

Cour internationale
de Justice
LA HAYE

International Court
of Justice
THE HAGUE

YEAR 1991

Public sitting of the Chamber

held on Thursday 6 June 1991, at 3 p.m., at the Peace Palace,

Judge Sette-Camara, President of the Chamber, presiding

*in the case concerning the Land, Island and Maritime Frontier Dispute
(El Salvador/Honduras: Nicaragua intervening)*

VERBATIM RECORD

ANNEE 1991

Audience publique de la Chambre

tenue le jeudi 6 juin 1991, à 15 heures, au Palais de la Paix,

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

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

COMPTE RENDU

Present:

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

Registrar Valencia-Ospina

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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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

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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,

Le Gouvernement d'El Salvador est représenté par :

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ainsi que :

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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.

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M. Miguel Tosta Appel,

M. Mario Felipe Martínez,

Mme Lourdes Corrales,

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Le Gouvernement du Nicaragua est représenté par :

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comme conseil.

The PRESIDENT: Please be seated. The sitting is open, and I give the floor to Professor Lauterpacht.

Mr. LAUTERPACHT: Thank you, Mr. President. My submissions this afternoon are offered in response to the arguments developed yesterday by counsel for Honduras. I apologize to my distinguished and learned friends if I should, in any way, inaccurately reflect their statements; I have not had enough time to receive and study the transcripts and I am, therefore, a bit uncertain as to whether my note is accurate. I have had the benefit of the manuscript text that Professor Dupuy Junior so kindly gave me, received this morning, and I hope that this will save me from going too far wrong.

I begin with the submissions made by Professor Dupuy Senior yesterday. He dealt with three main points under his first heading, which was the attempt to make the 1917 Judgment opposable to Honduras.

First, he referred to the principle of *res judicata*. He expressed surprise that it had been mentioned as he thought it had already been dealt with. But, in his remarks that followed, he betrayed a misunderstanding of the intention with which the reference was made to *res judicata* in the statement of the Minister.

El Salvador invoked the concept of *res judicata* as one of the two elements explanatory of its commitment to the 1917 Judgment. El Salvador asserted *res judicata* in the strict sense only as against Nicaragua. El Salvador acknowledged that it did not apply to Honduras *stricto sensu*. El Salvador argued that other considerations led to the binding effect of the Judgment upon Honduras, notably Honduras's subsequent non-objection amounting, over time, to acceptance. And reliance was also placed upon the very terms of the note that Honduras sent in 1916 which did not, itself, dissent from the idea of condominium generally.

There was a further point in this connection. Professor Dupuy Senior said that the provisions of the Statute of the Central American Court of Justice, to which El Salvador had referred for their indication of the obligation of moral support that the Parties to that Statute were required to give to Judgments of the Court, and he said that that requirement did not apply when the matter directly

affected one of the Central American States.

I feel I should, in this connection therefore, draw your attention to a note which is a public document, which was given to me only today and which was extracted from a work called "El Golfo de Fonseca y el Tratado Bryan-Chamorro" - you should have it in the little plastic folders in front of you. There is an extract from that volume, in the folder, item 31, which is a communication from the Secretary of the Central American Court of Justice to the States Members of the Central American Court who were not parties to the case. I would venture to draw your attention to the first paragraph, in which the Secretary indicates that he is communicating his note to the Chancelleries of Costa Rica, Honduras and Guatemala. He indicates - over the page - that he is doing so for the purpose of requesting the States recipients to lend to the Judgment the moral support which is called for by Article 25 of the Statute.

So, Mr. President, evidently the Central American Court, or its Secretariat, did not consider that Honduras was exempt from the obligation to lend moral support to its Judgment by reason only of the fact that Honduras was, in some way, affected - possibly adversely - by that Judgment.

I move on to the second point that Professor Dupuy Senior made. He referred to the role of the El Salvador Constitution. He made two points: first, he referred to the proposal made by President Duarte in 1985. He said that, if President Duarte could make that proposal in 1985 which involved a suggestion of delimitation? surely that must be an indication that it would have been constitutional for him to have accepted a delimitation. Professor Dupuy is, of course, quite right to point to President Duarte's proposal. The implementation of that proposal would have required constitutional amendment. And if that proposal had been accepted, the constitutional amendment would, no doubt, have been sought. If the amendment sought had been refused and if El Salvador had, in consequence, found itself unable to ratify the Treaty - which we are assuming incorporated President Duarte's proposals - then, of course, El Salvador would have been in the same position, vis-à-vis Honduras, as Honduras was in, vis-à-vis Salvador, just a century previously, when the Cruz-Letona Treaty failed to receive ratification by reason of the opposition of the legislature of Honduras.

It is not right for counsel for Honduras to say that the fact that President Duarte could put forward this proposal means that the proposal was itself in constitutional good order. The answer is no. If the proposal were to be implemented, a constitutional amendment would have been required.

Secondly, Professor Dupuy Senior said that invocation of the El Salvador Constitution was, in effect, elevating it to a position in which it affected third States in an arbitrary way. My response to that is: no, not at all. Reference was made to the El Salvador Constitution for the sole purpose of assisting in the interpretation of the 1986 compromis. It was an explanation of why the Foreign Minister of El Salvador of that day would not have signed an agreement providing for a delimitation that would have run contrary to a generally accepted interpretation of the Constitution prevalent at that time. There is no attempt here to elevate the Constitution over the international obligations of El Salvador. The endeavour is to use the Constitution as an element in determining the content of the international obligations of El Salvador; to determine what the limits of the intention of the Foreign Minister at the time must have been. And we are submitting that he could not have possibly have intended to do something that was unconstitutional, namely, to put his signature to a treaty requiring delimitation in a manner that ran contrary to constitutional provision. We have the Minister's affidavit to say how he had approached the matter. There is no rule of international law that excludes reference to constitutional law in such circumstances. This is impliedly recognized by the degree to which Article 46 of the Vienna Convention on the Law of Treaties of 1979 itself permits reference to constitutional limitations.

