

IN THE GUATEMALA-HONDURAS BOUNDARY ARBITRATION.**Opinion and Judgment of the Special Tribunal on the Preliminary Question.**

Both Parties have attested the sincerity of their desire to settle the controversy pending between them with respect to territorial boundaries. By their Treaty of July 16, 1930, they have agreed to submit the question to arbitration, and have established this Tribunal for that purpose. But they differ as to the capacity in which this Tribunal shall act in deciding the question; that is, whether it shall be decided by this Tribunal as the International Central American Tribunal created by the Convention of February 7, 1923, which the Parties agree is in force between them, or by this Tribunal as a Special Boundary Tribunal.

The Treaty of July 16, 1930, accordingly constitutes the arbitrators therein designated as a Special Tribunal to determine the preliminary question whether these arbitrators shall act as the International Central American Tribunal, or as a Special Boundary Tribunal in deciding the Boundary Question. In either case, the stipulations of the Treaty of July 16, 1930, are to control.

This preliminary question is thus stated in the Treaty of July 16, 1930:

“Is the International Central American Tribunal created by the Convention of February 7, 1923, competent to take cognizance of the boundary question pending between Guatemala and Honduras?”

With respect to the action to be taken, following the decision of this preliminary question, the Treaty of July 16, 1930, provides (Article I) as follows:

“If the decision of the Special Tribunal denies the competence of the International Central American Tribunal to take cognizance of the pending boundary question, the same Tribunal, as Special Boundary Tribunal, shall proceed to take cognizance of the frontier dispute which is maintained by the High Contracting Parties.

“If, on the other hand, the Special Tribunal recognizes, in its decision, the competence of the International Central American Tribunal, the said Special Tribunal shall take cognizance, as International Central American Tribunal, of the boundary question pending between Guatemala and Honduras, and will sit at the said City of Washington.

“In both cases, the stipulations of the present Treaty shall be observed.”

Constituted as the Special Tribunal to decide the preliminary question, we observe:

First. The International Central American Tribunal is not a permanent tribunal with a definite personnel and continuous existence. It is a tribunal created by the Convention of February 7, 1923, in the sense that that Convention provides for its constitution, determines its competence, defines its functions, and prescribes its methods. As a particular tribunal, composed of designated persons, it comes into existence when constituted in the prescribed manner for a particular purpose; that is, to determine a particular controversy as provided in that Convention. When so constituted, the tribunal is a special institution by virtue of its organization as provided in the Convention of February 7, 1923.

The Convention of February 7, 1923, was signed by the five Central American Republics. It is not competent for two of them to change its provisions or to alter the constitution of, or the method of constituting, the tribunal for which it provides. While two of the parties, as for example, Guatemala and Honduras, are not precluded by the Convention of February 7, 1923, from making an agreement for the determination of a controversy pending between them, and they may constitute or select a tribunal for that purpose, that tribunal will not be the International Central American Tribunal, unless it is constituted as provided in the Convention of February 7, 1923.

Second. In deciding the preliminary question submitted, we must, of necessity, first ascertain and define the meaning of that question, and the Treaty of July 16, 1930, confers upon us the requisite authority. The Treaty provides in Article XII:

“The High Contracting Parties confer on the Tribunal the necessary authority to settle by itself any difference which may arise with regard to the interpretation or carrying out of this Treaty and the decisions of the said Tribunal.”

The “Tribunal”, described in Article XII, is the Tribunal constituted by the Treaty in whatever capacity it acts, and the authority thus conferred relates to every provision of the Treaty.

In this instance, there is no International Central American Tribunal competent to take cognizance of the Boundary Question, unless the Special Tribunal, established by the Treaty of July 16, 1930, can be considered the International Central American Tribunal for the purpose of determining this controversy. The Parties recognize this fact by their recital in Article I of the Treaty of July 16, 1930, that “they have decided to establish in the City of Washington a Special Tribunal constituted in the form prescribed by the Convention for the establishment of an International Central American Tribunal”. If the Special Tribunal is not competent to act as the International Central American Tribunal, it cannot, in the capacity of the latter Tribunal, take cognizance of the Boundary Question.

We cannot interpret the Treaty as submitting a purely hypothetical question as to the competence of a hypothetical International Central American Tribunal, which has not in fact been constituted. The question presented is whether the arbitrators designated by the Treaty of July 16, 1930, were they to assume to act as the International Central American Tribunal, would constitute a body authorized to exercise the judicial powers conferred by the Convention of February 7, 1923.

As the Treaty of July 16, 1930, specifically provides that, if the Special Tribunal answers the preliminary question in the affirmative, the Special Tribunal shall take cognizance, as the International Central American Tribunal, of the Boundary Question, it follows that the Parties intended that in deciding the preliminary question, the Special Tribunal should decide, because necessarily involved in that question under the Treaty, its own competence to act as the International Central American Tribunal.

Third. In order that the International Central American Tribunal shall be competent to take cognizance of a controversy, two things are essential: (1) That the Tribunal shall be constituted as the Convention of February 7, 1923, prescribes; and (2) that the controversy comes within the terms of that Convention as one to be submitted to the Tribunal so constituted.

The difference between the Parties, with respect to the second of these conditions, has been elaborately and ably presented by the representatives of the respective Governments. It grows out of the fact that on August 1, 1914, the Parties signed a Boundary Treaty (which was duly ratified) providing a method for establishing the boundary between the two countries and for the arbitration of disputed points. That Boundary Treaty was to endure for ten years, and it expired by limitation in 1925, without any settlement having been made or any submission to arbitration as therein provided. At the time of the signing of the Convention of February 7, 1923, the Treaty of August 1, 1914, had not yet expired by limitation. The Convention of February 7, 1923, was signed at the last plenary session of the Conference on Central American Affairs held in Washington, and immediately after that Convention, and the other pacts negotiated at that Conference, had been signed, the Chairman of the Conference and the Delegates of Guatemala and Honduras, respectively, announced that the Governments of these Republics had agreed to submit their boundary dispute to arbitration by the President of the United States. These announcements, however, did not bear fruit. The agreement announced was not embodied in any treaty or convention of arbitration appropriately signed and ratified.

As the Parties manifestly expected at the time of the signing of the Convention of February 7, 1923, that there would be no occasion to submit the Boundary Question to arbitration under that Convention, the question arose whether that dispute fell within the exceptions stated in Article I of that Convention which described the controversies to be submitted to the International Central American Tribunal. On the one side, it is insisted that the Boundary Question was excepted from that Convention by the terms of Article I, and on the other side, that, despite the expectations and plans entertained at the time of the signing of the Convention, nevertheless, when these expectations and plans came to naught, and the Boundary Question survived other means for its solution, the terms of the Convention of February 7, 1923, operated to embrace it. In support of the latter view, attention is directed to the authoritative Spanish text of Article I of that Convention.

We find it unnecessary to pass upon this phase of the controversy in view of the situation created by the Treaty of July 16, 1930, in the establishment of the Special Tribunal.

Fourth. After describing the controversies which are to be submitted to the International Central American Tribunal, Article I of the Convention of February 7, 1923, continues as follows:

“2. The Parties agree that the decision of the International Tribunal established by the present Convention with regard to the questions submitted to it shall be regarded as final, irrevocable, without appeal, and binding upon the countries submitting disputes, should such decisions be rendered within the time stipulated in the protocol or in the rules of procedure applicable to the case as prescribed in Article XIX. The judgment of the International Tribunal established by the present Convention shall be null and void, and any one of the Parties, which may have an interest in the controversy may refuse to comply with it, in the following cases:

“a. When the tribunal shall not have been organized in strict accordance with this Convention.

“b. When in summoning the Parties before the Tribunal or in the presentation of evidence, the provisions of this Convention or of the Rules of Procedure contained in Annexes A and B shall not have been observed. . . .”

The Convention of February 7, 1923, provides two methods for the submission of a controversy to the International Central American Tribunal: (1) by agreement, or signed protocol, as prescribed in Article VII of that Convention, and (2), where there is no such protocol, by notice and the procedure prescribed in Article VIII.

There can be no question that the Special Tribunal established by the Treaty of July 16, 1930, has not been constituted as prescribed in Article VIII of the Convention of February 7, 1923, and we need consider only the requirements as to the protocol set forth in Article VII of that Convention as follows:

“Article VII.

“Whenever, in conformity with the provisions of Article I, it should become necessary to convene the Tribunal instituted by this Convention to take cognizance of any dispute or disputes which one or more of the Contracting Parties may wish to submit to its decision, the following procedure shall be pursued:

“a. The Contracting Party which may desire to have recourse to the Tribunal, shall advise the Party or Parties with which it proposes to enter into litigation, so that within sixty days following the date when they may have received this notification they should proceed to sign a protocol in which the subject of the disputes or controversies shall be clearly set forth. The protocol shall likewise state the date upon which the Arbitrators must be appointed, and the place where they shall meet, the special powers which may be given to the Tribunal, and any other conditions upon which the Parties may agree.

“b. After the protocol shall have been signed, each Party to the Controversy shall select an Arbitrator from the permanent list of jurists, but it shall not name any of the jurists whom said Party may have

included in the afore-mentioned list. Another Arbitrator shall be selected at will and by common accord, by the interested Governments; should the said Governments fail to agree on the selection, the third Arbitrator shall be chosen by the Arbitrators already appointed. If said Arbitrators should also fail to agree, the afore-mentioned third Arbitrator shall be designated by lot, to be drawn by the Arbitrators already appointed. Save in the case of agreement among the interested Governments, the third Arbitrator shall be chosen from the jurists, on the list referred to in Article II, who have not been included in said list by any of the interested Parties. Whenever the third Arbitrator should be chosen by lot, he shall be of a different nationality than that of either of the other two.

“Whenever two or more Powers in litigation should have a common interest in the controversy, they shall be considered as constituting a single Party in the matter for the purpose of the organization of the Tribunal.”

It is apparent that these provisions of Article VII have not been strictly pursued in the present instance. The only question then is presented whether these provisions should be treated as mere matters of form and the Treaty of July 16, 1930, should be regarded as in substance, although not in form, the equivalent of the protocol prescribed in Article VII, and the designation of arbitrators by that Treaty as the equivalent of the selection of arbitrators at the time and in the manner required by Article VII. The declaration of the Parties in the recital of Article I of the Treaty of July 16, 1930, that they have decided to establish “a Special Tribunal constituted in the form prescribed” by the Convention of February 7, 1923, cannot be regarded as binding upon the Special Tribunal in determining the issue of jurisdiction.

It must be observed that Paragraph 2 of Article I of the Convention of February 7, 1923, above quoted, covers all cases of submission to the International Central American Tribunal, whether by protocol under Article VII, or by notice and consequent proceedings under Article VIII. And Paragraph 2 of Article I provides explicitly that “the judgment of the International Tribunal established by the present Convention shall be null and void, and any one of the parties, which may have an interest in the controversy, may refuse to comply with it” when “the Tribunal shall not have been organized *in strict accordance with this Convention*”.

In view of the grave importance of the controversy and the intention of the Parties as evidenced by the Treaty of July 16, 1930, to settle the controversy by obtaining from this Tribunal a final determination, not open to any question with respect to jurisdiction, we do not feel at liberty to ignore, or construe as inapplicable, this explicit provision of the Convention of February 7, 1923, as to the constitution of the International Central American Tribunal. The fact that the Parties were entitled to depart from the provisions of Article VII in establishing a tribunal for arbitration of the Boundary Question, or that, in so doing, they could follow some of the provisions of Article VII and depart from others, does not affect the question whether the Tribunal as actually established is qualified to act as the International Central American Tribunal. It may be a valid Tribunal without being the International Central American Tribunal, which, as has been said, is a special institution constituted in a particular manner, as prescribed by the Convention of February 7, 1923. This view

does not in any way impair the efficacy of the Convention of February 7, 1923, or the power of the sovereign States to make their provisions for peaceful settlement of controversies. It simply deals with the question whether the Tribunal created by the Treaty of July 16, 1930, is the International Central American Tribunal,—constituted, as such a Tribunal must be constituted, in strict accordance with the Convention of February 7, 1923.

If the Special Tribunal, established by the Treaty of July 16, 1930, should undertake to act as the International Central American Tribunal, it would be possible for either party, dissatisfied by its award, to insist that the award was null and void because the Special Tribunal had not been "organized in strict accordance" with the Convention of February 7, 1923. Instead of the determination of the present dispute, there would thus be another dispute based upon the express words of that Convention.

Therefore, upon due consideration, acting as the Special Tribunal established by the Treaty of July 16, 1930, we answer the preliminary question submitted by that Treaty in the negative. This Special Tribunal, not being constituted strictly, as it is not, according to the Convention of February 7, 1923, has not the competence, as the International Central American Tribunal established by that Convention, to take cognizance of the Boundary Question between Guatemala and Honduras; but it has, and assumes, complete jurisdiction to take cognizance of and decide that controversy as Special Boundary Tribunal as provided by the Treaty of July 16, 1930.

The Parties shall accordingly submit to this Special Boundary Tribunal their respective pleas, proofs and documents, relating to the Boundary Question, as provided in Article IV of the Treaty of July 16, 1930.

Done at the City of Washington, District of Columbia, United States of America, this eighth day of January, nineteen hundred and thirty-two, in three copies, in Spanish and English, one of which is to remain with the documents of the Tribunal, and the others to be delivered to the Agents of the respective Parties.

CHARLES EVANS HUGHES, *President.*

LUIS CASTRO-UREÑA, }
EMILIO BELLO-CODESIDO, } *Arbitrators.*

ATTESTED:

B. COHEN,
Secretary of the Tribunal.

BEFORE THE SPECIAL BOUNDARY TRIBUNAL CONSTITUTED
BY THE TREATY OF JULY 16, 1930, BETWEEN THE REPUBLICS
OF GUATEMALA AND HONDURAS.

Opinion and Award.

The Special Boundary Tribunal, constituted by the Treaty of Arbitration of July 16, 1930, between the Republics of Guatemala and Honduras, renders the following Opinion and Award:

CONSTRUCTION OF TREATY—GENERAL PRINCIPLES.

Article V of the Treaty of Arbitration of July 16, 1930, provides as follows:

“The High Contracting Parties are in agreement that the only juridical line which can be established between their respective countries is that of the *Uti Possidetis* of 1821. Consequently, they are in accord that the Tribunal shall determine this line. If the Tribunal finds that one or both Parties, in their subsequent development, have established, beyond that line, interests which should be taken into account in establishing the definitive boundary, the Tribunal shall modify, as it may see fit, the line of the *Uti Possidetis* of 1821, and shall fix the territorial or other compensation which it may deem just that either should pay to the other.”

As thus defined, the first duty of the Special Boundary Tribunal is to determine the line of “the *Uti Possidetis* of 1821”. To leave no doubt of the sincere desire of the High Contracting Parties to secure a peaceful and abiding settlement by providing for a complete and final determination of the long-standing controversy between them, they have charged the Tribunal with the further duty to modify, as it may see fit, the line of the *uti possidetis* of 1821 where subsequent developments have established interests beyond that line which should be taken into account in fixing the definitive boundary and, also, in that event, to award such compensation as the Tribunal may deem to be just.

The High Contracting Parties, by Article XII, have also invested the Tribunal with the authority to settle any difference that may arise with regard to the interpretation of the Treaty.

The Tribunal finds itself confronted at the outset with a difference between the Parties as to the significance of the phrase “*uti possidetis* of 1821” as used in Article V. Both Parties agree that the principle adopted had reference to the demarcations which existed under the colonial regime, that is, to the administrative limits of the colonial entities of Guatemala and Honduras which became independent States. But the Parties differ as to the test to be applied in determining these limits. Guatemala contends that by reference to the “*uti possidetis* of 1821” the Parties meant to have the line drawn “in conformity with a fact rather than a theory, the fact being what the Spanish monarch had himself laid down, or permitted, or acquiesced in, or tolerated, as between Province and Province, in 1821”, and that the test of that line should be “the sheer factual situation” as it was at that time. Honduras insists that the phrase “*uti possidetis*” in Article V signifies “*uti possidetis juris*”, and that a line could not be considered “as being juridically based on a *uti possidetis de facto*”.

