have a Formal Title-Deed to Commons, even if it does date from the time of the Central American Federal Republic, than, as in the case of Honduras, to have no relevant Title-Deed at all.

Yesterday, Professor Sánchez Rodríguez said that our argument dissolved like sugar in coffee. Sugar may melt, but it sweetens the cup and makes it less bitter to have to accept a title so significant as that of Dulce Nombre de La Palma.

The significance of the Formal Title-Deed to the Commons of La Palma results from certain characteristics which differentiate this title-deed from others which are mentioned in the Reply of Honduras.

These characteristics are as follows. First, it is the only Formal Title-Deed to Commons filed in these proceedings which concerns the area in dispute in this sector. Secondly, the representatives of Ocoatepeque were duly summoned to observe the course taken by the measurement (Annexes to the Counter-Memorial of El Salvador, Vol. II, at p. 7) and made no objection thereto. Thirdly, it is the only title-deed with the above characteristics which was issued during the period of the Central American Federal Republic; this latter fact gives it a special importance.

Honduras is on record as having stated, in connection with its dispute with Guatemala, that title-deeds issued during the period of the Central American Federal Republic have a special value because "in the event that one State had, by virtue of its measurements, prejudiced the rights of another State member, there was a common authority able to re-establish justice" (see the Reply of El Salvador at para. 3.30). This admission, or this contention, is independent of the fact that it was formulated before a court or in the course of a mediation.

The measurement recorded in the Formal Title-Deed to the Commons of La Palma of 1829 did not provoke the slightest reaction from Honduras. The Arbitration Award handed down in 1933 by the Tribunal presided over by Chief Justice Hughes contains a statement which is fully applicable to the case at present under discussion (*UNRIAA*, at pp. 1325 and 1327). "The government acts of each State, specially when unopposed, or when initial opposition was not continued, are of special importance." The Formal Title-Deed granted in favour of the inhabitants of La Palma shortly after

the independence of Central America was "a formal act showing clearly the understanding" of El Salvador "that this was her territory. These assertions invited opposition on the part" of Honduras "if they were believed to be unwarranted".

Professor Sánchez Rodríguez repeatedly described the La Palma title as "un titre républicain". There is nothing wrong with this adjective, but it should have been specified that it is also a "federal title", issued during the existence of the Central American Federation, a fact which, as I said, confers on this document additional strength.

It constituted an assertion of rights by a State member of the Federation which did not meet opposition from other interested parties, such as the Ocotepeque community and the authorities in Honduras governing this community. There were at that time common superior authorities competent to settle an eventual dispute if there had been an usurpation of the boundaries of territories or poblaciones.

For these reasons, the La Palma title is as good as any title we have invoked and if, in an excess of purism, it is considered, because of its date, as incapable to prove *uti possidetis juris*, then, in any event, the title of La Palma constitutes a conclusive proof of Salvadorian effectiveness in the area.

Turning now to the geographical characteristics which emerge from this Formal Title-Deed, these include a number of features which should clearly be taken into account in fixing the boundary in this disputed sector.

The Formal Title-Deed establishes the Sumpul River as the boundary between Honduras and the Commons of La Palma, which were granted to that indigenous community by the authorities of El Salvador.

This fact signifies that El Salvador asserted its jurisdiction over the territory up to the right bank of the river - in its superior course, *curso superior del Sumpul*. The Title-Deed states that the judge and the other persons accompanying him reached the place known as Laguna Seca, which is on the bank of the Sumpul River and is situated in a sector whose frontier has already been delimited - the Sumpul River is already a boundary in an agreed sector - (see Annexes to the

Counter-Memorial of El Salvador, Vol. II, Ann. III, at p. 9).

The Formal Title-Deed indicates that the measurement was not stopped at the bank of the Sumpul River but was continued along the river upstream. It has been agreed that the Sumpul River constitutes the boundary line in the sector between the Quebrada Oscura and the confluence of the Sumpul River and the Pascacio River - this is another sector which has been agreed. The disputed sector at present under consideration begins at the confluence of the Quebrada Chiquita or Oscura and the Sumpul River, as the President stated in opening the proceedings concerning this sector.

The Formal Title-Deed clearly indicates how far to the north upstream along the Sumpul River the measurement was continued. The most important passage in this Formal Title Deed to Commons is the statement that the judge and the other persons accompanying him continued upstream towards the north as far as the confluence of the Copantillo Gorge with the Sumpul River. This is the confluence, this is the Sumpul, this is the Copantillo Gorge.