Before finally leaving this point on the Constitution, I should draw attention to the fact - and this is quite important - that, apart from the reference - as I suggest, the misplaced reference - to President Duarte's proposal, Professor Dupuy Senior did not dispute the interpretation placed by the Minister on the El Salvador Constitution. Indeed, it is El Salvador's interpretation of its own Constitution that effectively constitutes the starting point for the arguments of counsel for Honduras.

In the absence of any question about the correctness, and in the absence of any denial of the interpretation placed by the Minister for Foreign Affairs of El Salvador upon his own country's Constitution, that interpretation, I submit, should be accepted by the Court as authentic and binding.

The third point made by distinguished counsel for Honduras related to the connection between the 1917 Judgment and the concepts, respectively, of historic bay and condominium. He argued that the 1917 Judgment was declaratory of the character of the Gulf as a historic bay, but in effect he said the Judgment was constitutive of its character as a condominium. He accepted that there was an historical bay before 1917 but denied that there was a condominium.

One may note in passing - and again the point is important - that he did not grapple with two out of the three important questions that I identified in relation to the establishment and operation of historic bays. You will recall that I have suggested that one has to ask oneself when, where and what. While counsel dealt with the question of "what", he did not really deal with the questions of "when" and "where". He accepted that a historical bay is a product of the history, a product of the practice of riparians and of international acquiescence. And perhaps that was his answer to the question of "when", a very general answer. But it was not an answer to the question of "where".

Condominium, he said, was something quite different. My respectful comment on this is as follows. There is no basis for drawing this distinction between the declaratory aspect and the constitutive aspect of the 1917 Judgment. The Judgment itself certainly contains nothing to suggest that it was distinguishing between an historical bay and condominium. The condominium was considered to have existed from the time that of the independence the republics was established.

And, at the risk of boring you excessively, Mr. President, may I just invite you once again to look at two brief passages in the Judgment of the Central American Court. One is at page 709, a passage which sets the scene for what follows. The Court is here saying that "in regard to the co-ownership in the Gulf claimed by the complainant Party, and in view of what is alleged by the defendant, the question of division, demarcation or delimitation of jurisdiction between the provinces that constituted the patrimony of the Spanish Crown, must be examined in the light of historical truth in order to harmonize their conclusions with the legal relations that now govern among the riparian States". So you can see that the Court is there going right back to the beginning, not simply for the purpose of the identification of the historical bay, but for the purpose of establishing the condominium.

And so one can then pass to page 711, and perhaps we ought to start at the paragraph near the top of the page: "The high party defendant recognizes that no demarcation existed among the countries adjacent to the Gulf prior to their constitution as independent entities", notwithstanding the fact that demarcations were then not unknown; but no proof whatever is adduced to show that subsequently these same States ever effected a complete division of all the waters embraced therein, for although there was a division made with Honduras in 1900 . . . it only extends as far as a point midway between Tigre Island and Cosiguina Point, thus leaving undivided, as already stated, a considerable portion of the waters embraced between the line drawn from Amapala Point to Cosiguina Point, and the terminal point of the division between Honduras and Nicaragua. Consequently, it must be concluded that, with the exception of that part, the rest of the waters of the Gulf have remained undivided and in a state of condominium between El Salvador and Nicaragua". So, Mr. President, what you have there is an indication by the Court that it regards the condominium as being as old as the republics.

My learned friend then proceeded to a fourth point, namely, a consideration of the status of the waters in the Gulf of Fonseca. Honduras invoked the El Salvador proposals in the Joint Commission on 23 and 24 May 1985, when El Salvador proposed a joint declaration that, amongst other things, these waters are internal waters.

My learned friend did not remind the Court of a further proposal in that same document that the two States should also acknowledge and declare that the waters of the Gulf belonged to them in common, which is a position, of course, contrary to the view that he is arguing. Obviously, if the one statement binds, so does the second. But that is not really the important point. The real point here is that it is contrary to law and practice to refer and to place reliance upon negotiating proposals in subsequent litigation.

I made the point yesterday - I have to reiterate it. The Chamber really must take a clear position and exclude that kind of reference. The position of El Salvador rests upon analysis of the Judgment. It is not an easy task.

In attempting a coherent summary in response to Professor Dupuy Senior, I shall also be

answering the points that were made by Professor Dupuy Junior on the same topic, namely, the question of what has happened to the condominium. And I think I can put the position of El Salvador in seven simple and brief propositions.

Proposition one is that the Judgment of 1917 declared a condominium on the basis of State succession.

Proposition two is that the Judgment excludes from the area of condominium the area covered by the 1900 delimitation between Honduras and Nicaragua, for which see page 711 of the Judgment.

Fourthly, in the rest of the waters one begins by excluding the 3-mile zone, a point which appears at pages 711 and 715.

Fifthly, islands and promontories are accorded full weight - that is at page 711.

Sixthly, areas of special jurisdiction of 9 miles to cover fiscal and security matters also inhibit the condominium.