Both Parties invite attention to the historic utilization of the phrase "*uti possidetis*" in Latin American settlements. But an examination of these, and of the views of eminent jurists bearing upon that use of the phrase, fails to disclose such a consensus of opinion as would establish a definite criterion for the interpretation of the expression in Article V of the present Treaty.

The Parties also seek to support their respective interpretations by reference to former Treaties between them relating to the same boundary controversy. None of these Treaties used the expression "*uti possidetis*". The Treaty of July 19, 1845, provided (Article 13) that "The States of Honduras and Guatemala recognize as their boundaries those laid down for the diocese of each in the Royal Ordinance of *Intendentes* of 1786." The Treaty of March 1, 1895, provided (Article VI) that "Possession should only be considered valid so far as it is just, legal and well founded, in conformity with general principles of law, and with the rules of justice sanctioned by the law of nations." The Treaty of August 1, 1914, contained a similar provision. In the Mediation under the auspices of the Department of State of the United States of America (1918-1919), the last-mentioned Treaty, with this provision, was regarded as establishing the criterion of legal right. In the Mediation proceedings, the representative of Guatemala referred to "the improper formula of *uti possidetis*" stating that "This principle in practice has divided the opinions of publicists, inasmuch as while some maintain that in solving the boundary questions by the *uti possidetis*, they must consider only the fact of the possession without entering into the question of the title to the ownership, others think that the application of that formula would compel the study of titles of both jurisdictions and the granting to the nations, not precisely what they have possessed, but that which, according to the decrees of the sovereign, they had a right to possess. These opinions have been expressed in the formulas still more improper of *uti possidetis juris* and *uti possidetis facto*." The representative of Guatemala then pointed out that as between Guatemala and Honduras there was "happily no room even to discuss which one of the two opinions must prevail", as the Treaty of 1914 had stated the test (in the provision above mentioned) "with all possible clearness" and that by these stipulations "the so-called principle of *uti possidetis juris* acquired binding force of law for the two High Parties". Honduras, by its counsel, definitely accepted the principle as thus declared by Guatemala.

The Parties derive different inferences from these former proceedings and the agreement therein as to the test then invoked. Guatemala urges that it was because of the failure of these proceedings and the unsatisfactoriness of that test, that the Parties in the present Treaty must be taken to have intended to prescribe a different test and hence deliberately used the expression "*uti possidetis* of 1821", as referring to the factual situation, instead of *uti possidetis juris*, as defining legal right. Honduras, on the contrary, refers to the former proceedings as showing an agreement between the two countries as to the "principle of *uti possidetis* of 1821" and this is deemed to be continued by Article V of the Treaty of 1930, which is said to require the "running a juridical line *de jure* between the two countries upon the *uti possidetis*, naturally *juris*, of 1821".

In determining this initial question of interpretation, we cannot regard these former proceedings as having a controlling effect. As already observed, the expression *uti possidetis* is not found in the previous Treaties. The Treaties of 1895 and 1914 contained provisions which were explicit

as to the extent to which possession should be considered, and these provisions were not repeated in the Treaty of 1930. The reference to *uti possidetis* in the Mediation proceedings cannot be regarded as determinative, for, while the Parties were then in accord that the test provided by the Treaties of 1895 and 1914 embodied the principle *uti possidetis juris*, it is not without significance that when they negotiated the Treaty of 1930 the qualifying word *juris* was not used.

The Treaty of 1930 is a new agreement which makes no mention of the earlier and unsuccessful efforts at settlement and must stand on its own footing. The expression "*uti possidetis*" undoubtedly refers to *possession*. It makes possession the test. In determining in what sense the Parties referred to possession, we must have regard to their situation at the moment the colonial regime was terminated. They were not in the position of warring States terminating hostilities by accepting the status of territory on the basis of conquest. Nor had they derived rights from different sovereigns. The territory of each Party had belonged to the Crown of Spain. The ownership of the Spanish monarch had been absolute. In fact and law, the Spanish monarch had been in possession of all the territory of each. Prior to independence, each colonial entity being simply a unit of administration in all respects subject to the Spanish King, there was no possession in fact or law, in a political sense, independent of his possession. The only possession of either colonial entity before independence was such as could be ascribed to it by virtue of the administrative authority it enjoyed. The concept of "*uti possidetis* of 1821" thus necessarily refers to an administrative control which rested on the will of the Spanish Crown. For the purpose of drawing the line of "*uti possidetis* of 1821" we must look to the existence of that administrative control. Where administrative control was exercised by the colonial entity with the will of the Spanish monarch, there can be no doubt that it was a juridical control, and the line drawn according to the limits of that control would be a juridical line. If, on the other hand, either colonial entity prior to independence had asserted administrative control contrary to the will of the Spanish Crown, that would have been mere usurpation, and as, *ex hypothese*, the colonial regime still existed and the only source of authority was the Crown (except during the brief period of the operation of the Constitution of Cadiz), such usurpation could not confer any status of "possession" as against the Crown's possession in fact and law.

The question, then, is one of the administrative control held prior to independence pursuant to the will of the Spanish Crown. The time for the application of this test is agreed upon by the Parties. It is the year 1821 when independence was declared. We are to seek the evidence of administrative control at that time. In ascertaining the necessary support for that administrative control in the will of the Spanish King, we are at liberty to resort to all manifestations of that will—to royal *cedulas*, or rescripts, to royal orders, laws and decrees, and also, in the absence of precise laws or rescripts, to conduct indicating royal acquiescence in colonial assertions of administrative authority. The Crown was at liberty at all times to change its royal commands or to interpret them by allowing what it did not forbid. In this situation the continued and unopposed assertion of administrative authority by either of the colonial entities, under claim of right, which is not shown to be an act of usurpation because of conflict with a clear and definite expression of the royal will, is entitled to weight and is not to be overborne by reference to antecedent provisions or recitals

of an equivocal character. Statements by historians and others, of repute, and authenticated maps, are also to be considered, although such descriptive material is of slight value when it relates to territory of which little or nothing was known and in which it does not appear that any administrative control was actually exercised. It must be noted that particular difficulties are encountered in drawing the line of "*uti possidetis* of 1821", by reason of the lack of trustworthy information during colonial times with respect to a large part of the territory in dispute. Much of this territory was unexplored. Other parts which had occasionally been visited were but vaguely known. In consequence, not only had boundaries of jurisdiction not been fixed with precision by the Crown, but there were great areas in which there had been no effort to assert any semblance of administrative authority.

In considering the question of administrative authority, it is necessary to have regard to the established system of administrative organization under the Crown. The territory now pertaining to the States of Guatemala, Honduras, Nicaragua, El Salvador, and Costa Rica constituted, prior to independence, the Kingdom of Guatemala. As such, it was a Captaincy-General with its *Audiencia*. The colonial entities, described as Provinces, which respectively became on independence the States of Guatemala and Honduras, were districts or divisions of the Kingdom of Guatemala. On independence, the Kingdom of Guatemala terminated and it had no successor save as the short-lived Central American Federation may be considered to be such. The present inquiry as to administrative control on the part of Guatemala and Honduras thus relates not to the authority of the Kingdom of Guatemala but to that enjoyed by the Governments of the provincial divisions which became the States of Guatemala and Honduras.

It is manifest that, in determining this question, the action of these States in establishing their independent governments and in formally describing the extent of the territory to the sovereignty over which they regarded themselves as succeeding, is significant. There is thus available a virtually contemporaneous and solemn declaration of the extent of administrative authority deemed to have been enjoyed by the preceding colonial entity. The Constitutions of the new States, and the governmental acts of each, especially when unopposed, or when initial opposition was not continued, are of special importance.

The Tribunal has considered all the voluminous evidence submitted by the Parties. Conclusions may be conveniently stated as they pertain to the various parts of the territory in controversy, requiring separate consideration.

FIRST. THE LINE OF THE "*UTI POSSIDETIS*" OF 1821.

1. The territory between the Motagua river and British Honduras.

The Tribunal may first consider the claim of Honduras to the territory between the Motagua river and British Honduras. This claim is stated as follows:

"From the confluence of the Motagua and Managua rivers, according to the claim of Honduras, an approximately straight line should be drawn twenty kilometers to the south-west point of Lake Izabal or Golfo Dulce; thence following along the western bank of said lake,

and from its north-western shore a straight line should be drawn to coincide with the boundary between Guatemala and Belize which forms an angle with the Sarstoon river."

The claim of Honduras thus embraces the Golfo Dulce and the so-called Amatique coast region and excludes Guatemala from the northern coast on the Atlantic Ocean.

The controversy as to this claim has taken a wide range. As already stated, the attitude of the Parties upon achieving independence places in a strong light their conceptions at that time of the territorial extent of the administrative authority of the preceding colonial entities. In this view it is appropriate to examine the position of the Parties, when they became States, with respect to that portion of the territory now under consideration.

The first Constitution of the State of Guatemala, of October 11, 1825, by Article 35, defined the territory of the State as follows:

"The territory of the State includes: on the North, all the towns of the districts of Chiquimula, with Izabal and the Castle of San Felipe together with Golfo Dulce, Verapaz and Peten; on the South, those of old Soconusco, incorporated into the State, those of the districts of Suchitepequez, Sonsonate, Escuintla, and Guaszacapan; and in the Center, those of the districts of Quezaltenango, Huehuetenango and Totonicapam, Solola, Chimaltenango, Sacatepequez and New Guatemala, the Capital of the State."

Prior to the adoption of this Constitution, the Supreme Executive Power, as it was then constituted in Central America, had issued a decree (on June 22, 1824), in which the Motagua and Polochic rivers were described as being in the State of Guatemala, and the Ulua, Chamelecon and Lean as being in Comayagua (Honduras). One of the triumvirate exercising the Executive Power at that time, and who signed this decree, was Don Jose del Valle, a Honduran of high repute. A resolution of the Constitutional Congress of the State of Guatemala, of October 23, 1824, urged a project for populating as soon as possible the colony of Izabal. On May 24, 1825, the Constitutional Assembly of the State of Guatemala authorized the formation of a company for the establishment of colonies on the north coast of Guatemala upon a tract described as being "between the Golfo Dulce river and the Tinto river, from the Punta de Manabique along said Coast up to said Tinto river".

After the adoption of the Constitution of 1825, the Constitutional Assembly of Guatemala enacted a law dividing the territory of that State into seven departments, one of which was the Department of Chiquimula. On November 27, 1831, the Chief Executive of the State of Guatemala, with the authorization of the Legislative Body, issued a decree "for the purpose of classifying in legal order the villages already established and those which in the future may be established on the northern coasts within the boundaries of this State"; and the decree provided that these villages should form a district of the Department of Chiquimula, that the town at the mouth of the river which was the outlet for the Golfo Dulce, should be the capital of the district and should bear the name of Livingston. On August 19, 1834, the Chief of the State of Guatemala granted to Bennett and Meany for the purpose of colonization, the unappropriated public lands of the Department of Chiquimula, the area of which was stated to be shown on the map or chart made by order of the Guatemalan Government in 1832

(the map of Miguel Rivera Maestre), according to which, as the grant recites, the eastern boundary of the Department of Chiquimula was said to be as follows: "To the east, the State of Honduras; the Rio Tinto being the boundary line on the Coast." The Rio Tinto, to which we shall refer later, was a river lying a short distance to the south and east of the Motagua river. This grant was ratified by the Legislative Body of the State (August 30, 1834), and on submission to the Federal Government, was approved by the President of the Republic. It is said that later this grant was cancelled and was not carried into effect, but the fact of significance is the assertion of authority by Guatemala in officially publishing the map, and in referring to the boundary as there shown when the grant was made with the sanction above stated.

On January 5, 1835, the Government of the State of Guatemala notified the head of the Department of Chiquimula that, having obtained permission from the National Executive Power for the reopening of the Port of Santo Tomas, commissioners were appointed to report upon the necessary work to be effected "upon which depends the prosperity of the State and very particularly that of the villages of the Department of Chiquimula". On September 23, 1836, a decree of the Chief Executive of the State of Guatemala refers to the quarantine established by Guatemala during an epidemic of cholera over the infested zone of Peten and Izabal and gives special orders as to the mouth of the Motagua river. On September 12, 1839, the Legislative Body of the State of Guatemala divided the territory of the State into seven departments and two districts. The districts were Izabal and Peten, the latter including the territory lying to the west of what is now British Honduras. To this law was appended a list of towns in each department and district, from which it appears that the district of Izabal included the village of Izabal, Fort San Felipe and Livingston on the Rio Dulce, and Boca de Motagua at the mouth of the Motagua river.

While no State can acquire jurisdiction over territory in another State by mere declarations on its own behalf, it is equally true that these assertions of authority by Guatemala (and other acts on her part disclosed by the evidence), shortly after independence, with respect to the territory to the north and west of the Motagua river, embracing the Amatique coast region, were public, formal acts and show clearly the understanding of Guatemala that this was her territory. These assertions invited opposition on the part of Honduras if they were believed to be unwarranted. It is therefore pertinent to inquire as to what action, if any, was taken by Honduras at or near the time of independence in relation to the territory now under consideration and in answer to the above-mentioned proceedings of Guatemala.

The first Constitution of the State of Honduras, of December 11, 1825, contained the following general statement in Article 4:

"Its territory comprises all that which corresponds and has always corresponded to the bishopric of Honduras. Its limits shall be designated and its departments arranged by statute."

A new Constitution was framed on November 28, 1831, but it was not put into effect. This Constitution reiterated that the territory of the State comprised what had belonged to the diocese of Honduras, and provided, in Article VI, for the division of the territory into four Departments: (1) Tegucigalpa, (2) Gracias, (3) Olancho, and (4) Comayagua. It contained

no definite reference to the Amatique region. The next Constitution of Honduras, of January 11, 1839, which took the place of the Constitution of 1825, provided, in Article 4, as follows:

“The State of Honduras comprises all the territory known at the time of the Spanish Government by the name of Province, bounded by the following limits: On the west, by the State of Guatemala; on the south, south-west and west, by that of El Salvador; on the south, by the Bay of Conchagua on the Pacific Ocean; on the east, south-east and south, by the State of Nicaragua; on the east, north-east and north, by the Atlantic Ocean and the islands adjacent to its coasts on both oceans. When it may be conveniently possible, the limits which separate it from the other States will be marked in a precise manner.”

It will be observed that these Constitutions of Honduras did not make specific reference to Izabal or Golfo Dulce, or to the Amatique region. If it had been considered that Honduras was being deprived of territory to which she was entitled, and especially that Guatemala was asserting authority over territory which was, or prior to independence had been, under the administrative control of Honduras, it can hardly be doubted that these assertions by Guatemala would have aroused immediate antagonism and would have been followed by protest and opposition on the part of Honduras. The intense feeling existing at the time, and the natural jealousy of the new States with respect to their territorial rights, would have caused a prompt reaction. But it does not appear that such protest was made or that opposing action was taken by Honduras. The record fails to show that Honduras during the time to which we have referred, that is, upon or following independence, asserted or attempted to exercise any authority over the territory north and west of the Motagua river. This circumstance is the more striking because of the opportunity afforded by the success of Francisco Morazan, the eminent Honduran, in overthrowing Arce, The President of the Republic. As a result of the revolt caused by the conduct of Arce, Morazan, as the leader of a victorious army, was proclaimed President of the Federation in 1830. It appears to have been Morazan who as such President approved the above-mentioned grant by Guatemala to Bennett and Meany which referred to the Rivera map as showing the boundary of Guatemala at the Rio Tinto.