Finally, at this extreme northern point of the measurement, its direction was changed towards the south-west and the measurement was continued upstream along the Copantillo Gorge as far as the place known as El Pital. I would suggest Mr. President, with your permission, that we can follow what comes now on the map which was distributed yesterday by counsel for Honduras, Map C.1, which I think you have in your possession - it is small, but you can still follow it. The measurement, once it reached the confluence, took the Copantillo Gorge as far as the place known as El Pital. Here there is a geodesic point named Pital recognized as such by both Parties. From there, they went, according to the title, to a point described as being in the vicinity of the Peak of Cayaguanca ("la cercanía del Copo de Cayaguanca").

The disputed area granted as Commons to the indigenous community of La Palma by the authorities of El Salvador has a roughly triangular shape with the apex of the triangle at the point of the confluence of the Sumpul River and the Copantillo Gorge.

Honduras ignores the fact that the survey continued upstream of the Copantillo Gorge - I refer you to Honduran Map 3.1 presented yesterday by Honduras and by us today. Honduras, in Map 3.1, draws a straight line in red colour, instead of the line of the title which follows the

ondulations of the Copantillo Gorge. So, in respect of the ondulations of the Gorge, the Salvadorian interpretation of the title is in violet. I will ask the cartographer to point out again the different lines, the one of Honduras arbitrary and the other corresponding to the title.

You will notice that the right side of the triangle is the Sumpul River and the left side the line linking the confluence of the Sumpul River and the Copantillo Gorge with the Cerro El Pital and a point in the vicinity of the peak of Cayaguanca. Given that the Cerro El Pital is thus part of the boundary, it is therefore possible to be on that Cerro and nevertheless to be on the Honduran side of the frontier.

And this explains the meaning of the correspondence from the Foreign Ministry of El Salvador which has been relied on by Honduras, in which the local commanding officer based at La Palma reported that certain generals engaged in revolutionary activities were on the Cerro El Pital, in the jurisdiction of Ocotepeque in Honduras. He was simply reporting that these generals were not on the Salvadorian side of this mountainous area, but rather on the Honduran side thereof.

This correspondence relied on by Honduras (HR, pp. 245 *et seq.*) shows only that the Cerro El Pital was a frontier area, where incidents of this type are accustomed to occur.

This map 3.1 presented by both Parties compares the Honduran and El Salvadorian interpretations of the formal title-deed to the Commons of La Palma. There does not appear to be any substantial difference of opinion as to the boundary of these Commons on their right side, which is the Sumpul River.

There is, however, a difference of opinion as to the boundary of these Commons on their left side, namely - I repeat - the line linking the confluence of the Sumpul and the Copantillo Gorge with the Cerro El Pital and the point in the vicinity of the peak of Cayaguanca.

We have pointed out in our Reply the inconsistencies of the interpretation of Honduras, and we have shown how this map 3.1 has been doctored in order to appear to support the incorrect interpretation of the title made by Honduras.

You will notice, Mr. President, Members of the Chamber, that you have there in capital letters the location assigned by Honduras to certain features, markers, described in the title, and also, in

smaller letters, the Salvadorian interpretation.

As I said, a straight line between the confluence and the Cerro El Pital is postulated by Honduras when the fact is that the survey continued upstream along the Copantillo Gorge, with the judge and the other persons accompanying him naturally following the undulations of the line of the gorge. A "paraje El Pital", in capital letters, is invented in the Honduran map and is located some 2 kilometres distant from the peak of the Cerro El Pital. (Can all of you see, because it is very small. This is the Pital - there. And here is the paraje El Pital which is in red on that map by Honduras.) Finally, the place described in the title as in the vicinity of the peak of Cayaguanca, "en la cercanía del pico de Cayacuanca", which did not appear on the big map (Map 2359 II), is located some 4 kilometres away from the Cerro El Pital. What is the distance between this "cercanía del pico y el pico". Four kilometres away. So it is quite a strange way to interpret the word "nearby" or "cercanía".

But all this exercise which Professor Sánchez Rodríguez does as to the interpretation of the measurement of La Palma, going into the minutiae of the measurement; we will not follow him because both interpretations of the title are absolutely incompatible with the frontier line claimed by Honduras in its final submissions. What you must note is the line claimed by Honduras - they ask you to establish this line. The difference for the relevance of this discussion is whether 80 per cent of the area belongs to El Salvador or the 100 per cent.