And seventh, having regard - and this is not so much what the Tribunal said as what El Salvador now says - to the new Law of the Sea - the emerging concepts upon which Honduras has placed so much reliance - the 9-mile jurisdictional zones should now be regarded as having been absorbed into territorial water zones of at least 12 miles.

Now for El Salvador and Nicaragua, this assertion of a territorial sea or territorial waters of more than 3 miles goes back at least to their 1950 declarations on the subject when they claimed 200 miles of adjacent waters of a territorial nature. But possibly - or probably - these claims will be adjusted when these States become parties to a Law of the Sea Convention that enters into force and limits a claim to territorial sea to 12 miles.

But for all practical purposes, at any rate at the latest since 1950, both El Salvador and Nicaragua have claimed more than the 3 miles of territorial sea that were anticipated in the 1917 Judgment.

Mr. Dupuy Senior repeated his insistence that the waters of a historic bay are all internal. He reiterated his reliance on the terms of the *Norwegian Fisheries* Judgment of 1951. I submitted it to you yesterday and read to you the relevant passages to indicate that that Judgment is not so absolute

as Professor Dupuy suggested. I also venture the observation that it is a bit odd if the interpretation of the Judgment of 1917 is to be controlled by a decision of this Court of 1951 in an entirely separate matter. I am not, of course, for a moment suggesting that what this Chamber may decide in this case will not have relevance for the 1917 Judgment but in terms of the general interpretation of the 1917 Judgment it is rather strange that one had to wait from 1917 to 1951 to find authority, which is authority that I question, for the proposition that the waters of a historic bay are internal waters.

Professor Dupuy in this general connection introduced references to a number of text writers and they were mainly European. But it is useful when trying to determine what is the character of the waters of the Gulf of Fonseca to look at the writings of a Central American author and in particular one who comes from Honduras. There is a Professor Umberto Lopez Villamil who has written a book published in Madrid in 1960 called *La Corte Centro-Americana de Justicia en Politica Internacional*. And in that book, at page 221 [I am reading from a translation], the Professor says:

"The Gulf of Fonseca belongs to the special category of historic bay and is in the exclusive dominion of El Salvador, Honduras and Nicaragua as it unites all the characteristics or conditions that the publicists in international law, international law institutes and the jurisprudence, have established with respect to the character of territorial waters." (Emphasis added.)

I also want to make the further point that if the position of historic bays is so clear, why has that position not been codified in all the attempts that have been made since 1949 to bring order into the law of the sea? And the answer is because there is not that degree of uniformity in the law relating to historic bays as to render it easy or perhaps even possible to codify.

Professor Dupuy Senior suggested that El Salvador's approach to historic bays was disruptive of all concepts in the law of the sea and he insisted that one cannot have internal waters outside the territorial sea.

Mr. President, I have no problem about the theoretical possibility in an historic bay where the law follows history. If the practice of the Party leading to the establishment of the historic bay is such as to invert the usual form, then the usual form is for the purposes of that particular bay

inverted.

I think it is perhaps right before leaving this point, just to say that there is, of course, nothing particularly novel in the stand that the Government of El Salvador is now taking, and one only has to look at the Memorial of El Salvador to find a quotation from the statements made by Mr. Galindo Pohl, as representative of El Salvador in the Law of the Sea Conference in 1974, where he said "on whatever theory the delineation of either the territorial or internal waters was based, Honduras would be deprived of access to the line of entry to the Gulf". Professor Dupuy concluded with observations that are the clue to the position of Honduras in this matter. He said that "Honduras cannot conceal its affliction that all these arguments are enclosing it within the bay". A situation which he suggested was contrary to the rights of Honduras, the trends of the Law of the Sea and the principles of the North Sea Continental Shelf case.

Now, Mr. President, I think it is very important that one does not in this case confuse the question of entitlement with the question of delimitation. I am not going to pursue that point now, it is clearly going to be highly material to the arguments that the Court will hear next week on the subject of rights in the Pacific. But it is not appropriate, in this context, to bring in references to the rights of Honduras, which is a self-serving reference, or to the trends of the Law of the Sea and the principles of the North Sea Continental Shelf because they really have so little to do with the interpretation of the 1917 Judgment.

Once more, Mr. President, it is difficult to see why Honduras feels so afflicted. It is not suffering any hardship as a result of the prevailing position in the Gulf. First of all, one must not forget that in contrast with its neighbour, El Salvador Honduras has a massive Atlantic coastline.

Secondly, Honduras has unimpeded navigation to and from the Pacific. There has never been a problem about navigation.

Thirdly, Honduras has free access to the Pacific for its fisheries and apparently no great need of them. Nonetheless, it can go and fish in the Pacific in common with all other States.

Fourthly, it is worthwhile remembering, and the point will become even more apparent as we go along this afternoon, that Honduras was in the past perfectly ready to be cut off. One only has to

recall the fact that it was prepared to negotiate and conclude, though not ultimately ratify, the Cruz-Letona Treaty which drew a boundary in the Gulf that moved south-eastwards from the Bay of La Union. And also the fact that it concluded with Honduras the Gamez-Bonilla Treaty of 1894 which led to the delimitation of 1910. Now, if both these Treaties had been implemented, then Honduras would have effectively been cut off in the manner that it now says it must not be. And we will look at the maps presently.

Now I turn, Mr. President, from considering the arguments of Professor Dupuy Senior to those of Professor Dupuy Junior and his first point was related to the task of the Court. He understandably reasserted the authority of this Chamber to delimit the waters in the Gulf. He endeavours to meet the point of El Salvador about the lack of specific negotiations by saying that it does not matter which way you take the question of title. You can look at the problem of delimitation assuming that Honduras is sovereign over Meanguera and Meanguerita or, alternatively, he offered suggestions to the Chamber on the assumption that Meanguera and Meanguerita belong to El Salvador.