It appears that Guatemala has maintained her authority over the territory now under consideration from the above-mentioned period until the present time. As late as November 30, 1894, in a note addressed by the Honduran Minister for Foreign Affairs to the Minister for Foreign Affairs of Guatemala, in answer to a complaint that Honduran forces had entered Guatemalan territory, the boundary between Honduras and Guatemala was described, and, in the course of that description, that portion of the boundary from the confluence of the Managua river with the Motagua river was stated to be “the latter great river to its discharge into the Atlantic in the Gulf of Honduras or Amatique”. Apparently it was not until the year 1906 that it was intimated in the diplomatic correspondence of Honduras that she was entitled to territory north and west of the Motagua river.

In these circumstances, the contention that the continued and long unopposed assertion of authority by Guatemala over the territory between the Motagua river and British Honduras had no foundation in the authority enjoyed prior to independence, but was an encroachment upon territory

previously held under the administration of Honduras, requires clear proof. But such proof is lacking. Without attempting to review in detail the voluminous evidence, it is sufficient to say that the Parties have not presented any royal *cedula* or decree clearly supporting the claim now advanced by Honduras. The elaborate and critical analyses to which the multitude of documents and transactions have been subjected serve to reveal ambiguities rather than precise delimitations. The claim of Honduras largely rests upon the royal *cedula* of 1745 appointing Colonel Don Juan de Vera Governor of the Province of Honduras and also Commandant General of the King's military forces on the coast from Yucatan to the Cape of Gracias a Dios. But the terms of this appointment, and of that of Vera's successor, Ibañez Cuevas in 1748, show that this grant of military authority was for special reasons expressly limited to the two functions of defence and the prevention of illicit commerce, and was not for the purpose of disturbing or altering the limits of provincial administrative authority in other matters. This is indicated by the terms of the royal instructions to Vera to the effect that it was not the royal will to make any change in the political and civil government of the Province of Honduras, and that Vera, in executing his special military authority, should be careful to abstain from mixing "in the political and civil government of the *Alcaldia* of Tegucigalpa nor of any other governancy that may reach to the said coast which may have its Governor, or *Alcalde Mayor*, because that is to remain absolutely as it has been under the *Alcalde Mayor* or Governor". The evidence clearly shows that the district of Chiquimula pertained to the provincial jurisdiction of Guatemala and the district of Comayagua to the jurisdiction of Honduras, but no royal *cedula* or decree has been produced which definitely fixed the location of the boundary between Chiquimula and Comayagua. This lack of definition was not supplied by the Royal Ordinance of *Intendentes* of 1786 as extended to the Captaincy General of Guatemala in 1787. As shown by the royal rescript of 1791, the territory of the *Intendencia* of Honduras was intended to correspond to that of the Bishopric of Honduras, but there was no precise delimitation of the extent of that bishopric.

It does appear, however, that Guatemala, for a period long prior to independence, was exercising jurisdiction in the *Alcaldia Mayor* of the Port of Santo Tomas and the towns of San Pedro de Amatique and San Antonio de Padua, subject to the President and Captain General of the Kingdom. The port at Amatique, which became known as Santo Tomas, was established as early as 1604. At that time the Captain General of Guatemala issued a decree by which, after reciting that a new port had been established at Amatique, it was ordered that this port should "be under and appertain to the jurisdiction of this City of Guatemala" and that it should "be counted and enumerated as well as one of the *Alcaldias Mayores* of this Province newly established". And in 1605 the Captain General informed the King that, subject to his approval, he had directed that Santo Tomas "should be an *Alcaldia Mayor* and of the jurisdiction of this City [Guatemala], as is the Gulf, and not of the Province of Honduras". That the Golfo Dulce and the Amatique coast region had not been regarded as pertaining to the Province of Honduras also appears from the report made in 1744 by Luis Diez Navarro, an engineer who had been sent by the Spanish Government to Guatemala to make a general survey of the Kingdom. He stated that "all the jurisdiction of the Government of Comayagua or of Honduras commences on the coast from the river Motagua . . . and

finishes at the Port of Truxillo". This statement he substantially repeated in his further report of 1751. While there is evidence which gives opportunity for conflicting inferences, it is highly significant that on October 20, 1791, after the above-mentioned royal rescript of July 24, 1791, the Bishop of Comayagua, in an extensive report to the King concerning the districts within his bishopric, gives a description of thirty-five curacies into which the bishopric was divided and makes no mention of Golfo Dulce or Santo Tomas. Again, it may be observed that when, in 1804, Ramon de Anguiano, who had been Governor-Intendant of Honduras since 1790, rendered a report to the King on the state of affairs in his *Intendencia*, and gave a description of the district of Comayagua and of the sub-delegations into which the *Intendencia* was divided, he made no mention of any place north or west of the Motagua river.

What has been called the Amatique coast region was largely unexplored and unpopulated, but its relation to territory shown to be under the provincial administration of Guatemala was such as to justify the understanding that it was the will of the Spanish monarch that, subject to the demands of the Kingdom in relation to defence and illicit traffic, civil and criminal jurisdiction should be exercised in that region, as well as in the region of Golfo Dulce, by the provincial authorities of Guatemala so far as progressive activity in the development of that territory made the exercise of such jurisdiction necessary.

The evidence affords no sufficient ground for the conclusion that there was any new departure, or inconsistent proceeding, in the action of the State of Guatemala, upon achieving independence, in asserting administrative authority over the region north and west of the Motagua. On the contrary, that action of the State of Guatemala appears to have been in accord with the view that had prevailed prior to independence as to the proper scope of provincial administrative control, and this fact adequately explains the absence of opposition, to which reference has been made, on the part of the State of Honduras.

The necessary conclusion is that there is no warrant for drawing the line of *uti possidetis* of 1821 so as to assign to Honduras the territory north and west of the Motagua river.

2. Omoa and the Cuyamel area.

The Tribunal may next consider the claim of Guatemala to Omoa, and to the territory contiguous to Omoa lying east of the Motagua river and known as the Cuyamel region, that is, the region bounded by the mountains of Omoa, the Tinto river, the Motagua river and the sea. Guatemala claims that the line of the *uti possidetis* of 1821 in this region should run from Cerro San Ildefonso to the place in which the *cordillera* ends, near the sea, between Puerto Cortes and Omoa.

(a) *Omoa*. The Constitution of Guatemala of 1825 did not in terms include Omoa, and the proper allocation of that port was at that time in controversy. The Constitution of Honduras of 1831 expressly included Omoa in Honduras. That Constitution was not put into effect. But in 1832 Honduras established her authority in Omoa and has maintained her jurisdiction there continuously from that time until now. Guatemala apparently recognized the control obtained by Honduras when, in 1832, Guatemala officially approved the Rivera map, above mentioned, which

showed the river Tinto as the boundary line between the two States on the Coast. Guatemala insists, however, that Omoa was taken by Honduras by force, after independence, regardless of the *uti possidetis* of 1821.

As early as 1685, in an official report of Don Lope de Sierra Osorio to the King with respect to proposed fortification, Omoa is described as being in the Province of Honduras. In the report in 1744, already mentioned, made by the engineer Diez Navarro, the Port of Omoa is definitely stated as belonging "to the jurisdiction of San Pedro Zula Thenentasgo of the Government of Comayagua of Honduras". In 1752, the work of fortifying Omoa was in progress under the direction of Captain General Vasquez Prego. In 1754, the Captain General commanded Don Pedro Truco to make a survey for a road by which Guatemala City would have direct communication with Omoa. This enterprise thus begun by Truco, and continued by others, was completed in 1756, the expense being borne by the Municipal Council of Guatemala City. A second road from Guatemala City, reaching Omoa, by a different route, was opened in the same year. In 1767, the Captain General appointed an officer to take command of the fortress of Omoa; and in 1768, a report of expenditures for the fortification of Omoa showed that 1,200,000 *pesos* had been expended of which about 87,000 had been contributed by the Province of Comayagua. As early as 1778, it appears that the port of Omoa was subject to the direct control of the Captain General of the Kingdom, and after the extension of the Ordinance of *Intendentes* to the Kingdom of Guatemala, the port of Omoa was expressly excepted from the *Intendencia* of Honduras. This appears from the royal rescript of July 24, 1791, approving the order of the Superior Board of the Royal Treasury of the Kingdom of Guatemala which directed "the incorporation into the *Intendencia* of Comayagua of the said *Alcaldia* of Tegucigalpa with all the Territory of its Bishopric, with the exception only of the military post (*plaza*) and port of San Fernando de Omoa, where its Political and Military Governor should remain as it had up to then, the Treasury Department continuing subject to the Superintendency General and separated from the Province of Comayagua, in consideration of the fact that said military post (*plaza*) and Government had always corresponded with the Superior Government of the Kingdom and of the fact that its ties with Golfo Dulce, Bodegas Altas and the Royal Customs of your Capital would not suffer its separation from the said Superintendency without leaving exposed to many complications mercantile operations and the operations of the Royal Treasury which daily occurred in the said Port". The report of the Bishop of Comayagua of October 20, 1791, in giving what purported to be a complete list of the parishes of his own bishopric includes San Pedro Sula but does not include Omoa. Nor does Governor Anguiano of Honduras, in making his report of 1804, include Omoa.

The Port of Truxillo, although located within the limits of the Province of Honduras, had also been placed under the control of the Captain General. When, in 1812, the Constitution of Cadiz was proclaimed in Guatemala and, pursuant to its provisions, the establishment of provincial boards for Central America was directed, the Municipal Council of the City of Comayagua made complaint to the Spanish Government, and, in enumerating the grievances of the people of Honduras, stated that the ports of Omoa and Truxillo, although both were within the boundaries of the Province of Honduras had been "segregated from the Government and General Command of this Province". The Municipal Council asked for their restitution

and their subjection to the Government of the Province of Honduras "as they are in the old demarcation". In 1814, Don Jose S. Milla, as the representative chosen by Honduras, presented to the King a petition for the restoration to Honduras of the two ports. The effort of Señor Milla was successful with respect to the port of Truxillo, and on September 19, 1816, the King issued his royal rescript reciting the disadvantages resulting from the exercise of direct control by the Captain General over Truxillo, which had "belonged to the Province of Honduras", and the King decreed that this port "situated within the limits of the Province of Honduras shall be subject, as it was before, to the Political and Military Governor Intendant of Comayagua".

While there appears to have been some understanding that similar action was to be taken as to Omoa, an inquiry disclosed the fact that it had not been taken, and Señor Milla again petitioned the King for an order directing that the port be made immediately "subject to the Governor of Comayagua in the same manner it was prior to being attached to Guatemala, without prejudice to the authority corresponding to the Captain General as Superior Chief of the Province". Señor Milla supported his petition by a memorandum of Señor Aysinena, an official of the Council of the Indies, to the effect that, in view of the history and circumstances of the Port of Omoa, there could be no doubt that it should be restored to Honduras.

It is the contention of Honduras that this action was taken. Reliance is placed upon what is asserted to be a royal rescript of October 16, 1818, directing the restoration to Honduras of the port of Omoa in accordance with this petition. Guatemala insists that this rescript did not bear the signature of the King and was a mere draft. The document which has been produced is an authenticated copy of an original preserved in the General Archive of the Indies and bearing the caption "Dated at the Palace on October 16, 1818. To the Governor and Captain General of Guatemala, notifying him that the port of Omoa is reincorporated to the Government of Comayagua as it had been prior to its annexation to Guatemala. Made in duplicate and countersigned by the Secretary Silvestre Collar, registered *ex officio*." The signature of the King does not appear. The record contains no direct evidence of the promulgation of this decree, but there is evidence that it was considered to be in effect. From a synopsis of a report made to the King by Governor Tinoco of Honduras, on March 1, 1819, upon the condition of his Province, it appears that he referred to Omoa in terms indicating that he regarded it as being within the Province of Honduras and stated that he had been faced by the necessity of organizing militia for the protection of both Omoa and Truxillo. In October, 1820, the Syndic of the Municipal Council of the City of Comayagua, in a statement to that body setting forth the grievances of Honduras against Guatemala, said that although "the Sovereign Parliament, and even our beloved monarch, issued two royal orders directing that they [Omoa and Truxillo] should pertain to this Government [Honduras], Guatemalan officials had been unwilling to carry them into effect (without any other reason than the long distance from the Crown and their detestable ambition) notwithstanding the fact that the first [Omoa] is only 60 leagues from Comayagua and the latter [Truxillo] 72; whereas they are separated from Guatemala by 210 and 222 leagues, respectively". And Dr. Jose Maria Mendez, one of the clergy attached to the Cathedral of Guatemala, and representing the District of Sonsonate, of Guatemala, in the Spanish Parliament, presented

to that Parliament a project for the reorganization of the provinces of the Kingdom of Guatemala in which he described Honduras as having six ports on the north coast, specifically including both Omoa and Truxillo.

The fact remains that after the date of the alleged decree of October 16, 1818, Omoa continued under the actual control of the representative of the Captain General and did not become subject to the actual control of the Government of Honduras. The argument is pressed that if the decree of 1818 had been actually signed by the King, the Captain General and his representative would not have dared to disobey it. The argument loses much of its force not only because of the lowered prestige of the royal authority in Central America at that time, but also because a similar situation appears to have existed at Truxillo. It was long after 1821 that Honduras obtained actual control of Truxillo, although there is no question of the authenticity of the royal rescript of 1816 which restored that port to Honduras. The further point is made that the King had no constitutional authority to decree the restoration of Omoa and that in issuing the decree of 1816 as to Truxillo the King had acted upon the mandate of Parliament. This contention does not seem to be tenable. On the return of Ferdinand VII to Spain in 1814, he issued a manifesto annulling the Constitution of Cadiz and he continued to rule as absolute monarch until in 1820 when under compulsion he restored the Constitution and decreed the enforcement of many of the acts of the Constitutional Parliament which he had set aside in 1814. While in the decree of 1816 restoring Truxillo to Honduras the fact that its restoration had been decreed by Parliament is stated, that statement, in view of the time when it was made, may be taken to be by way of recital and not as indicating that the King was acting upon the authority of Parliament. On the other hand, there is much reliance upon the fact that the King, on November 6, 1821, after independence had been achieved, but before it was known in Spain, issued an order conferring upon Don Antonio Prado "Commandant of the Castle of the Gulf in Guatemala . . . the Military Commandancy of the Castle and Port of San Fernando de Omoa in the same Province". While this order was ineffective, it is urged that it would not have been made by the King if he had signed the decree restoring Omoa to Honduras. It should be observed, however, that the mere appointment of a Military Commandant would not have been necessarily inconsistent with the decree of 1818, as the restoration was to be without prejudice to the authority of the Captain General as the "superior chief of the province" and a purely military authority might have been exercised without disparagement to the general jurisdiction, civil and criminal, of Honduras. And it should also be noted that the word "province" is at times used ambiguously in colonial documents.

Whatever the fact may be as to the making of the alleged decree of 1818, it is apparent that when independence was declared in September, 1821, the port of Omoa was in actual control of the commandant of the fortress. At that time Governor Tinoco and the people of Honduras appear to have been opposed to union with Guatemala and, as part of the plan for a separate organization of Honduras, Governor Tinoco desired to obtain possession of the port of Omoa. His appointee, Bernardo Cavallero, succeeded in gaining control of the fortress and the town and the inhabitants took an oath of allegiance to the Honduran Government. In December, 1821, the troops in the fortress, hearing that forces from Guatemala were moving against them, revolted against the Honduran Government and seized the

agents at Omoa of Governor Tinoco and sent them to Guatemala City. After the proceedings incident to the brief movement for the annexation of the Kingdom of Guatemala to the Mexican Empire, the authorities of the Central American Federation, in 1824, issued an edict for an election of deputies to the Federal Congress and it was therein provided that the residents of Omoa should vote at Santa Barbara, a town in the State of Honduras. The Chief Executive of Guatemala, insisting that the port of Omoa was subject to that State, then called upon the Constitutional Congress of Guatemala to decide the status of Omoa and to determine where its inhabitants should exercise their right to vote. It does not appear what action, if any, the Congress took. In 1825, the Constitutional Assembly of the State of Guatemala, after discussing the question whether Omoa belonged to Guatemala or Honduras, reached the conclusion that the question was one for the Federal Congress and adopted a resolution asking that body for a decision. It is not shown that the Federal Congress acted upon this request and, as already noted, the Constitution of the State of Guatemala, adopted in October, 1825, made no specific mention of Omoa. The hostility of Honduras to Guatemala continued and in 1829 the forces of Honduras and El Salvador successfully invaded Guatemala and the Assembly of the State of Honduras called upon the local authorities of Truxillo and Omoa "for the last time" to submit to the Government of that State. Those in control of Omoa having refused to submit, the Chief Executive of Honduras issued a decree imposing an embargo upon the port, and shortly after Omoa came under the control of Honduras. Save for a short time, in 1832, Honduras has held Omoa ever since.