The issue, therefore, is not whether the measurement reached the Marrano mark or not, but whether or not the title of La Palma as such constitutes the best evidence of *uti possidetis juris* or, in its defect, of real effectiveness by Salvadorian authorities and populations.

It should finally be observed that El Salvador bases its claims to the marginal area - [it is a marginal area] not covered by the title on effectiveness. You will notice in yellow that marginal area. It is a region which is not covered either by the title of Ocatepeque. El Salvador bases its claim to the marginal area shown on the map in yellow on the *effectivités* and the human argument, in accordance with the dictum of the Court in the *Burkina Faso/Mali* case.

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.

I will not go into the details of effectiveness, answering Professor Sánchez Rodríguez on this question, for three reasons.

Firstly, because we only claim effectiveness and the human argument with respect to the marginal area in yellow on this map.

Secondly, because the evidence of effectiveness in those marginal areas will be presented as a global subject by another member of our legal team.

Thirdly, the main reason is that Salvadorian effectiveness in this area has been admitted by Honduras in its Reply. I refer to paragraph 54 at page 238 of the Reply. I will read to you this paragraph in French; it constitutes an implicit admission that there is Salvadorian effectiveness and not Honduran. Honduras's Reply states:

"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 de Honduras. Il s'agit, au contraire, de présenter à la Chambre de la Cour des arguments complémentaires a posteriori pour confirmer - et non pas pour remplacer - *l'uti possidetis juris*".

Professor Sánchez Rodríguez yesterday (at C 4/CR 91/11, p. 46) invoked also as evidence of Honduran effectiveness "la cartographie du secteur", mentioning certain private maps.

But it is clear that those maps have no evidentiary force when compared with a title such as that of La Palma.

In the *Burkina Faso/Mali* case, so largely mentioned by our adversaries, the Chamber of the Court dismissed the claim of one of the Parties, which described maps as "cartographic titles". The Chamber said:

"Maps merely constitute information which varies in accuracy from case to case; of themselves and by virtue solely of their existence, they cannot constitute a territorial title." (*I.C.J. Reports 1986*, p. 82.)

Last of all, Mr. President, it should be mentioned that the title-deeds invoked at the last minute in the Reply of Honduras concerning the Volcán of Cayaguanca and Las Nubes are not Formal Title-Deeds to Commons conferring "ejidos de reducción" but are instead title-deeds conferring

"ejidos de composición", that is to say private proprietary rights in exchange for a monetary payment.

In any event, these title-deeds do not extend as far as, or interfere in any way, with the Commons of La Palma. The identification postulated in the Reply of Honduras (at p. 242) between El Volcán and the Cerro El Pital is shown to be incorrect by the official Honduran Map 2359 II where El Volcán and the Cerro El Pital are shown as two distinct places a considerable distance apart. I will now ask the cartographer to indicate both these places: that is to say, El Volcán and the Cerro El Pital. It will be better to follow this on your small map. This is El Volcán and this is the Cerro El Pital.

As to the Title-Deed of Las Nubes of 1883, the promoter of the measurement declared that "après s'être mieux informé, il sait que le terrain demandé n'est pas limitrophe avec les terrains des villages de San Ignacio et de la Palma; qu'il ne réclame rien de plus que ce qui se trouve sur la cime du coteau de Cayagua" (Annexes to the Reply of Honduras, at p. 94).

Finally, Mr. President, I want to make a short comment as to the insistence of our adversaries in bringing up the Burkina Faso case and reproaching us for not paying enough attention to this case. The *uti possidetis juris* principle in the final analysis consists in determining how and through which legal means the colonial authorities organized and governed the populations under their care. In Africa, as the *Burkina Faso/Mali* case showed, the main difficulty in the original dispute consisted in determining the territorial title in the case of nomadic populations. In Central America, on the contrary, it consists in determining how and by which legal means the King and the colonial authorities transform nomadic populations into stable settlements. This was accomplished through the *ejidos de reducción*, that is to say, through the granting of land for communal agricultural exploitation. These grants were made gratuitously in recognition of a pre-existing right. This explains the difference between the two situations and the importance in the present case of the *ejidos de reducción* and of the territorial disputes as to their limits between the Indian populations.

Thank you, Mr. President.

The PRESIDENT: I thank President Jiménez de Aréchaga. I would like to know whether the

Honduran delegation would be prepared to reply tomorrow morning at 10 o'clock, or whether they will require more time and would prefer to speak in the afternoon.

Mr. VALLADARES SOTO: Mr. President, we shall be able to reply tomorrow morning at 10 o'clock.

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

*The Chamber rose at 11 a.m.*

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