Well, as the Court will appreciate, I am not going to respond to my friend on the substance of his proposed delimitation. But I am obliged and indeed entitled to refer to certain aspects of the substance of his proposals and to show why it would be premature and contrary to principle for the Court to proceed to a delimitation on the basis of its findings on title.

Now, one must note what Professor Dupuy said about the effect of Meanguera and Meanguerita on the proposed line. The Chamber will recall how he stood yesterday before the map with his ruler and indicated how a 12-mile limit would operate. But when he came to Meanguera and Meanguerita, and assuming that those islands belong to Honduras, he said "we should not give it too great effect" [those were his words as I understood them], he said do not give those islands too great an effect. Now this nebulous idea of not giving them too great an effect was originally put forward on the assumption that they were Honduran.

Now, the suggestion may sound like a generous act of self-denial on the part of Honduras which is willing to accord less than full weight to two islands over which it is sovereign. Well, of

course, it is very easy to be generous in that way with the right of an island which you are virtually certain, I suspect, is not going to be held to belong to you. Because it enables you to say later on that the same reduction should operate even if those islands belong to El Salvador. But my point is this, in terms of this particular piece of argument, that every element in the proposal put forward by counsel for Honduras yesterday, involved an uncertainty, a discretionary element. Here are a few phrases that I jotted down as he spoke: "not too great an effect for Meanguera and Meanguerita"; "would have to devise necessary technical means to reach an equitable result" - "have to devise necessary technical means", "the Chamber could devise means to avoid a stranglehold", "there are many possibilities". Now it is precisely those expressions, Mr. President, which demonstrate why the matter of delimitation is not ripe for this Chamber. Professor Dupuy has identified precisely the specific aspects of delimitation that must be the subject of negotiation either to settle the matter or to reveal, in relation to those aspects, the nature and extent of differences between the Parties. Those matters have never been discussed as such. At present there can be only speculation or guessing about the position of the Parties, and that is not a basis on which the Chamber can properly act.

Professor Dupuy in his manner of approaching delimitation has made my point about negotiation even more cogently than I could have. He has emphasized the number and range of the variables that have to be taken into consideration, and there is not a shred of evidence before the Chamber that these variables have been discussed between the Parties.

I now turn, Mr. President, to take up here a point that came at the end of Professor Dupuy's argument but was related to the task of the Chamber, which was to this effect. He asked why use in the 1986 Compromiso the same language as appears in the 1980 Treaty regarding the determination of the juridical status of the islands and maritime spaces, if one wishes to avoid the implications which he suggests go with the words used in the 1980 Treaty. And the answer is, I believe, quite simple. El Salvador made it clear in the negotiations relating to the conclusion of the Compromiso that delimitation was not included and it followed the 1980 wording out of convenience and so as to avoid controversy. After all, this is process being brought to the Court within the framework of the 1980 Treaty. But there was no basis on which it should be assumed that all that had gone on

between 1980 and 1986 was pertinent to the interpretation of the Compromiso, which must stand as an independent document. As I submitted to the Chamber yesterday, the material of 1980 to 1986 does not qualify for consideration as part of the context of the 1986 compromis.

I turn now to the second point of Professor Dupuy, the interpretation of the 1900 delimitation line between Honduras and Nicaragua. The Chamber will recall that El Salvador had asked why that line ended where it did, or why there might be controversy requiring Honduras to qualify the way in which it described the terms of the line. El Salvador had said that the line ended where it did because there was no further generative power in Honduras territory, notably the island of Tigre and evidently it was considered at the time of the conclusion of the 1900 delimitation that Meanguera and Meanguerita were not Honduran islands. El Salvador had also pointed out discrepancies in the way that Honduras had referred to the line on occasion as a complete delimitation and on others as an incomplete one. Professor Dupuy now says that the line extends as far as Farallones and the basis of this is said to be twofold; one, cartographic interpretation and, two, practice. Now before examining these two bases, and it will take me a few minutes, I ought first to look back at the documentary evidence. We have to bear in mind first that we have the Gamez-Bonilla Treaty with a preamble which says that the two Governments desired amicably to resolve their differences, and then Article 1, which provided that there would be a mixed commission charged with tracing a line of demarcation which will indicate the boundary of the two Republics. And then, proceeding from the Gamez-Bonilla Treaty, you have the delimitation of 1900, and that delimitation, as you will recall, used words like these: "that there would be a land boundary that would reach a central position in the bay equidistant from the coasts and that the boundary would then follow an equidistant line up to the middle of the distance between the northern part of Cosiguina and the southern part of Tigre". Now, that point is a little more than 3 nautical miles due east of Meanguerita. We are now told by Professor Dupuy that the line in fact extends to the south towards Farallones, in his words "aussi loin vers le large que les îles Farallones". But he does not tell us where in relation to Farallones, whether the north or the east or the west or the south of that group. He simply asserted it in unqualified terms. Now, what is the basis for this extension? One has got to bear in mind that he is

inviting the Chamber to accept the idea that the clear, absolutely clear, words of the delimitation are not the correct delimitation. Now, he invites the Chamber to look at maps and practice. Now, as for maps, what maps? There are the maps that were listed in a footnote at page 7 of the Observations filed by Honduras on the Written Statement previously filed by Nicaragua. But with respect, Mr. President, those maps have not been placed before the Court. We have not seen them. Not at any rate upon the initiative of Honduras. However, we happen to have amongst our papers, a copy of one of those maps, and I put that copy on the easel. This is called the "Mapa General de la Republica de Honduras". It is the map of Paz of 1954 and it is a map that one can buy freely in Honduras. It is an official governmental map. This particular copy was bought quite casually by the El Salvador Ambassador in Tegucigalpa some time ago and, although you cannot see really from where you are, I would nonetheless point out that the line of division between Honduras and Nicaragua follows the direction provided in the delimitation to a point in the bay which is equidistant from the two shores and then follows an equidistant line and, it is correct to say that that line then curls around. Unlike the original line that curls around to the point midway between Tigre and Cosiguina, this line curls around and comes down further to the southwest so that the terminus of the line is beyond the location identified in the delimitation.