If the decree of October 16, 1818, were regarded as authentic, it would follow that, as the provisions of the document were explicit and there appears to have been no royal action to the contrary prior to independence, Honduras was entitled to administrative control of Omoa at that time. Refusal to permit the exercise of authority by Honduras pursuant to that decree, so viewed, would have been a mere act of usurpation. In that case, neither the Province of Guatemala, nor the rebellious individuals at Omoa, could be regarded as having possession under the Spanish Crown, from which alone at that time, and prior to independence, all authority and possession, through the exercise of authority, was derived.

But the evidence does not admit of a finding that the alleged decree of October 16, 1818, was made. Unless signed by the King, it was not a royal decree which operated to change the status of Omoa. There is no satisfactory proof that it was so signed. In view of the admitted situation as shown by the royal rescript of July 24, 1791, the burden was upon Honduras to establish the fact that the decree of 1818 was actually made, and this burden has not been sustained. The evidence merely permits conflicting inferences and falls short of proof of the essential fact.

If, however, it be assumed that Honduras was not in possession of Omoa at the time of independence, it does not follow that the colonial entity which became the State of Guatemala held that possession. The evidence shows clearly that Omoa had previously belonged to the Province of Comayagua [Honduras]. Señor Aysinena, an official of the Council of the Indies, in the above-mentioned report made by him in connection with the petition of Señor Milla, refers to Omoa as "only 62 leagues from Comayagua, and formerly was always counted to be within its limits". The rescript of July 24, 1791, declares that the separation from the Province of Comayagua was "in consideration of the fact that said military post (*plaza*) and Govern-

ment had always corresponded with the Superior Government of the Kingdom and that the fact that its ties with Golfo Dulce, Bodegas Altas and the Royal Customs of your Capital would not suffer its separation from the said Superintendency [the Superintendency General] without leaving exposed to many complications mercantile operations and the operations of the Royal Treasury which daily occurred in the said Port". It does not appear that the purpose and effect of the royal action in segregating Omoa from Comayagua was to place Omoa under the control of any provincial authorities, as such, but solely under the Superior Government of the Kingdom. The evidence does not show that Omoa was made a part of the territory of the Province of Guatemala. The district of Chiquimula, which was under the provincial jurisdiction of Guatemala, bordered on the district of Comayagua which was under the provincial jurisdiction of Honduras. But there is no evidence that Omoa was annexed to Chiquimula or placed under the authority of Chiquimula for any purpose. The evidence rather justifies the conclusion that by reason of the special exigencies of the port of Omoa, it was made subject to a special regime of the Superior Government of the Kingdom as such. That regime, as distinguished from mere provincial administration, was in the interest of all the provinces of the Kingdom, that is of the Kingdom as a whole.

The Tribunal, however, is concerned with the line of *uti possidetis* of 1821 as it applies to the separate interests of the colonial entities which became States. The fact that for a time after independence there was an effort to maintain a Federation or Central American Republic does not change the nature of the question. If Omoa had not been annexed to the territory of the Province of Guatemala so as to be subjected to the provincial administration of Guatemala, as distinguished from the special regime set up on behalf of the Kingdom of Guatemala, the mere termination of the latter regime would not have the effect of allocating the territory to the colonial unit which became the State of Guatemala. For this reason the evidence is not sufficient to warrant the conclusion that the line of *uti possidetis* of 1821 should be established so as to place Omoa within that State.

The question remains whether Omoa on the termination of the Spanish rule can be deemed to have been restored to Honduras to which Omoa originally belonged. If Honduras during the Spanish regime had exercised administration in civil and criminal matters at Omoa, subject only to the general authority of the Kingdom in relation to its special interests, the termination of the royal rule would have left Honduras complete administrative control over Omoa as part of her territory. The difficulty arises from the fact that it appears that Omoa had not been subjected to the general authority of the Kingdom merely in relation to its special interests but, in order more fully to secure those interests, had been separated from the territory of Comayagua [Honduras] and, for all purposes, including those of ordinary civil and criminal administration, had been made subject to the exclusive authority of the Kingdom. Thus separated, there is no basis for the conclusion that Omoa was actually a part of the territory of Honduras at the time of independence. Hence, the line of *uti possidetis* of 1821 cannot be established so as to place Omoa within the State of Honduras.

The conclusion, then, is that at the moment of independence Omoa was in the possession of the Kingdom of Guatemala for the purposes of the Kingdom as a whole, and was not in the possession of the Province of Guatemala, as distinguished from the Kingdom, or in the possession of the Province of

Honduras. Hence, the evidence affords no sufficient basis for drawing the line of *uti possidetis* of 1821 so as to include Omoa in either Guatemala or Honduras.

It should be added that the fact that Omoa had been part of the territory of Honduras, and had been segregated solely for the purpose of a special royal regime which had terminated, is undoubtedly a fact which will require appropriate consideration in determining the boundary between the two Republics on the basis of equity and justice.

- (b) *The territory contiguous to Omoa, lying east of the Motagua river and known as the Cuyamel region, that is, the region bounded by the mountains of Omoa, the Tinto river, the Motagua river, and the sea.*

The record does not present satisfactory evidence of administrative control over this area by either the Province of Guatemala, or Honduras, during the colonial period. To the extent of the four square leagues, established by Law VI, Title V, Book IV, of the Laws of the Indies as the extent of the jurisdiction of populated places, it might be urged that this region should be regarded as tributary to Omoa. But the territory in question extended five leagues from Omoa.

It is necessary again to recur to the fact that while the evidence shows that on the east the district of Chiquimula of Guatemala bordered on the district of Comayagua of Honduras, there is no definition in any royal rescript of the boundary between these districts. This lack of definition cannot be deemed to be supplied by general and ambiguous references to the territory which are found in public documents but which do not attempt to describe the boundary line. Thus, references are found to the district of Chiquimula as bordering on, or neighboring to, Omoa. But such statements do not give any precise delimitation. More definitely, it appears that in 1768 the farm or *hacienda* of Cuyamel was the property of the Spanish King. And, in 1792, Señor Porta, in his report to the Captain General of a survey of the Motagua river, stated that he had found on the banks of the river, at a distance of six leagues from its mouth, a few huts occupied by six free English negroes who were domiciled in Omoa.

One of the documents submitted is a deed, executed in 1822, of a parcel of land in the Cuyamel area which was authenticated before the "Political Chief" at Omoa and may be taken to indicate that at that time the authorities of Omoa regarded Cuyamel as a place within their jurisdiction. It may be that in the long period during which Omoa was segregated from Honduras the whole Cuyamel area had come to be regarded as tributary to Omoa and this may explain the apparent acquiescence of Guatemala, after the loss of Omoa in 1832, in the expanding activities of Honduras in this region. The view that Guatemala regarded the Cuyamel area as appertaining to Omoa, and as having been lost by it to Honduras with Omoa, is supported by the Rivera map, to which reference has already been made, officially published in 1832 by Guatemala and purporting to show the dividing line between Chiquimula and Honduras in this region at the river Tinto. After 1832, the Hondurans, apparently without protest from Guatemala, assumed that the Cuyamel area was within the national domain of Honduras. This is shown by the Cuyamel grant made by Honduras in 1837 and later grants of territory within this region. It does not appear that the Republic of Guatemala attempted to exercise authority in this area during the 19th century after 1832.

In view of the lack of proof as to the exercise of administrative control during the colonial period by either the Province of Guatemala or Honduras, and of the absence of any recognized boundary line in this region, and of the special situation of Omoa at the time of independence, it is impossible for the Tribunal to establish the line of *uti possidetis* of 1821 so as to include the Cuyamel area, as described above, either in Guatemala or in Honduras.

Again, in this instance, the later circumstances disclosed must be taken into consideration in fixing the definitive boundary between the two Republics as equity and justice may require.

3. The territory of the Motagua valley from a point near the confluence of the Managua river and the Motagua river to the mouth of the latter, including the area between the Motagua river and the crest of the Merendon range.

Guatemala claims this region, contending that the boundary line should run along the Merendon range. Honduras contests this claim, and advances her own claim, not only up to the Motagua river, but to the north and west of that river, as already stated.

The region to the east of the Motagua river, from the neighborhood of Amates (below Quirigua near the confluence of the Managua and Motagua), and lying between the Motagua river and the Merendon range, was virtually unpopulated and unexploited during the colonial period and for many years after independence. For the most part, it was an unbroken wilderness. No royal *cedula* or rescript, or official order of any sort, has been produced purporting to define a boundary between Chiquimula (Guatemala) and Comayagua (Honduras) through this territory.

Nor is there any evidence of provincial administrative control by either Guatemala or Honduras in this area, prior to independence. The building of the two roads, already mentioned, which were opened in 1756 so as to afford communication between Guatemala City and Omoa (then in Honduras), enterprises which were naturally in the interest of the Kingdom of Guatemala, cannot be regarded as showing that the virgin territory traversed by the roads across the mountains belonged to either Province as against the other. In 1792, Señor Porta was commissioned by the Captain General to make a survey of the Motagua river, and in 1796 a stock company was formed in Guatemala City for the improvement of its navigation. It also appears that in December, 1820, the King directed that a report of the Captain General relating to a project for the navigation of the Motagua should be referred to the provincial board of Guatemala for investigation. Whatever light these proceedings throw upon the provincial interest in the navigation of the Motagua river, they do not extend to the territory on the right bank of the river and lying between the river and the Merendon mountains to the east.

In 1797, Don Juan Payes y Font acquired the lands of Quirigua (adjoining Amates) lying on both banks of the Motagua river and embracing part of the plains called Chapulco on the right bank. In the official proceedings relating to this acquisition, these lands were described as belonging to the Province of Chiquimula. But north-east of Quirigua, and as far as the above-mentioned Cuyamel region by the sea, there were no other developments during the colonial period in the Motagua valley and the territory between the Motagua river and the Merendon range upon which a finding of administrative control can be based.

The question remains whether there was a recognized boundary. For the concept of possession cannot be deemed to require a *pedis possessio* of every tract of land, and it is manifestly possible to have a recognition of a boundary, up to which it is assumed that administrative authority will be exercised as the opening up and the development of territory within the boundary may require. The chief points in the evidence bearing upon this question may be noted.

In 1689, the Governor of Honduras, in a report to the King enumerating the rivers of his Province, makes no mention of the Motagua. In 1742, the report of the Captain General of the Kingdom, Don Pedro de Rivera, addressed to the King, includes the Motagua among the rivers flowing into the Sea of the North "between the two provinces of Honduras and Costa Rica". In 1744, the engineer Diez Navarro made the statement, already quoted, that "all the jurisdiction of the government of Comayagua or of Honduras commences on the coast from the river 'Motagua'", a statement repeated in his further report of 1751. Ibañez Cuevas, Governor of Honduras, stated (1752) that on taking possession of his government, it appeared to him most important "to put the final touch" to a galley "which was being made on the Rio Motagua, Province of Chiquimula". The place of construction was apparently at Real de Utrera on the Motagua near the Managua river. It may also be noted that Captain General Salazar, in 1768, and Captain General Estacheria, in 1786, referred to the Province of Guatemala as being adjacent to Omoa. In 1804, as heretofore observed, Governor Anguiano of Honduras, while describing in his report to the King the districts into which Honduras was divided, made no mention of any place north or west of the Merendon range.

Father Juarros, in his history of the Kingdom of Guatemala, published in 1808, says: "Among the rivers of this region, those of the first rank are the Fresh Gulf (Golfo Dulce), the Great River (Rio Grande), noted for a sort of fish called 'Bobo' . . . ; the Great River has its source in the Province of Chimaltenango; in its lengthy course it receives many other streams, and afterwards takes the name of Motagua; it forms the boundary between this province [Guatemala] and Honduras, and falls into the ocean eight leagues eastward of the mouth of the Gulf river." While each Party cites Juarros in answering the claim of the other, neither Party accepts the historian as authority with respect to its own claim. Thus, Honduras contends that her jurisdiction extended north and west of the Motagua river, and Guatemala, that her jurisdiction embraced territory beyond that river to the east.

In the proceedings which were taken for the purpose of effecting the restoration of Omoa to Honduras, Señor Milla, on behalf of Honduras, alluded to "the voluminous rivers which abundantly irrigate this Province [Honduras] and which can be made navigable, especially those of Ulua, Lean and Motagua". But the instructions which Milla received from the Municipal Council of the City of Comayagua, while enumerating the principal rivers of the Province, made no mention of the Motagua. In the same year, 1814, Micheo, who had been the Guatemalan representative in the Spanish *Cortes*, presented a memorial to the Spanish colonial office in which he urged the development of the Motagua river for the trade of Guatemala. Speaking of the project "to open a plain and commodious gateway", he said that "fortunately Guatemala possesses this gateway and it is that of the River Motagua".

In considering the question whether there was a recognized boundary in the region of the Motagua Valley and between that river and the Merendon range, reference should also be made to the action by the Parties upon, and shortly after, achieving independence. The Constitutions of Guatemala and Honduras gave no indication of the location of the boundary in this region. The action of most significance is the decree of June 22, 1824, of the Executive Authority of the Central American Federation, published in the Official Gazette, in which it was stated that the Motagua and the Polochic rivers were in the State of Guatemala and the Ulua, Chamelecon and Lean in the State of Honduras, and that these streams should be improved so as to make them navigable. The decree was signed by Valle, President, O'Horan, and Arce. President Valle was born in Honduras and is said to have been a man of high culture and a recognized authority on Central American geography. The point is made by Honduras that the reference in this decree is a casual one, and is in part correct because for a long distance the Motagua river flows through territory unquestionably Guatemalan up to its confluence with the Managua river. But it does not appear that the Motagua was either navigable or could be made navigable in that part of its reach. The suggestion that the decree was not authentic is not supported. In 1825, the Constitutional Assembly of the State of Guatemala enacted a statute granting the exclusive privilege "to test the feasibility of steam navigation" on certain rivers including the Motagua. A statement of importance was made in 1834 by Don Jose Maria Cacho (later Honduran Minister for Foreign Affairs) in his "Statistical Résumé" of the history of the Department of Gracias, of which he was Governor, in the State of Honduras. In that publication he said: "The Department of Gracias, one of the seven that form the State of Honduras, is situated north-west of the City of Comayagua, and ends in the same direction in a mountain range which separates it from the Department of Chiquimula, State of Guatemala. . . . One of these *cordilleras* extends from south-west to north-east over a distance of more than 60 leagues to the north coast and, as has been stated, it constitutes the boundary of the Department of Chiquimula and of those of Gracias and Santa Barbara."

While the grant by Guatemala in 1834 to Bennett and Meany, already mentioned, of all the public lands in the Department of Chiquimula, as shown in the Rivera map of 1832, apparently covered both banks of the Motagua river, and described the boundary line on the coast as being at the Rio Tinto, it gave no delimitation of the boundary in the region now under consideration. It does appear, however, that certain grants were made by Guatemala in 1836 and 1837 in the lower Motagua Valley on the right bank.

Honduras contends that the "Instructions" prepared in 1844 by Marure and Larreynaga of Guatemala and apparently intended for the guidance of the Guatemalan members of the Commission to be appointed to settle the boundary dispute with Honduras, constituted an express recognition by Guatemala that the Motagua, from the Managua to the sea, was the dividing line between the two countries in 1821. The Treaty under which the Commission was to act was not signed until 1845, and as the Boundary Commission ceased to function before reaching the Managua river, its minutes afford no assistance in determining the significance of the document in question with respect to the Motagua river. Further, it does not appear whether the "Instructions" were ever actually given. In these "Instructions" it is said, referring to Juarros' history: "There are two sure

data; one is that the valley of Copan divides Chiquimula and Honduras, and the other that the Motagua is also a dividing line." But a careful examination of the "Instructions" does not require the conclusion that the authors believed that the boundary was the Motagua river from its confluence with the Managua to the sea. For they said further: "Along Copan there passes a *cordillera*, which commences to the south of Mita, and which is commonly called Merendon, and intersects the Motagua, and extends to the east of the port of St. Thomas, to enter Cape Three Points called Punta de Castilla or Manavique. The dividing line between Honduras and Chiquimula strikes this mountain before it (the mountain) intersects the Motagua, the line passing through the north of the village or hamlet of Chucuyales, and it is a point which should be examined and marked out very scrupulously." They then went on to say that: "From the point at Chucuyales, following the mountain to the Motagua, it forms a boundary, and also the river to its mouth in the Bay of Omoa or Honduras." Thus, it would appear that the "Instructions", even if they could be regarded as having official authority, are not clear, as they apparently follow the mountain range until it "intersects the Motagua", such an intersection being a geographical misconception. These "Instructions", however, afford ground for the conclusion that some time between 1832, the date of the Rivera map, and 1844, the Motagua river had changed its bed near its mouth and had taken the bed of the Rio Tinto. The "Instructions" of 1844 state this as a geographical fact, as follows: "Such case has occurred with the Motagua, which has changed its course some cords or leagues before reaching its mouth leaving an islet at the edge of the sea, as is shown by the map published by the Belgian company, which depicts two streams with the name of Motaguilla and Motagua"; and, also, "The flow of the Motagua, now newly formed, has been added to a smaller river which existed there, and lent to it its river bed. It should be ascertained what river this is. In the chart of Rivera Maestre it is called Rio Tinto, and is on the dividing line which is there shown between Guatemala and Honduras." As this change in the bed of the Motagua had taken place before 1844, it may serve to account for the action by a Honduran customs officer in 1840, as shown by the evidence. He had reported to his superior officer concerning a dispute which had arisen with the customs official at Izabal and he stated that he had informed that official that inasmuch as the "River Motagua discharges into the sea in this State" [Honduras], they should not interfere with merchandise on which duty had been paid in Omoa and which was being carried up the river for importation into Guatemala. The Honduran officer observed that the disagreement had apparently arisen out of a mistake, and he added, "Although, strictly speaking, merchandise which goes up the Motagua is not transported over land, it does traverse for more than a league the territory of this State [Honduras] which shows that the trade is, (one may say), from State to State." While the Honduran officer contended that the mouth of the Motagua, which may have been at that time the same as the former mouth of the Tinto river, was in Honduran territory, he did not seem to think that the Motagua constituted the boundary for more than a short distance.

Giving full weight to this evidence, it must be deemed to support the view that the territory of the Province of Guatemala did extend to the Motagua river. But the evidence cannot be said to furnish an adequate basis for the conclusion that both States recognized the Motagua as the boundary between them. Such a decision could not rest upon the statement of Juarros

alone, unsupported by official data, and official documents lack the requisite definiteness and certainty. Still less can it be said that the evidence is sufficient to enable the Tribunal to determine the legal status of the territory below Quirigua, which lay between the Motagua river and the Merendon range—the region in which, as has been said, there is no proof of the exercise of administrative control by either Province during the colonial period.

Honduras does not attempt to show the exercise of such authority on her part in that region, but bases her claim with respect to the *uti possidetis* of 1821 upon the contention that the boundary of Honduras ran on the west from the confluence of the Managua and Motagua to Lake Izabal and thence to the coast at Belize, or British Honduras. For the reasons already stated, that claim cannot be sustained. The claim of Guatemala, with respect to the territory in question, that is, that the line of *uti possidetis* of 1821 should follow the *cordillera* of Merendon, rests, not upon a factual possession or upon a right to that territory shown to have been conferred by the Spanish monarch, but upon the theory of a constructive possession of the watershed of the Motagua river. But, as Guatemala states—“The watershed was at that time [during the colonial period] for the most part a tangle of impenetrable forests that defied the explorer, and even more the surveyor. From the heights of the westerly side, and following the course of the streams that flowed into the Motagua river, the region was largely uninhabited by the Spaniard, even as late as 1821.” And it is manifest that the mere physical fact of the existence of a watershed cannot be regarded as fixing the line of *uti possidetis*.

In the absence of royal delimitation, or of evidence of the exercise of administrative control, or of satisfactory proof of a recognized boundary, the Tribunal is not at liberty to allocate the territory in question, that is, the region lying between the Motagua river and the Merendon range and extending from the lands of Quirigua, near the confluence of the Managua and Motagua rivers, to the Cuyamel area, to either Party on the basis of a line of *uti possidetis* of 1821. Subsequent developments in this region and the corresponding equities of the respective Parties demand, however, proper recognition in determining the definitive boundary which should be established between them in this territory according to equity and justice.

4. The territory from a point near the confluence of the Managua and Motagua rivers (Amates-Quirigua) to the boundary of El Salvador, embracing the Copan region.

The area in dispute is about sixty miles long. For about fifteen miles, from the Salvadoran boundary to Cerro Oscuro, it is three miles or less in width, and to the north of Cerro Oscuro it is from fifteen to twenty miles in width.

The line claimed by Honduras runs from Cerro Brujo on the south to Angostura on the Managua river and thence along that river to its confluence with the Motagua. That claimed by Guatemala runs from the Salvadoran boundary at Cerro Dantas to Cerro Azul and thence to the north-east along the Merendon range.

A preliminary question is presented as to the effect of the proceedings for the settlement of the boundary dispute prior to the Treaty of 1930. It is said that the first difficulties relating to boundaries arose in 1842 in the region to the south of the Copan river and led to the Treaty of 1845. In

Article 13 of that Treaty the Parties recognized "as their boundaries those laid down for the diocese of each in the Royal Ordinance of *Intendentes* of 1786". Commissioners were appointed under the Treaty and meetings were held in 1847, but as the Commissioners were unable to agree, the negotiations under the Treaty of 1845 failed and the controversy continued. Fifty years later, in the Treaty of 1895, the Parties provided for a Mixed Technical Commission which should give consideration "to the lines marked in public documents not contradicted by others of the same nature and of greater force, giving to each the value corresponding to it according to its antiquity and juridical efficacy; the extent of the territory which formed the ancient provinces of Guatemala and Honduras at the date of their independence; the dispositions of the Royal ordinance of intendants which then ruled; and, in general, all documents, maps, plans, etc., which may lead to clearing up the truth, preference being given to those which by their nature should have greater force owing to their antiquity, or to their being clearer, more just or impartial, or for any other such good reason according to the principles of justice.—Possession should only be considered valid so far as it is just, legal, and well founded, in conformity with general principles of law, and with the rules of justice sanctioned by the law of nations." The Mixed Commission was organized in 1908 and held sessions at intervals during several years. Honduras urges that agreement was definitely reached on two points, Cerro Brujo (as the common boundary point of Guatemala, Honduras and El Salvador) and Cerro Oscuro, and that this agreement is binding. There was no agreement as to the intermediate points or as to the basis to be adopted for the demarcation. It also appears that the engineers of the Mixed Commission described the line of actual possession as it was found to exist in 1910 from Cerro Brujo to Caulotes or Coyoles (Copan river). By Article 16 of the Treaty of 1914 the Parties recognized "as valid the work carried out up to this date by the Mixed Boundary Commission" under the Treaty of 1895. It is not shown, however, that the Mixed Commission under the Treaty of 1895 adopted the report of the engineers as to the line of actual possession. The negotiations under the Treaty of 1914 resulted in a deadlock. The Parties were at liberty to reach a new agreement and they did so in the present Treaty of 1930. This Treaty does not refer to the proceedings under the earlier Treaties and establishes its own criteria. As already observed, the former Treaties did not use the expression *uti possidetis*, and in endeavoring to determine the line of *uti possidetis* of 1821, the Tribunal cannot be deemed to be bound by proceedings under earlier Treaties with their particular requirements. However, in establishing the definitive boundary according to equity and justice, the Tribunal should not fail to give appropriate consideration to antecedent inquiries and reports as to the facts of actual possession at stated times, although such reports may not be regarded as governing the Tribunal in determining developments and possession as these now exist.

In fixing the line of *uti possidetis* of 1821, Guatemala contends that controlling effect should be ascribed to the evidence from ecclesiastical sources in the view that, in the absence of a royal order of specific delimitation, the limits of ecclesiastical jurisdiction are determinative. In support of this view, the provisions of Law VII, Title II, Book II of the *Recopilacion* of the Indies are invoked, as follows:

"That the territory of the Indies may be divided in such manner that the temporal may correspond with the spiritual. . . . We command

the members of our Council of the Indies that they shall always take care to divide and distribute all the territory thereof, discovered and to be discovered, for temporal purposes into vice-royalties, provinces of *Royal Audiencias* and chanceries, and provinces of officials of the Royal Treasury, *adelantamientos*, governancies, *alcaldias mayores*, *corregimientos*, ordinary *alcaldias* and of the brotherhood, councils of Spaniards and of Indians; and for spiritual purposes into archbishoprics and suffragan bishoprics and abbeys, parishes and tithing districts, provinces of the religious orders and institutions, always taking care that divisions for temporal matters shall conform and correspond with divisions for spiritual matters, insofar as may be possible; archbishoprics and provinces of the religious orders with the districts of the *Audiencias*; bishoprics with governancies and *alcaldias mayores*; and parishes and curacies with *corregimientos* and ordinary *alcaldias*."

But it will be noted that absolute correspondence of the limits of temporal and spiritual jurisdiction was not required. The conformity was to be "insofar as may be possible". The Spanish King could fix the limits of civil jurisdiction in his colonial possessions as he saw fit. Open and formal exercise of administrative control by the provinces, under claim of right, where the evidence fails to show that such control was opposed to the royal will, may properly be taken to have been with the royal acquiescence. Administrative control so exercised by the civil authorities at the time of independence must be deemed to constitute *possession* by the colonial entity in the sense in which the expression *uti possidetis* is used in the Treaty of 1930. And it is the extent of the civil jurisdiction of the colonial entities with which the Tribunal is concerned.

With respect to ecclesiastical authority, it is the contention of Guatemala that the Copan region was within the Bishopric of Guatemala; that the Bishopric of Comayagua (Honduras) comprised the territory east of the Merendon range, and that Ocotepeque of that diocese was the only parish situated west of the cordillera; that the Bishopric of Guatemala extended as far as the western slopes of the Merendon range and that the priests of Esquipulas and Jocotan administered spiritual services in the Valley of Copan. It was the practice of the Guatemalan church to sell at auction to the highest bidder the right to collect tithes, and the records show the sale by the ecclesiastical authorities of Guatemala City of the privilege to collect the tithes "of the Parishes of Chiquimula de la Sierra, Jocotan, Esquipulas and Valle de Copan". Such sales were made in 1762, 1772, and 1802. Burial certificates of the same period, which are said to have a similar import as to the exercise of ecclesiastical jurisdiction, are also produced. Reference is made to the visitation of the diocese by the Archbishop of Guatemala in 1769 and his description of the parish of Jocotan, and also to the statements, in answer to the Archbishop's questions, made by the priest of Jocotan—documents indicating that the inhabitants of the Valley of Copan were within that parish. The statistical table of the parishes visited by the Archbishop of Guatemala in 1784 also includes the Valley of Copan. And another reference is found in the record of the inspection made by the Archbishop in 1786. Further, the report made to the King by the Bishop of Honduras in 1791 with respect to the condition of his diocese contains no mention of the Valley of Copan.

As against this evidence of ecclesiastical jurisdiction, Honduras relies on the statements of Father Juarros in his history of the Kingdom of Guatemala. In the first volume of this history, printed in Guatemala in 1808,

Juarros included the Valley of Copan in his description of the District of Comayagua, saying that "the Valley of Copan is as remarkable at present for its excellent tobacco, as it formerly was for its opulent city"—referring to the Mayan ruins. In his second volume, published in 1818, Juarros described the conquest of the Indian King of Copan by the Spaniards in 1530, and in the course of his narrative said that Copan, "which at the present time is known only by the name of Valley is situated on the dividing line of the Provinces of Chiquimula and Comayagua so that at certain times it has been within the jurisdiction of the former and at others as now of the latter". And in the list which Juarros gave of the ecclesiastical divisions of the Kingdom, the Valley of Copan does not appear among the parishes dependent upon the church at Guatemala. This omission, however, does not seem to be entitled to great weight, as the Valley of Copan may have been one of two unnamed valleys which were said to be dependent upon the parish of Jocotan. Father Juarros was a priest directly connected with the Archbishopric of Guatemala and his book was printed with the express approval and license of both the ecclesiastical and civil authorities of Guatemala. His familiarity with the situation of Copan at the time he wrote, and with its early history, may be deemed to make these statements with respect to Copan of greater authority than those made by him in relation to the territory to the north-east, of which little was known. And these statements of Juarros were published some time after the last sale of Copan tithes (1802) disclosed by the evidence.

Honduras adduces evidence of judicial administration by the authorities of Honduras in the Valley of Copan. Thus, it appears that in 1763 and 1764, the authorities at Gracias a Dios in Honduras made orders for the administration of decedents' estates in the Copan valley. In 1780, Father Perdomo, the parish priest of Jocotan, presented a complaint to the Judge Commissioner of the Valley of Copan seeking restoration of cattle claimed to belong to one of the brotherhoods in his parish. The final order for restitution, and for the arrest of the offender who was sent to Gracias a Dios for trial, is dated at the "*Hacienda del Jobo, Valle de Copán, jurisdicción de Gracias a Dios*". In 1799, a domiciliary priest of the Archbishopric of Guatemala presented a petition to the Court at Sensenti (a place in Honduras about eighteen miles east and eight miles north of Ocotepeque) asking that proceedings be taken to enforce payment by a tenant of property which was subject to a charge in favor of the church. The record shows that the property, located in the Valley of Copan, was considered to be within the jurisdiction of Gracias a Dios of Honduras. In 1803, the *Corregidor* of the Province of Chiquimula exercising judicial functions with respect to the estate of a decedent who had been a resident in Chiquimula and had a farm in the Valley of Copan, addressed a communication to the authorities at Sensenti (Honduras) asking that an inventory be taken of the property in Copan, or that authority for that purpose should be delegated to the *Corregidor* of Chiquimula. The official at Sensenti accordingly went to the ranch which he said was in the "Valley of Copan in the limits of my jurisdiction", in order to appraise the property and make an inventory, and he directed that a certified copy be sent to the *Corregidor* of Chiquimula so that the latter might take such action as pertained to his jurisdiction. Other illustrations of Honduran judicial action, prior to independence, in relation to the Valley of Copan are found in 1804, 1812 and 1813.