So, that map - at any rate of 1954 - supports the position indicated by my friend. But, apart from this map, which is not in the case, it, I think, is worthwhile looking at some of the maps that are in the case because they will have some bearing, not only on what my learned friend said yesterday, but they will also have some bearing on a point which I made and perhaps did not sufficiently elaborate, regarding the Cruz-Letona line and its location.

So, Mr. President, if I may invite the Chamber to look at their atlases, may we start with the atlas that was filed with the Honduras Memorial. If you would be so good as to turn to map A.16; this is the so-called Byrne map. And it is, I think, valuable to see what is said by Honduras - note, Honduras - in its reply on the subject of these maps. I am looking now at the Honduras Reply, at page 809 of the French text, 133 of Volume II of the English translation. There is a heading *Mapa de la Republica de Honduras* by Byrne. Honduras, itself, says about this map that it was prepared

by Thomas Byrne, a civil engineer of the Government of Honduras; he was an American who had been appointed in 1884 by the Honduran authorities as an expert to serve on the Commission charged with demarcating the frontier with El Salvador shortly before the negotiations of the Cruz-Letona Convention.

In order not to confuse you, may I explain that I am going to go through these maps in the order in which they appear first in the Honduras Memorial Atlas and then in the El Salvador Memorial Atlas and the El Salvador Reply Atlas. So, taking the maps in that order means I will be touching on two points at once; the point that I am dealing with directly from my learned friend about the terminus of the Gamez-Bonilla delimitation and also the point that I dealt with, perhaps insufficiently yesterday, regarding the Cruz-Letona delimitation and its significance. The Byrne map is relevant to the second point, the Cruz-Letona Agreement.

I am skipping a few paragraphs and going down in the Memorial of Honduras to where it says it is of particular interest - that is the Byrne map - because it corresponds to a transcription of the line of the frontier drawn by Byrne and repeated in the Cruz-Letona draft Convention of 10 April 1884. This map therefore confirms the interpretation placed by Honduras on Article 3 of this Convention and constitutes an additional item of evidence contradicting the interpretation advanced by the opposite Parties, an interpretation - please bear in mind - that was concerned with the position in the Goascorón zone. Whoever penned these words was not thinking of the significance of the map in relation to the Cruz-Letona delimitation. You will remember, Sir, that, yesterday, I bewailed the fact that there was no map illustrating the Cruz-Letona delimitation. I learned, in the interval, that we do, in effect, have a map prepared by Byrne, a Honduran engineer. So let us, Mr. President, look at that map; a difficult thing to do because the scale is so small. But, notwithstanding the small scale, one can perceive, first of all the Gulf of Fonseca towards the bottom left-hand corner of the map, and, within that, there is a line coming down from the Baya de La Unión from the north-west, down running towards the south-east and terminating - this is the interesting point - between Meanguera and Tigre. This is the line, please remember, that was described in that delimitation as a line starting in the Pacific and running midway between Meanguera and Tigre. So,

clearly, Byrne's understanding of what was meant by the words "starting in the Pacific" is a line that starts between Meanguera and Tigre and runs north-westwards.

I go on from the Byrne map, Mr. President, to the next one which is the Altschul map of 1899, which is map A.16 in the same Honduras Atlas volume. Now, the Altschul map also has the Gulf of Fonseca in it, towards the bottom, on the left-hand side. Now this is somewhat different. This has a line coming from the land, in the south-eastern part of the Gulf, and moving north-westwards towards Meanguera and Tigre, but when it reaches a point which is not quite the midway point between Tigre and Cosiguina, it turns sharply and runs in a straight line towards the south-west and, at the end of that line, there appear the words "Frontera de Nicaragua". Now, that line actually runs well beyond the Farallones - Mr. President, have I lost you? I am sorry, map A.19. So, I will go back to that. We have here, at the bottom of the map, towards the left-hand side, the Gulf of Fonseca - you will see that the map is described on the right-hand side as 1899 Altschul. Then, going back to the Gulf of Fonseca itself, you will see the boundary between Nicaragua and Honduras emerging from the land, passing midway between the two landmasses in the Bay, reaching a point in the Bay where it is not quite between Tigre and Cosiguina and then, as I said, turning sharply to the south-west to run towards the sea. And in so running, as depicted here, it goes right past the Farallones Islands; it does not stop north of them, it goes right past them and at the end of the line the words appear "Frontera de Nicaragua".

So, that map too would help my friend, as a cartographic illustration of the extension of the line beyond the wording of the delimitation, were it not for one rather extraordinary fact and that is that the map bears a date a year before the delimitation took place. So, it can hardly be regarded as being an illustration of, or an extension of the delimitation, but is probably an aspiration; it is what they might have liked, but is not evidently what the words gave them.