Deliberate and formal assertion of civil authority is shown in the making of grants of the public domain. The high significance of these grants as public instruments evidencing the exercise of civil jurisdiction within the territory under consideration is apparent from the character of the official procedure pertaining to their execution. The title to the public domain was in the Spanish King, and land grants could be made only with the royal authority. After the middle of the eighteenth century, surveys of land in the Kingdom of Guatemala were made by subdelegates, or special land judges, who were appointed by the Captain General to serve in the several provinces, and these surveys were subject to confirmation by the *Audiencia* on behalf of the central government of the Kingdom. It appears to have been the practice that the person desiring to acquire title to public land presented a petition to the local subdelegate, or land judge, in the province in which the land was deemed to be situated. An official survey was then made under the supervision of the local judge and the land was measured and marked. Opposing claims were heard and pertinent questions were decided by the judge subject to appeal to the *Audiencia*. The price was paid into the Royal Treasury and the *dossier* was sent to the *Audiencia* which entered its adjudication after hearing the *Fiscal* (Attorney-General). In the circumstances of the times, it is difficult to see what procedure could have afforded more ample opportunity for examining and determining questions of territorial jurisdiction. Through these land grants it is possible to trace the area in which each of the colonial entities, and the States which succeeded them, asserted administrative control.

It is convenient to adopt the order of the arguments by taking the following divisions of the region now under consideration; (a) from the Salvadoran boundary to Cerro Oscuro, (b) from Cerro Oscuro to the parallel of Copan, and (c) from that parallel to Amates-Quirigua on the Motagua river.

(a) *From the Salvadoran boundary to Cerro Oscuro, approximately fifteen miles.*

Guatemala claims that the line of *uti possidetis* of 1821 runs from the ridge of Cerro Dantas to Cerro Mojanal and La Brea, and thence to the east on a line about one mile south of Cerro Oscuro. Honduras claims that the line runs from Cerro Brujo to Quebrada Pedernales, thence east across the Quebrada de la Brea to Cerro Oscuro.

Neither line is supported by adequate evidence either of royal decree, provincial control or actual occupation. Either of these lines would place within the domain of one Party land which had been held by the other Party before and since independence.

The first question is as to the starting point. Cerro Brujo is proposed by Honduras; Cerro Dantas, about three miles to the east of Cerro Brujo, by Guatemala. Cerro Dantas was accepted by the Honduran Boundary Commissioners in 1847 in accord with the Guatemalan Commissioners. In 1908, the representatives of Guatemala, Honduras and El Salvador agreed upon Cerro Brujo as the common boundary of the three Republics. In the course of the aerial survey ordered by the present Tribunal, information was received by the engineer in charge indicating the possibility that a claim might be made by El Salvador that Cerro Brujo was entirely within her territory. Apart from such a claim, as to the validity of which the Tribunal is not in a position to express an opinion, the aerial survey shows that Cerro Brujo is separated from Cerro Dantas by a divide, or watershed, which commences at Cerro Montecristo and runs in a northerly direction

roughly parallel to the upper reaches of the Frio river. There seems to be no natural line which connects Cerro Brujo with the Frio river, a stream which, a few miles below, at least between the Blanco river and Chaguiton creek, has had practical recognition as the dividing line between the two countries.

In the northern part of the area in question, in the neighborhood of La Brea, about twelve miles from Cerro Dantas, it sufficiently appears that the Quebrada de La Brea was the recognized boundary line prior to independence. In 1702, in connection with a petition by one Erasso to the local authorities in Gracias a Dios for the survey of a tract known as Barbasco and La Brea, objection was made by the *Alcalde Mayor* of Chiquimula upon the ground that the land to the north of Quebrada de La Brea was in his district. The result of the litigation is shown in proceedings in 1773 relating to the La Brea grant of that year of lands lying to the north of Quebrada de La Brea and found to be in the jurisdiction of Chiquimula. The local judge in Chiquimula recited that one Herazo appeared with his title deed (to the Barbasco tract) with the record of the survey of 1702, and the judge found "in said title that the *Alcaldes Mayores* had a litigation on the boundary of their jurisdictions in which they acknowledged that the four *caballerias* of land of the Herazos were understood to be in the jurisdiction of Gracias a Dios and that the creek that is called La Brea divides the two jurisdictions of Chiquimula and of Gracias a Dios". No ground is shown for an attempt at this time to review that determination.

In 1794, in a survey of a tract called Miramundo, lying directly to the north of the parallel of Cerro Oscuro, the subdelegate of Chiquimula referred to the mountain called Barbasco as dividing the jurisdiction of Chiquimula from that of Gracias a Dios. A similar reference to the mountain Barbasco as being the boundary is found in the Pozas grant in Chiquimula, in 1815, of land to the north-east of the Miramundo tract. In the survey pertaining to the Mecatal grant (1864), made by the Honduran authorities, of land adjoining the Miramundo tract, reference is made to the survey of the latter tract in 1794 and to the ravine of La Brea "as the dividing line of this Republic and that of Guatemala". In the Mecatal record the question was raised whether the mountain Barbasco was identical with Cerro Oscuro and the latter was decided to be a neighboring peak of greater elevation (manifestly in the same range) which was taken as the dividing line of the Miramundo property. No evidence has been produced opposing the fair inference that prior to independence Cerro Oscuro was deemed to mark the boundary of the two provinces. And the line of the Guatemalan grant (Miramundo) indicates the recognized boundary as following the parallel of Cerro Oscuro from the Quebrada de La Brea, instead of the line one mile to the south of that parallel.

The Quebrada de La Brea flows south-west into the Olopa river at a point where the Agua Caliente, as the lower part of the Quebrada Tecomapa is called, flowing north-east, joins the same stream. In 1731, in connection with the proceedings, in the jurisdiction of Gracias a Dios, for the San Cayetano Sesecapa grant (adjoining on the south the property of the Barbasco grant), the subdelegate in Gracias approved the survey which defined the tract as bounded by the Quebrada Tecomapa, stating that at this stream "the jurisdiction of Gracias is divided from that of Chiquimula". The receipt issued by the officials of the Royal Treasury in Guatemala City recited that San Cayetano Sesecapa was within the jurisdiction of Gracias a Dios. The contention of Honduras that this grant shows that

the Quebrada de Amatal was a dividing line is not supported by the record before the Tribunal; that stream is not mentioned in the grant of 1731. The Tecomapa grant of 1739, which was made on an application to the subdelegate in Chiquimula, borders the Quebrada Tecomapa on the west. During the period of the Central American Federation, in 1834, Honduran authorities made a survey of the tract called Chaguilton, situated between the Sesecapa (Frio) river on the south and the Quebrada Tecomapa, the latter being described as the boundary between Honduras and Guatemala. The recitals by the Honduran officials indicate that special care was taken not to go beyond the acknowledged Honduran boundary in view of the fact that the land to be measured bordered on the State of Guatemala.

In 1834, the Honduran authorities surveyed a tract called Mojanal, situated at the confluence of the Chuctal creek with the Sesecapa (Frio) river and to the south of that river. The grant was issued in the same year. Application was made in 1838 to the Honduran authorities for a tract, called Chuctal, between Cerro Mojanal and the right bank of the Sesecapa (Frio) river. This tract lay about six miles north-east of Cerro Brujo. The tract was surveyed in 1845 and title was granted by Honduras in 1854. These proceedings by Honduran authorities in the period following independence show the early assumption of sovereignty by Honduras over the territory from the vicinity of the Salvadoran line along the south or right bank of the river Frio. The evidence discloses no opposition on the part of Guatemala to that action. Nor does the evidence show any exercise or assertion of authority by Chiquimulan officials in colonial times with respect to that part of the territory. The activities of the Parties in later years will receive separate consideration.

The conclusion is that while for a few miles from the Salvadoran boundary there is no sufficient basis for drawing the line of *uti possidetis* of 1821, in the absence of proof of administrative control by either Party referable to the colonial period, the line of *uti possidetis* of 1821 may be deemed to be established in the remaining part of the area now under consideration. That line is found to run along the Quebrada Tecomapa and the Quebrada de La Brea up to the parallel of Cerro Oscuro and thence along that parallel to that peak.

(b) *From Cerro Oscuro to the parallel of Copan, approximately seventeen miles.*

Honduras claims that the line of *uti possidetis* of 1821 runs in a straight line from Cerro Oscuro to the north. The line as claimed by Guatemala runs from La Brea to the east to Pico del Zapotal, thence to Cerro San Jeronimo, thence to Pico de Erapuca in the Merendon range and along that range to the north. The territory thus in dispute is approximately fifteen miles in width.

As already stated, while it appears that the jurisdiction of the ecclesiastical authorities of Guatemala extended to the Valley of Copan, the evidence shows that the civil jurisdiction of the judicial authorities of Honduras in that Valley was exercised and recognized for a long period prior to independence. The land grants in this area during the colonial period furnish convincing evidence that the jurisdiction of Guatemala was deemed to extend to a considerable distance to the east of the line now claimed by Honduras, and that, on the other hand, the Guatemala claim of a line along the Merendon range, placing the whole Copan valley in Guatemala, is not supported.

With respect to the southern portion of the area now being considered, reference may again be made to the Miramundo grant (1794-1795) of land lying directly to the north of the parallel of Cerro Oscuro and surveyed as being in Chiquimula, with the mountain Barbasco (Oscuro) on the dividing line. This tract extended to the east of the line (claimed by Honduras) running directly north from Cerro Oscuro. The lands of the Pozas grant, within the limits of which the Guatemalan town of La Union (Chanmagua) is located, which were surveyed in 1815 as pertaining to Chiquimula, lay to the north-east of the Miramundo grant.

About eight miles directly north of La Union is the Guatemalan town of La Paz (Monteros) also to the east of the line running north from Cerro Oscuro. It appears that between La Paz and Cerro Oscuro all the colonial grants were made as of lands lying in Chiquimula. In this region are found the Chiquimulan surveys of the lands of Sulay (1738), Jiquilite (1741) and the Pasalja (1722). To the east of the Pasalja lands was the Leonera tract, surveyed in 1737 under the direction of the subdelegate in Chiquimula and sold at auction, in 1738, in Escuiipulas in that Province. This tract lay along and to the north of the Playon river. North of the Leonera lands and to the east of La Paz lay the lands of Tixiban, surveyed in 1817 as being in Chiquimula. The Tixiban lands were situated about five miles south of the town of Copan. But to the east and north-east of the Tixiban grant were lands set apart for the inhabitants of the Indian village of Pueblo Nuevo, a place about five miles south and three miles east of Copan. These Indians had requested the authorities of the Province of Comayagua to grant lands for their village commons. In the proceedings, which took place in 1817, it is stated that Pueblo Nuevo was situated "in the mountain of the Merendon district of Sensenti subdelegation of Gracias in the Intendence of Comayagua." On reference of the petition to the judge of the Special Land Court at Guatemala City, an order was issued directing the Governor of Comayagua to arrange that the surveyor of the district should "measure and delimit a league of the best lands" for the service of the Indians.

In the vicinity of Copan, and along the Copan river to the west of Copan, lands were surveyed in colonial times as lying within Honduras. As early as 1628, under the authority of a commission issued by the Captain General of Guatemala, the local judge made the survey of the Estanzuela property as lying in the Valley of Copan within the jurisdiction of Gracias a Dios. This tract lay on the south bank of the Copan river beginning slightly to the east of the village of Copan which is on the north bank of the stream. The survey was reported to the Captain General and title was directed to issue. In 1730, application was made for the Potrero lands which were stated to be located in the Valley of Copan in the jurisdiction of Gracias a Dios. The survey was made in that year by the local judge and in 1737 the grant was approved by the authorities at Guatemala City, the officers of the Royal Treasury reciting in their receipt that the lands had been measured in the jurisdiction of Gracias a Dios. These lands lay on the west of the Estanzuela property and extended to a point close by Portillo Caulotes. In the survey, in 1754, of the property called Tapexco de Avila and Leona, it is stated that the Potrero property was on the boundary between the Province of Gracias a Dios and the Province of Chiquimula. Petition for title in 1759 described the Tapexco land as being in Chiquimula and this location is also recited in the receipt issued for the purchase price by the judges of the Royal Treasury. The Tapexco

survey also describes the "valley of Jupilingo" as being in the Province of Chiquimula. Reference to the valley of Jupilingo as being in Chiquimula had been made in the application for the Coyoles grant, the survey for which was made in 1726. The latter tract was to the west of the Potrero property.

Considering the land grants made prior to independence as evidencing the extent of the recognized provincial jurisdiction, it appears that the line of *uti possidetis* of 1821 may be deemed to be established from a point on the Copan river, west of the village and ruins of Copan, at the western border of the Potrero grant, running thence along the western limits of the Potrero grant to its southern boundary; thence in a south-easterly direction to and along the eastern limits of the Tixiban grant. From the southern point of the Tixiban grant to the boundary of the Leonera grant the line of *uti possidetis* of 1821 is not clearly shown by the evidence, as provincial administrative control does not appear directly to the east of the lines of the Sulay and the Jiquilite surveys. The line of *uti possidetis* of 1821 may be deemed to pass along the eastern border of the Leonera grant to the southern boundary of that grant, and along the eastern border of the Pozas grant to the southern limit of that grant, and thence to Cerro Oscuro.

(c) *From the parallel of Copan to Amates-Quirigua on the Motagua river, approximately twenty-nine miles.*

Honduras claims that the line of *uti possidetis* of 1821 runs from Portillo de Caulotes or Coyoles to Cerro Ceniza, thence to the Managua river at Angostura, and thence along that river to the Motagua. Guatemala claims that the line runs along the Merendon range. The distance from Angostura to Cerro Azul, a point directly to the east in the Merendon range, is about fifteen miles.

In the southern part of this section the line of the *uti possidetis* of 1821 is reasonably clear. The survey of the tract known as Los Jutes, in 1722, states that the line was commenced at Las Cruces, a place which serves "as a landmark and boundary for the division of the jurisdiction of Chiquimula and at which that of Gracias a Dios commences". This land apparently lay approximately four miles west of the town of Copan. The official receipt of the Royal Treasury refers to Los Jutes as being within the district of Gracias a Dios. Directly to the east of the northern part of the Jutes property lay that of Llano Grande de Copan, which was surveyed in 1729 as being in the jurisdiction of Gracias a Dios. In 1766 this property was the subject of judicial proceedings for the administration of the estate of the deceased owner who had been a resident of Chiquimula. The court at Jocotan in the Province of Chiquimula referred the proceedings as to Llano Grande to the court at Gracias a Dios in view of the fact that the property was situated in that jurisdiction. At Gracias the resignation of the testamentary executor was accepted and a substitute was appointed, the order being dated at "Llano Grande jurisdiction of the city of Gracias a Dios". Subsequently the inventory of the property was taken in the same jurisdiction. It was also in relation to this property that the proceedings (already mentioned in connection with the judicial administration of Honduran authorities in the Valley of Copan) were taken in 1803, on the death of the then owner, in the course of which the Corregidor at Chiquimula requested the authorities at Sensenti (Honduras) to make the inventory of the estate, which was taken accordingly.

To the east of the southern part of the Jutes property and adjoining the Llano Grande property was that of El Salto, of which a survey was made in 1730, the tract being described as situated "in the place called the Salto in the Valley of Copan, jurisdiction of Gracias a Dios". The application for the survey indicated that the property was believed to be on the dividing line between Gracias and Chiquimula.

Lying to the north of Los Jutes and Llano Grande was the tract of Llano Grande Sesesmil in the Valley of Copan, which was surveyed in 1781 under the direction of the subdelegate or local judge of Gracias a Dios. Forty years earlier (1741) title had been granted to the Chaguites tract situated to the north of Llano Grande Sesesmil. The grant was made by Captain General upon the survey of 1736 by the local judge of Gracias a Dios. The land is described as being "in the Valley of Copan jurisdiction of the city of Gracias a Dios". Its boundaries were said to touch Cerro Chaguite, Cerro Barbasco and Quebrada Cordoncillo. Cerro Chaguite is about six miles to the north-west of the town of Copan. Mount Barbasco is a short distance to the north of Mount Chaguite. The record shows clearly, as contended by Guatemala, that the commons of San Juan Camotan, lying to the west of Chaguites, were in Chiquimula. But it is also clear from the grant of the Chaguites property that the latter was deemed to lie within the jurisdiction of Gracias a Dios.