And so, Mr. President, we now may turn to the next series of maps and for that may I ask you, please, to turn to the large El Salvador Atlas. Here - it is difficult to see the numbers unless you open the Atlas right up and you will find that the numbers are placed in the top right-hand corner. May I ask you please to turn to map 19. I call it a map; it is, in fact, a sketch prepared by

the El Salvador cartographic experts. I would have referred you to it yesterday if I had remembered that it was here in this Atlas. But, as you will see, it is merely an attempt to draw on to a larger scale map, or representation, the Cruz-Letona delimitation of which the much smaller version appears in the Byrne map that I showed you a few minutes ago, and I need not spend more time on that.

So, may I ask you, please, to turn to the next map in the same Atlas; it will be map 20, which is the so-called Dawson map. Now, Dawson is described in the Honduras Reply, at page 824 of the French text or 140 of the English text. I will read from page 140 of the English text.

This map was prepared by Dawson at San Salvador in 1887 under the supervision of Consul-General Pector and was published in Paris by Erhart Frères and contains a long list of authors and documents consulted for its preparation. There follows a list of people and this shows that Dawson did not only use maps made by cartographers in the service of the Honduran Government, such as Byrne, or of the Salvadorian Government, such as Sonnenstern, but also maps made by independent cartographers, such as Squier. Now, that is not language suggestive of the inadequacy of the map. The very reverse. So, let us look and see what the map shows us. You will see here that the Gulf of Fonseca is in the bottom right-hand part of the map. You will see, about two and a half inches up from the bottom, the boundary line coming out of the Bay of La Unión and following down towards the south-east and terminating again between Tigre and Meanguera; not equidistant but nonetheless going no further than the south-eastern tip of Meanguera.

Now, again, that is a useful reflection of what the Parties had in mind in 1894 and again in 1900, particularly when they talked about a line starting in the Pacific. You will bear in mind that all along El Salvador said that whenever you find the word Pacific in Honduras documents, Honduras does not mean the open ocean, it means the Pacific in a general sense, i.e., the Gulf of Fonseca. And so here we have further confirmation of it, a line starting in the Pacific, when specified as being between Meanguera and Tigre, starts just by Tigre.

So we may go on from Dawson to the next map in the same volume which is the so-called Mayes Map, map 21. I am hesitating, Mr. President, because I failed to mark where the Gulf of

Fonseca is. It does not immediately stand out but it is at the very bottom of the map, in the third square from the left hand side, the very bottom. And there, Mr. President, again one can see the boundary emerging, this is now the boundary under the Gamez-Bonilla Treaty, emerging from the mainland of Nicaragua and Honduras, dividing the Gulf of Fonseca, or the bay, reaching a point between Tigre and Cosiguina and then turning sharply to the south-west and going on outwards. That again lends some support to my friend but this is a map of 1907. But at the same time as it lends him support in that respect, it lends El Salvador support in respect of the delimitation under the Cruz-Letona Treaty because as you will see, there is a boundary coming out of the north-west part of the Gulf of Fonseca and running down to terminate midway between Meanguera and Tigre.

I need hardly say that, although I continuously speak about Meanguera in the singular, for most purposes the reference to Meanguera must carry with it a reference to Meanguerita which is an island so close to Meanguera that it is in the legal sense dependent on it and forms a part of it.

Now I move on from the Mayes Map to the next map in this same volume, which is the US Marine Corps Map, No. 22. And this is a much larger scale map, it is a map of the Gulf of Fonseca specifically. And so one can see very clearly the lines that seem to have commended themselves to the United States Marine Corps as being the boundaries in this area. Once again starting with the Gamez-Bonilla delimitation, one can see it coming out of the coast on the east, moving to a point mid-way in the Gulf and then turning north-westwards and running round to a point which is between Tigre and here it is marked as Monypenny, that is Punta San José or Cosiguina also. Now, what is interesting is what happens afterwards.

Next one has to look and see the Cruz-Letona boundary running from the north-west corner of the map towards that same point, between Tigre and Cosiguina. You will see it is called Salvador/Honduras boundary. Now of course we all know and perfectly understand that that boundary was not effective in law but what is interesting is that there was delimited on this map a line that reflects the Cruz-Letona Agreement and again supports the view that the starting point of the Cruz-Letona delimitation is not somewhere out in the Pacific Ocean but that the words Pacific here mean this position well inside the Gulf.

Then we come to the third interesting feature of this same map, which I suspect is really quite fictitious but shows what at any rate a Marine Corps cartographer thought the situation might well be. He has drawn a line from the notional junction of the Cruz-Letona and the Gomez-Bonilla line. He has drawn a line sharply to the south-west, in an approximately straight line, and he has marked it Salvador/Nicaragua boundary. The significance of that as an indication of what was thought in 1931 by certain cartographers is quite clear but there was no conception, at that time, that Honduras reached the Pacific. It was effectively cut off by the waters of El Salvador and Nicaragua.

So we may move on then, Mr. President, to the next map in the same volume, the Fiallos Map, No. 23. Now this one is slightly more demanding upon ones eyes. The Gulf of Fonseca again appears towards the bottom, once more about the third square in. You will see that it is marked there as Baie de Fonseca. And this is a map which I fear really requires a magnifying glass but again it is interesting because one finds this map, which was drawn by a Honduras official, one finds the Gamez-Bonilla delimitation emerging from the Honduras/Nicaragua coastline and moving towards a position in the middle of the Gulf. Likewise one finds the Cruz-Letona line moving from the north-west into a position in the middle of the Gulf where it links up with the Gamez-Bonilla Treaty. And yet again we find very faintly, but nonetheless visibly, a line moving from approximately the terminus of the Gamez-Bonilla delimitation south-westwards towards the sea, but it is virtually impossible to see how far it stretches. I am not sure whether it is vision or imagination that leads me to think that it goes right out into the high seas.

We can go on then, Mr. President, to the map, not the next map but the next map but one, map 25 in the same volume. This is the American Geographical Society Map of 1937. Now, this is not particularly helpful on the Gamez-Bonilla line because it only takes it out from the shore into the middle of the bay and it does not turn north-west towards its terminal point. It is, however, of interest as showing the Cruz-Letona delimitation, again starting between Meanguera and Tigre.

Well so much, Mr. President, for that volume of maps. May I invite you now to turn to the El Salvador Reply Atlas which is a much smaller collection. And here, the first map that I would like to show you is map 26. That number is in the top right-hand corner. And this is the Luciano

Mendioroz Map and here again, it is no help on Gamez-Bonilla but it is of help on Cruz-Letona, though the terminus of the Cruz-Letona line is open to question because it ends on this map, just above the inscription, La Union. So it is not particularly helpful except as showing that, at any rate, before 1912, there was a mapmaker who thought that there was a boundary between El Salvador and Honduras that ran along those lines.

And we may turn next, Mr. President, to map 27, the next map in that compilation. So, this is not particularly helpful, but it is worth mentioning because it is made by the same man, Jesus Aguilar Paz, 1933, the man who prepared this map on the easel and one will bear in mind that the map on the easel shows an extended line for the boundary between Honduras and Nicaragua. So one asks oneself what was it that happened between 1933 and 1954 to lead Mr. Paz to extend his line in that way. Evidently he did not think it was necessary to do so in 1933.

Now, of course, as we have gone through these maps, I must apologize for this, I forgot to make one very basic point, I thought I was only dealing with two points on the maps but in fact I should have been dealing with three points on the maps, because it is not only that they illustrate the Gamez-Bonilla and the Cruz-Letona lines, it is that they all, without exception, show Meanguera and Meanguerita to be El Salvador islands. There is not one man that shows anything else.

And then, Mr. President, may we turn to the next map, map 28 in the same volume, and this is once more the American Geographical Map that I have already shown you but on a larger scale and we need not study it now. And finally, we come to the Esso map, map 29 in that same volume, which shows the Gamez-Bonilla line in a somewhat truncated form and also shows the Cruz-Letona line ending up just to the east of Meanguera. Now, Mr. President, I will not read you the comments that are made in the Honduras Reply on these matters. I have read you some, I do not need to go on doing so, but the comments on the Paz map of 1933 are to be found in the Honduras Reply, page 812 of the French text, 134 of the English text, and the comments on the Esso map in the same volume, page 833 of the French text and 145 of the English text.

So, Mr. President, what is the conclusion on looking at these maps? Conclusion number one, which relates to what I said yesterday, is that the seaward terminus of the Cruz-Letona delimitation

is universally taken to be not in the Pacific, despite the words of the Treaty, but in the Gulf of Fonseca, between Meanguera and Tigre. That is an important point in terms of nomenclature. Point number two, again not in answer to what my friend said yesterday, is that all maps show Meanguera and Meanguerita to be El Salvador islands. And point number three, which is the point for which I originally looked at the maps and which is the answer to my friend's comments of yesterday, is this: if one wants to change the terms of a text like a delimitation established by a Joint Commission into something else on the basis of maps, then one would expect to find in those maps uniformity and numbers. Now we have not got many maps that even show the line bending down towards Farallones. Most of them stop well short of that. But more to the point, those that do turn towards Farallones do not all terminate at the same point. So that, as an indicator, you do not have in these maps the clarity and uniformity that one would expect.

So now I may turn to the second element that my friend introduced in support of his view that the Gamez-Bonilla delimitation terminates at Farallones, and this was reliance on practice.

Now what does this reliance on practice turn out to be? It turns out to be an allegation of patrolling, based on what? Based on or supported by one map, map C.2, taken from the Honduras Memorial, and by my learned friend's own single exposure to the waters of the Gulf of Fonseca.

May I speak first about map C.2. Map C.2 appears in the Honduras Memorial. You will not be able to see it from where you are sitting but it is the one that has a very large shaded area in the middle of the Gulf and of the bays. And this shaded area on the map is described thus, "carte montrant le patrouillage naval hondurien à l'intérieur du golfo". So this large shaded area is intended to show the very large area patrolled by Honduran vessels.

Well, Mr. President, this map in terms of evidence of the termination of the Gamez-Bonilla delimitation at Farallones proves too much by far, because the map shows an area that extends beyond Farallones right up to the Pacific and across the Gulf of Fonseca, close towards the shores of El Salvador. So, the map is open to question further because of its lack of coincidence with the so-called incident map that I referred to yesterday. You will recall that the incident map is map 8.1 in the Honduras Reply, the map that contains the little black dots indicative of where incidents had

occurred. And I suggested to the Chamber yesterday that it was strange that if Honduras was so effectively patrolling in the Gulf of Fonseca in waters which it believed to be its own, that there were no indications of incidents in the western part of the Gulf, where one would have expected to find many more El Salvador vessels and therefore to have more incidents as a result of the patrolling by Honduras.