Opposed to this evidence is the Cutilca grant made in 1743, upon the survey (1741) which located the property "in the Valley of Copan of Chiquimula de la Sierra". This tract lay to the north of the Copan river, and north-east of, and close to, the town of Copan. But prior to this grant, there had been made, in 1729, the survey of the Petapa lands lying north of the Copan river and adjoining the town of Copan on the west. This land was stated to be in the Valley of Copan within the jurisdiction of Gracias a Dios. The evidence gives no explanation of the inconsistency between the descriptions of the Cutilca grant, of land north-east of the town of Copan and stated to be in Chiquimula, and the grants of the Petapa, Llano Grande, El Salto, Los Jutes, Llano Grande Sesesmil, and Chaguites, of land lying to the west of the town of Copan and north of the Copan river. The Cutilca grant is an isolated instance, as the record before the Tribunal does not show any other grant during the colonial period of land lying north of the Copan river, and in the immediate vicinity of the town of Copan, as being in Chiquimula. In view of the several grants above mentioned, and of the clear showing of judicial administration by the Honduran authorities in the Valley of Copan, it is believed that the weight of evidence requires the conclusion that the line of *uti possidetis* of 1821 north of the Copan river ran along the western limits of the grants of Los Jutes, Llano Grande Sesesmil and Chaguites to Cerro Barbasco.

From Cerro Barbasco, the northern limit of the Chaguites tract, and in the long reach to the Motagua river, the evidence does not show any colonial grants within the territory in dispute. Within that territory, that is, between the lines claimed by the Parties, the record affords no basis for establishing the *uti possidetis* line of 1821 between the limits of the Chaguites grant and Los Amates and Quirigua. At the latter place, the evidence discloses the Payes grant in 1797, the tract being described in the receipt given by the General Ministers of State and the Royal Treasury of Guatemala as lying "on the banks of the Motagua river in the Province of Chiquimula". It thus appears that at that point the lands on the right bank of the Motagua

river, within the Quirigua grant, were considered to be within the provincial limits of Guatemala.

CONCLUSIONS. The conclusions as to the line of *uti possidetis* of 1821 may be thus summarized:

(1) The claim of Honduras to the territory north and west of the Motagua river is not sustained.

(2) The evidence affords no sufficient basis for establishing the line of *uti possidetis* of 1821 so as to assign

(a) Omoa, or

(b) the territory contiguous to Omoa and known as the Cuyamel region, or

(c) the territory in dispute lying between the Motagua river and the Merendon range and extending from the lands of Quirigua, near the confluence of the Managua and Motagua rivers, to the Cuyamel area, or

(d) the territory in dispute between Cerro Barbasco (north-west of the town of Copan) and the lands of Quirigua

to either the Province of Guatemala or the Province of Honduras by virtue of proved provincial administrative control.

(3) The lands within the limits of the Quirigua grant on the right bank of the Motagua river pertained to the Province of Guatemala.

(4) Within the southern portion of the territory in dispute, the line of *uti possidetis* of 1821 is found to be established as follows:

North of the Salvadoran boundary along the Quebrada Tecomapa and the Quebrada de La Brea to the parallel of Cerro Oscuro, and thence along that parallel to Cerro Oscuro; from Cerro Oscuro to the south-eastern limit of the Pozas grant, thence along the eastern boundary of the Pozas grant to the north-eastern limit thereof; along the southern boundary of the Leonera grant on the Playon river to the south-eastern limit of that grant, thence northerly along the eastern boundary of the Leonera grant to the north-eastern limit thereof; from the south-eastern limit of the Tixiban grant north-westerly to the north-eastern limit thereof; from the south-western limit of the Potrero grant along the western boundary of that grant to the Copan river; along the western boundaries of the Los Jutes, Llano Grande Sesesmil and the Chaguities grants, to Cerro Barbasco. The gaps in this line, which are found near the Salvadoran boundary, and in the regions between the Leonera grant and the Tixiban grant, and between the latter grant and the Potrero grant, and in the region north of the Copan river and south of the limits of the Los Jutes and El Salto grants, are due to the lack of satisfactory evidence of administrative control during the colonial period.

SECOND. THE DEFINITIVE BOUNDARY.

Construction of Treaty.

The Treaty of 1930 contemplates the establishment of a definitive boundary between Guatemala and Honduras. The Parties recite in the preamble of the Treaty that they are "desirous of settling the question of territorial boundaries" and that they "have agreed to submit said question to arbitration through the conclusion of this Treaty". It was with this magnanimous

purpose to reach a definitive settlement that the Parties provided, in Article XIV of the Treaty, that the award "shall decide the boundary controversy finally", and, in Article XII, that the Tribunal shall have "the necessary authority to settle by itself any difference which may arise with regard to the interpretation or carrying out of this Treaty and the decisions of the said Tribunal". While by Article V the Parties recorded their agreement that the only juridical line which can be established between their respective countries is that of the *uti possidetis* of 1821 and that the Tribunal shall determine this line, it was also recognized that the Tribunal might find that interests had been established beyond the line of *uti possidetis* which should be taken into account "in establishing the definitive boundary". Accordingly, the Parties agreed that in determining that boundary "the Tribunal shall modify as it may see fit the line of *uti possidetis* of 1821 and shall fix the territorial or other compensation which it may deem just that either Party should pay to the other".

In the light of the declared purpose of the Treaty, the Tribunal is not at liberty to conclude that the lack of adequate evidence to establish the line of *uti possidetis* of 1821, throughout the entire territory in dispute, relieves the Tribunal of the duty to determine the definitive boundary to its full extent. The Tribunal, by the provision of the Treaty as to the line of *uti possidetis* of 1821, is not required to perform the impossible, and manifestly is bound to establish that line only to the extent that the evidence permits it to be established. And as the Tribunal is expressly authorized in the interests of justice, as disclosed by subsequent developments, to depart from the line of *uti possidetis* of 1821, even where that line is found to exist, the Treaty must be construed as empowering the Tribunal to determine the definitive boundary as justice may require throughout the entire area in controversy, to the end that the question of territorial boundaries may be finally and amicably settled.

The criteria to be applied by the Tribunal in the exercise of this authority are plainly indicated. It is not the function of the Tribunal to fix territorial limits in its view of what might be an appropriate division of the territory merely with reference to geographical features or potential advantages of a military or economic character, apart from the historical facts of development. The Treaty cannot be construed as authorizing the Tribunal to establish a definitive boundary according to an idealistic conception, without regard to the settlement of the territory and existing equities created by the enterprise of the respective Parties. So far as may be found to be consistent with these equities, the geographical features of the territory indicating natural boundaries may be considered.

In fixing the boundary, the Tribunal must have regard (1) to the facts of actual possession; (2) to the question whether possession by one Party has been acquired in good faith, and without invading the right of the other Party; and (3) to the relation of territory actually occupied to that which is as yet unoccupied. In the light of the facts as thus ascertained, questions of compensation may be determined.

Article XIII of the Treaty provides: "The High Contracting Parties empower the Tribunal to appoint committees of investigation, to utilize the service of experts and resort to other means of information which it may deem necessary for ascertaining the facts. They also empower it to organize the subordinate personnel of the Tribunal, in such form as it may deem desirable. To this end the Parties undertake to place at the service of the Tribunal such facilities as may be necessary."

Referring to this Article of the Treaty, the Tribunal, in view of the inadequacy of the topographical data submitted with respect to certain portions of the territory in dispute, requested the submission to the Tribunal of photographs and map of an aerial survey embracing territory described in the Tribunal's order. The aerial survey was made accordingly, with the participation of engineers appointed by the respective Parties. The photographs and a preliminary map of the survey have been submitted to the Tribunal, together with a report from the senior engineer in charge.

1. From the Salvadoran boundary to Cerro Oscuro.

In 1910, the Guatemalan and Honduran engineers of the Mixed Boundary Commission, appointed under the Treaty of 1895, agreed upon the line of actual possession in this portion of the territory as follows:

“that according to the above-mentioned maps [which the engineers had exchanged] the line of present possession between Guatemala and Honduras begins at Cerro Montecristo, because the part which belongs to the two Republics at Cerro Brujo is in the possession of citizens of the Republic of El Salvador; that from Cerro Montecristo towards El Bonete, where the trail from La Granadilla to the village called El Brujito crosses, the line of possession, according to the data obtained by them, follows roughly (the country being uncultivated and uninhabited) the watershed of the Frio and Anguiatu rivers; from El Bonete the line continues, absolutely undefined, up to El Chuctal de La Granadilla, leaving in Honduran possession the place called El Amatal; from Chuctal de la Granadilla the line runs to Floripundio, along the side of the road from El Sunnete to Granadilla; from Floripundio the line runs to the north peak of two that compose the Cerro de Tecomapa; from here it follows a ditch made by the owners of the land until it strikes the brook of Tecomapa or Agua Caliente; thence the line runs along this brook to its confluence with the Lempa river; thence down the river to the confluence of that stream with the brook of La Brea, which flows straight into the river on the left bank; thence the line runs along the brook of La Brea upstream, to the place where the Miramundo estate, granted by Guatemala, adjoins the Mecatal estate, granted by Honduras; this point is situated 60 meters to the south-east of the junction of the La Brea and El Incienso brooks; thence the line runs straight to Cerro Oscuro. . . .”

The Ashmead report of the survey which was made in 1919 by the American Geographical Society in connection with the Mediation proceedings, described this region as one of high mountains and rapidly flowing streams. It is sparsely populated. The report states that “Representatives of both Guatemala and Honduras are stationed at La Brea and recognize the *thalweg* of the Quebrada de La Brea as a limit of their authority from its mouth to a point some two miles west of Cerro Oscuro.”

The engineer in charge of the aerial survey made in 1932, by direction of the present Tribunal, has reported that at La Brea there are both Hondurans and Guatemalans, the Quebrada de La Brea dividing the settlement and representing the line of present possession of the two governments; that at Canoas, about one-half mile west, Guatemala maintains a telegraph office; that Agua Caliente, located on the north-west side of the Quebrada Agua Caliente or Tecomapa, is occupied by Guatemalans, and the settlement,

called La Frontera, on the south-east side of that stream, is occupied by Hondurans; that in the lower valley of the Rio Frio there are the Guatemalan settlements of Floripundio and Granadillas.

It thus appears that, in the northern part of this section, the line of actual possession closely corresponds with that which was found to be the *uti possidetis* line of 1821, the dividing line being the Quebrada Tecomapa and the Quebrada de La Brea to La Brea and thence running along the latter stream to the line where, as the engineers stated in 1910, "the Miramundo estate, granted by Guatemala, adjoins the Mecatal estate, granted by Honduras", and the line from that point going straight to Cerro Oscuro.

In the southern part of this section, the engineers in 1910 were unable to ascertain a clearly defined line of possession, as the region was found to be uncultivated and uninhabited. They placed the line from a mile to a mile and a half to the north of the Frio river and to the west of the Chaguiton tract. Reference has been made to the Chaguiton survey by Honduran authorities, in 1834, of lands lying between the Sesecapa (Frio) river on the south and the Quebrada Tecomapa. The boundary of this tract ran from the headwaters of the Quebrada Tecomapa to the summit of Cerro Tecomapa and then followed the brook called El Chaguiton to the point where it joined the Sesecapa (Frio) river. Apparently at that point it was considered that "the line of the two States terminates". The Chuctal grant made by Honduras in 1851, upon the survey of 1838, was of lands lying to the south of the above-mentioned point and on the right, or south, bank of the Frio river. From the record of the survey of the Honduran grant in 1875 of the lands of Peña Quemada lying to the south of the Frio river, it appears that that river had therefore been commonly known as the boundary between the two States in that region. Later Honduran grants (Comedero, 1876; Granadillas, 1878, to the south-west of the Chaguiton tract) which ran a short distance north of the river Frio and favored a boundary running directly from Cerro Tecomapa to Cerro Brujo, called forth a protest from Guatemalans, who complained to the Guatemalan authorities that "from time immemorial their forefathers, natives of Esquipulas, had possessed and worked the lands of Las Granadillas mountain" and that they had been dispossessed by the Honduran grantee. These statements seem to have found support in the report to the Guatemalan Government by the Political Chief of Chiquimula and are not refuted by evidence before the Tribunal.

The Frio river which rises near Cerro Dantas and to the east of Cerro Montecristo appears to be a natural boundary and upon the evidence it is believed that it may fairly be taken as a part of the definitive boundary. The Guatemalan settlements of Granadillas and Floripundio to the north of the Frio river are deemed to be within the proper boundaries of Guatemala.

In view of the report of the aerial survey as to the location of Cerro Brujo, and the showing of the divide which commences at Cerro Montecristo (between Cerro Brujo and Cerro Dantas), the definitive boundary should start at Cerro Montecristo, which was accepted in the report of the engineers of 1910 as the beginning of the line of actual possession.

The conclusion is that the definitive boundary in this section should run from the Salvadoran boundary at or near Cerro Montecristo to the headwaters of the Frio river, thence along that river to its confluence with the stream known as El Chaguiton, thence to Cerro Tecomapa, thence to the headwaters of Quebrada Tecomapa, thence along that stream to the Olopa river, thence to the mouth of the Quebrada de La Brea, thence up that stream

to La Brea, thence along the same stream to a point sixty meters below the confluence of that stream with the Quebrada El Incienso, and thence in a straight line to Cerro Oscuro.

2. From Cerro Oscuro to Angostura on the Managua river.

The report of the aerial survey, referring to the difference mentioned in the Ashmead report as to the location of Cerro Oscuro, states that the difference is found to be approximately 300 meters, and the Guatemalan and Honduran engineers attached to the aerial survey have apparently agreed upon the true location of this mountain.

Going north from Cerro Oscuro, the engineers in 1910 fixed the line of actual possession as follows:

“thence [from Cerro Oscuro] to Cerro Guineal; thence in a straight line to Peña Blanca, passing by the little hill of El Capucal, which is to the north-east of the hamlet of El Mico or San Isidro, possessed by Honduras; from Peña Blanca it follows the rough ridge which is to the east of Chaumaga, a village possessed by Guatemala, up to the head waters of the brook called La Raya or El Pezote; thence the line runs down this brook to its confluence with the Playon river; thence upstream along the Playon river to the place at which the stream Zanjón de Laguna Verde connects with the river on its right bank, which place is a point on the line of possession; thence it runs in a straight line to the confluence of the Sulay and Templador rivers leaving the villages of Carrizal and Tabloncito on the Guatemalan side, and the villages of Agua Caliente and Camalotillo on the Honduran side; from the said point of confluence the line runs straight to the Cerro del Ojo de Agua del Amate; the line runs through the spring called Tamagas, dividing the village of the same name so that some of its houses are situated in Guatemala and others in Honduras; from the Cerro del Ojo de Agua del Amate the line follows a winding course to the place called El Rincon de Leon, a farm which belongs to Antonio Cueva, leaving in Guatemala the hamlets of San Gaspar and El Horno and the village of Monteros, and in Honduras the village of San Cristobal, adjacent to Monteros; from Rincon de Leon the line runs straight to the hamlet of El Tablon, along the road the Hondurans use in going from San Cristobal to the town of Copan; from El Tablon it runs in a straight line to the place called El Ahorcado in Monte de los Negros, along the road which goes from this place to the farm called San Jose, belonging to the said Cueva; from El Ahorcado to the Caulotes or Coyoles pass, leaving in Guatemala the hamlets of Piñuelas and Caulotes or Coyoles, and in Honduras, Monte de los Negros; from the said pass to the hamlet of Tapezco, which it divides, so that some of its houses are in Guatemala and others in Honduras; from this place in a straight line to the Bonete del Portillo, leaving on the left and in Guatemala the road that goes from the hamlet of Carnalotes to the villages of Caparja.”