Now it is in this connection that I ventured to invite you to look at two sketch-maps that have been placed before you in a folder and I apologize for their late submission. I hope that the Chamber will feel able to receive them in the same spirit as it received the oral testimony tendered yesterday by my learned friend. These are sketches that we have only just received from San Salvador, as you can see from the date at the top. They have come by fax from San Salvador, and I apologize for the poor quality of the documents before you. There is one that is numbered 1 in the top left hand corner and it is just possible to perceive the following inscription in the top left hand part. It says "El Salvador-Honduras" and then something like "incidentes", something like "indicativos durante"; and then there are the years 1984, 1985 and 1986. And what you have there written around the margins of the sketch are descriptions of various episodes. I only put it before you because you will see that again there are no episodes in the western part of the Gulf where, according to Honduras's patrolling map, its vessels were patrolling. And presumably if they were patrolling there they were doing so because Honduras thought that those waters were Honduran waters. And yet, they must surely have met a lot of El Salvador fishing vessels or other vessels in that area and there appear to have been no incidents. And the second sketch that carries the number 2 in the top left hand corner is more of the same. And again, no incidents in the western part.

The other item of practice relating to patrolling is the direct personal experience of my friend himself.

Well now, I must say, I am sure we would all like to have had a day on a boat in the Gulf of Fonseca, but it is an open question whether that day on a boat would entitle us to give evidence about the extent to which Honduran State practice had amended the terms of the Gamez-Bonilla delimitation.

If my friend had given evidence as a witness, he would, of course, have been asked some searching questions. For example, how many patrols had he been on? Was he shown maps indicative of the patrol lines and the patrol area? Had there ever been exercises of authority in the patrol area? Had there ever been a challenge to those patrols by vessels of Nicaragua or El Salvador? And how does he explain the discrepancy that I have already pointed out between the Honduran maps C.2 and 8.1?

So, Mr. President, I think that the Chamber must treat with considerable caution the evidence given by my friend.

And now I come to the third sketch that appears in the same folder that you have just been looking at, following the two sketches of incidents. And this an El Salvador sketch indicative of the areas within which it patrols. Rather than present its patrols in the form of a somewhat amorphous shadow in the middle of the Gulf, it has very properly just given a line, and that is the line that consists of dots and dashes that runs from the north-west corner near Goascorán down in a south-easterly direction just north of Meanguerita and then turns south-westerly as far as Farallones.

So that represents the limit of El Salvador patrolling, which is a limit that seems very reasonable on a de facto basis of restraint by the three riparian States.

Well so much for my friend's attempt to change the terms of the Gamez-Bonilla delimitation. He did not deny that the line was drawn on the basis that Meanguera and Meanguerita belong to El Salvador. He did not dispute that the Gamez-Bonilla delimitation line exhausted the possibilities of delimitation between Honduras and Nicaragua. He did not assert that the line reached the closing line of a larger gulf, that is to say, where one runs into the Pacific waters. He did not deny the continuing validity of the Gamez-Bonilla delimitation. And he did not respond to the Minister's reference to the concept of equality in the framework of the community of interest.

You will remember, the Minister made the very interesting point that if community of interest is so important, and if its cardinal feature is the equal character of those who participate in it, why should Honduras, in the matter of delimitation, treat El Salvador differently from the way in which it treated Honduras.

With Honduras it was prepared to determine a line treating Meanguera and Meanguerita as Salvadorian. But now, when it comes to negotiating a line with El Salvador, Honduras wants to treat Meanguera and Meanguerita as Honduran.

Now that is not equality, and my friend never offered any explanation about it.

I am coming now, Mr. President, very close to the end of my remarks. My friend then came to the location of the condominium area, and he asked "where is the condominium?".

Mr. President, I will not take you through it again - I have already dealt with that in relation to the argument developed by Professor Dupuy Senior, so I need not repeat it.

But if counsel for Honduras are correct and the condominium disappears, how can the historic bay concept by itself survive in face of the factors that destroy the condominium? What is it that destroys the condominium? Apparently that the waters within it are territorial sea and additional jurisdictional zones. If they operate to destroy the condominium, they must also operate to destroy the historic bay, and in particular the concept of internal waters. The actual facts of the Gulf of Fonseca's situation are quite irreconcilable with the notion of internal waters over the whole expanse of the Gulf of Fonseca.

And a further point not to be forgotten is - as I suggested to the Chamber yesterday, and my friend did not really answer it - if one abandons the condominium concept, and abandons the operative force of the 1917 Judgment, then how does one get away from what I described as the small bay or the small gulf theory, the description that was given in the El Salvador pleadings in the 1917 case and which was adopted by Honduras in its Note of Protest? I did not find my friend's answer on that matter convincing.

And so I come, lastly, to the final point, which was the matter of community of interest itself. And here, as I understand my friend, he has effectively given up the concept of community of interest as an independent source of proprietary or sovereign rights outside the Gulf of Fonseca. What I understood him to say was that community of interest only operates to create rights of property or sovereignty in combination with the existence of a historic bay. No historic bay - no sovereign rights. Even if there is a community of interest.

So what it really boils down to, Mr. President, in my submission, is we have to forget about community of interest as having an independent role. Either there is some other source for rights outside the Gulf, or there is not.

And, Mr. President, that is clearly a matter to which argument will be directed next week, and for that reason I do not feel it necessary for me to anticipate matters which can be discussed better after Honduras has presented its case relating to its claim outside the Gulf of Fonseca. And, with your permission, I will close there.

Thank you, Mr. President.

The PRESIDENT: I thank Professor Lauterpacht and we adjourn now until tomorrow at 10 o'clock.

The Chamber rose at 16.25 p.m.