The Ashmead report stated:

“Following a line generally north of the Montaña del Mico (or de San Isidro) to Cerro Boneton, and thence to the Cerro Llano Grande, there are situated to the eastward the towns of Encarnacion, Copan, Santa Rita, San Agustin and Dulce Nombre, having municipal

officers responsible to Honduras; and to the westward of this line are situated the towns of La Union (or Chanmagua), Tablon de Sulay, and La Paz (or Monteros), having municipal officers responsible to Guatemala."

The report also showed that the town of San Jorge was governed by Guatemala.

The aerial survey shows that the existing line of possession in this region apparently has not changed since the Ashmead report.

It will be observed that the engineers' line of 1910 left San Jorge in Honduras, the line following the Quebrada de La Raya or El Pozote to the Playon river and the Guatemalan settlement of Carrizal being to the west of that stream. Guatemala contends that San Jorge was invaded by Honduras in 1843 and that it was due to the advances of Honduras in this region that the Treaty of 1845 was negotiated. But there is no satisfactory evidence to sustain the contention of Guatemala as to San Jorge or to show that the Province of Guatemala in colonial times exercised civil authority east of the Pozas grant. Nor has evidence been produced by either Party as to the time when the municipality of San Jorge was established or as to its political affiliations during the colonial period. Apparently the assertion of Guatemala in this regard is based upon her primary contention that the evidence as to ecclesiastical administration must be deemed controlling, a contention which has already been considered. There is an absence of any satisfactory basis for determining the original equities of the Parties with respect to San Jorge and the fact remains that it has been in the actual control of Honduras for about ninety years. Moreover, to the south and south-east of San Jorge lie the tracts of Los Planes and Joconal granted by Honduras in 1845 and 1857, respectively.

The engineers' line of 1910 cut across the Los Planes tract (Honduras) leaving a strip in Guatemala, and north of the Playon river the line crossed the Leonera tract (Guatemalan grant of 1740), leaving the eastern portion of that tract in Honduras; the line then crossed the tract of Cauchilla del Tambor (Honduran grant of 1873), leaving a portion in Guatemala. Thence the engineers' line proceeded to the north-west, crossing the Tixiban grant (Guatemalan, 1817). The occasions for these apparent changes in territorial control are not explained by the evidence and are left to conjecture.

At Monteros (La Paz), as reported by the aerial survey, the main north and south trail divides the authority of the two Governments, the settlement on the west side of the trail being called Monteros, where the Guatemalan Government maintains a Commandant and a small post of soldiers, and the settlement on the east side of the trail being called San Cristobal and governed by Honduras. North of Caulotes, and to the west of Copan, the engineers' line of possession in 1910 cut through the Tapexco grant (Guatemalan, 1754) and ran only as far as Bonete del Portillo.

The line of actual possession beyond that point, as shown by the map annexed to the Honduran Case, leaves the Chaguites grant (Honduran, 1741) and part of the grant of Lomas de Agua Fria (Honduran, 1888) in Guatemala. North of the latter grant the line of possession, as shown by the Honduran map, runs north to Cerro Morola, Cerro Margal, Cerro Gacho, Cerro Filo, Peña Cuevitas, Cerro Achiotas, Cerro Palmichal to Angostura on the Managua river. This part of the line of actual possession cuts across grants made by Guatemala in the latter part of the nineteenth century and also cuts almost through the center of a large tract surveyed

by Honduras in 1885. The line leaves in Honduras the settlements of Agua Caliente and Los Arcos on the left bank of the Managua river, and the settlements of Cisne and Aldea Nueva, near Angostura and to the east of the Managua river. The aerial survey shows that the most important settlements along the valley of the Managua river are those of Aldea Nueva, Cisne and Agua Caliente and that these are in the possession of Honduras.

It thus appears that according to the line of present possession, each one of the Parties is in possession of certain portions of territory which by the line of *uti possidetis* of 1821 pertained to the territory of the other Party. But the evidence furnishes no means of measuring the respective equities of either Party with respect to these apparent encroachments of the other or to determine the balance of advantage which either Party may thereby have derived. It is also evident that the Tribunal has no sufficient basis for an attempt to rectify the line of present possession so as to secure a more equitable division of the territory in dispute.

The conclusion is that the line of present possession, as above described, from Cerro Oscuro to Angostura, with a few local changes which are necessary in the region between Cerro Oscuro and Peña Blanca, and at Monteros-Christobal, and in the vicinity of Peña Cuevitas and Cerro Palmichal, in order to provide a practicable dividing line, should be accepted as the definitive boundary.

3. The territory lying north-east of Angostura and east of the Managua river, and south and east of the Motagua river, and extending to the Merendon range.

It appears that very little was known about the topography of the mountains, which have been called the Merendon range, until aerial photographs of the recent survey were available. The indications on maps, even those published with apparent official sanction during the nineteenth century, with their obvious inaccuracies in the light of present knowledge, are of little or no value in marking the just limits of territorial jurisdiction as shown by actual developments.

The aerial reconnaissance indicated that the range "is considerably broken up and that the main divide (actual water parting) follows a very irregular course and the photographs confirm this observation". The eastern end of this continuous range is called the Montañas de Omoa; the center section, the Sierra del Espíritu Santo; and the western section, near Cerro Azul, the Montañas del Gallinero. The spread of the territory in controversy is shown by the following distances: From Angostura directly east to Cerro Azul is approximately 14 miles; from the point of confluence of the Managua and Motagua rivers (about 10 miles north of Angostura) south-east to the main divide of the mountain range is approximately 19 miles; and from the eastern boundary of the lands of Quirigua (above mentioned) on the right bank of the Motagua river, to the main divide is approximately 10 miles. In the lower reaches of the Motagua river the distances to the main divide on the south are approximately as follows: from Morales, about 12 to 14 miles; from Tenedores, about 8 miles; from Cinchado, about 12 miles.

It is evident that the Tribunal is not at liberty to adopt the view that the continental divide of the Merendon range, however acceptable as a natural boundary, constitutes throughout its entire length the boundary between the Republics of Guatemala and Honduras. In the south there lie to the

west of this divide the established communities of Ocotepeque, Concepcion, Santa Fe and Barbasco which are admittedly in Honduran territory, being outside the area in controversy. It further appears that to the north of these Honduran towns there is a considerable area to the west of the Merendon range, embracing the communities of San Jorge, Encarnacion, Cabañas, Copan, and Santa Rita, which, for the reasons already stated, must be regarded as properly belonging to Honduras from the time of independence. The town of Copan is about 12 miles west of the Merendon range. It is therefore necessary to approach the region now under consideration with appropriate regard to the actual occupation established by the Parties in good faith and without a preconception that the mountain range, as such, must be deemed to constitute the dividing line.

Lying almost directly east of Angostura and on the western side of the divide, near Cerro Azul, is the Honduran village of El Paraiso. The record does not show when El Paraiso and Ocote, a nearby settlement, were established. But in 1888 the people of El Paraiso and Ocote petitioned Honduras for the allotment of a tract for their town commons. A tract of four square leagues was accordingly surveyed and granted by Honduras, at the headwaters of the Morja river. The aerial survey shows that at El Paraiso there are three or four square miles of clearings with indications of considerable cultivation and that trails which extend in all directions from El Paraiso indicate that the village is the important center in that area. On the same survey it was found that north and west of El Paraiso, between the Morja river and the Managua river, were a number of small scattered clearings and several small settlements, the largest of which is the Honduran village of Santa Cruz, situated about 7 miles north of El Paraiso and about midway between the Managua river and the main divide of the Merendon range.

The aerial survey also found Honduran settlements along the crest of the mountain range. Thus about 8 miles south of Chachagualilla (on the Motagua river) are the clearings at Pinalejo, a settlement reached by trail from Quimistan, a Honduran town lying on the southern side of the mountains. The aerial survey indicated that the next cleared area along the crest of the range was about 18 miles to the westward of Pinalejo in the vicinity of Los Tarros, a Honduran settlement about 27 miles north-east of El Paraiso, and about 7 miles south-east of Las Quebradas, the latter being an important Guatemalan development. Also along the mountains and to the north-east of Los Tarros is the Honduran settlement of Joconal mentioned in the Ashmead report of 1919.

In the northern part of the area now being considered, along the right bank of the Managua river and along the right bank and south of the Motagua river from Los Amates to Cinchado (the region beyond Cinchado, including the Cuyamel area, will be considered separately) developments since independence have been made progressively by Guatemala. The aerial survey shows that a considerable area of the Motagua valley, between the mouth of the Managua and Cinchado, and also the lower valleys of the Jubuco, Morja, Animas, Negro and Chiquito rivers are under cultivation and that large investments have been made. Guatemalan settlements along the Motagua river below Los Amates are found at Morales, Tenedores, La Tienda and Cinchado. The International Railroad of Central America runs from Puerto Barrios south-westerly along the north bank of the Motagua river to a point above Los Amates where it crosses to the south bank and follows the Motagua to the vicinity of Santa

Ines (Guatemalan). The railroad then follows for a short distance the south bank of the Managua river and crossing that river continues in Guatemalan territory. A branch line extends across the Motagua river from Morales to Las Quebradas and from that point runs along the south bank of the river to a main line connection near Los Amates. At the Guatemalan settlement of Las Quebradas, about 25 miles north-east of Los Amates and seven miles south-east of Morales, placer mining is in full operation and is producing a considerable amount of gold.

In this region in dispute, east and south of the Motagua river, where it has been found impossible to establish the line of *uti possidetis* of 1821, it is manifest that neither Party can be regarded as infringing the rights of the other Party in making developments according to the demands of economic progress, so long as territory already occupied has not been invaded. In view of the nature of the territory, long uninhabited and unknown, and of the lack of authoritative delimitation, it was natural that there should have been conflicting conceptions of the extent of jurisdiction and that each Party should believe that it was entitled to advance into the unoccupied zone as its interests seemed to require. Such advances in good faith, followed by occupation and development, unquestionably created equities which enterprises subsequently undertaken would be bound to consider. When it appears that the two Parties, seeking to extend their area of possession, have come into conflict, the question of priority of occupation necessarily arises. Priority in settlement in good faith would appropriately establish priority of right.

Such an instance of conflict appears at the place called Lancetillal on the Morja river, about seven miles north-east of the Honduran settlement of Santa Cruz, and about 12 miles north of El Paraiso. It is alleged by Guatemala that the tracts in question known as Alsacia and Lorena were originally acquired by grants from Guatemala at various times from 1891 to 1914 and were purchased by one Rodezno, a Honduran, in 1914-16, and that he consolidated them under the name of the estate of Alsacia upon which he paid his territorial and municipal taxes to the Guatemalan authorities upon appropriate declarations. Guatemala asserts that in 1915 Rodezno appealed to the proper department of Guatemala for the remeasurement of the lands, reciting them as being in the jurisdiction of Los Amates, Department of Izabal; that later, Rodezno, availing himself of his Honduran status, facilitated the stationing of a detachment of Honduran soldiers upon this property, in which Lancetillal was situated, and that a telegraph station was installed. The positive statements in the Guatemalan Case on this point are not refuted. Upon the facts stated, the tracts above mentioned must be considered as pertaining to Guatemala. The purchase by a Honduran of property which had been granted by Guatemala in the exercise of asserted sovereign right—such grant for purposes of settlement being an appropriate act of occupation by the State—cannot be deemed to affect the equity established in Guatemala's favor.

Upon proper recognition of the just interests of the Parties, as shown by their grants and developments, and with the topographical information obtained through the aerial survey, the conclusion is that the definitive boundary in the territory lying north-east of Angostura and east of the Managua river, and south and east of the Motagua river, should run as follows: Starting at a point on the Managua river at the mouth of the first creek north of the village of Aldea Nueva; thence in a north-easterly direction in a straight line to a point on the Morja river

due east of the south-east corner of the La Francia clearing; thence in a north-easterly direction in a straight line to a point at the junction of the secondary water divide between the Juyama and Encantado rivers with the main water divide between the Motagua and Chamelecon drainage basins; thence in a north-easterly direction in a straight line to a point at the junction of the secondary water divide between the Bobos and Animas rivers with the main water divide between the Motagua and Chamelecon drainage basins; thence in a north-easterly direction in a straight line to a point at the junction of the secondary water divide between the Animas and Negro rivers with the main water divide between the Motagua and Chamelecon drainage basins; thence in a north-easterly direction following the meanders of the main water divide between the Motagua and Chamelecon drainage basins to a point at its junction with the secondary water divide between the two principal branches of the Chiquito or Platanos river; thence in a north-easterly direction in a straight line to the highest point of the mountain designated as Cerro Escarpado, situated near the junction of the secondary water divides between the Chiquito or Platanos, the Nuevo or Cacao and the Chachagualilla river basins.

All points are described as shown on the preliminary map of the aerial survey. Cerro Escarpado is approximately 21 miles from the sea.

Before proceeding north-easterly beyond the last-mentioned point, it will be convenient to consider the status of Omoa and the contiguous Cuyamel area.

4. Omoa and the Cuyamel area.

Honduras has been in possession of Omoa since 1832. The situation of that port at the time of independence has been described. Omoa had originally belonged to the Province of Honduras and had been segregated for the purposes of the Kingdom of Guatemala as a whole, and not for the purposes of the Province of Guatemala as such. When it was believed that the interests of the Kingdom no longer required this segregation, an effort was made to effect the restoration of Omoa to Honduras. From the record of the proceedings for restoration, it appears that the same reasons existed for the restoration of Omoa as for that of the port of Truxillo which had been similarly separated from Honduras for the purposes of the Kingdom and which the King restored to Honduras in 1816. A royal decree for the restoration of Omoa was drafted in 1818 but has not been proved to have received the royal signature. When the independence of Central America was achieved and the Kingdom of Guatemala was brought to an end, there existed a manifest equity in favor of Honduras with respect to Omoa, but the struggle over the possession of that port lasted until 1832. In obtaining control at that time, it cannot be said that Honduras secured any unfair advantage over Guatemala. Honduras regained what had originally belonged to the Province of Honduras, the purposes for which Omoa had been separated from that Province having ceased to exist upon the termination of the Kingdom.

The attitude of Guatemala is shown by her action in authorizing and publishing, in 1832, the map of Migual Rivera Maestre, and by the grant which Guatemala made to Bennett and Meany, in 1834, of the unappropriated public lands of Chiquimula. In that grant, as already stated, the eastern boundary of the Department of Chiquimula was said to be "the State of Honduras; the Rio Tinto being the boundary line on the coast".

However erroneous the line of the upper Tinto river, as indicated on the Rivera map, may have been in view of the obvious lack at the time of accurate knowledge of the region between the mountains and the sea, it cannot be doubted that the described river was well known at its mouth. This deliberate and formal description by Guatemala of the boundary of Chiquimula thus clearly indicated the acquiescence of Guatemala in the possession of Omoa by Honduras, an acquiescence which may reasonably be deemed to have been due to the recognition by Guatemala of the propriety of that possession in view of the early relation of Omoa to Honduras. Nothing has been shown to alter the conclusion which was thus reached one hundred years ago.

The so-called Cuyamel area, contiguous to Omoa, has been described as the region bounded by the mountains of Omoa, the Tinto river, the Motagua river, and the sea. It has been pointed out that the view that Guatemala considered this Cuyamel area as having been lost by her, with Omoa, is supported by the Rivera map, which purports to show the dividing line between Chiquimula and Honduras at this point at the Tinto river. The developments in the Cuyamel area after 1832 were made by Honduras. This, as heretofore stated, is shown by the Cuyamel grant by Honduras in 1837, and later grants by her of territory within this region, and from the record before the Tribunal it does not appear that Guatemala attempted to exercise authority in this area during the nineteenth century after 1832. On the contrary, Guatemala, in emphasizing her complaint before this Tribunal as to attempted extensions of Honduran authority in neighboring territory in the twentieth century, states that they were "far beyond the possession *de facto* held by her [Honduras] since 1829, which was the Rio Tinto, as is proven by the official map of Guatemala drawn by the geographer Rivera Maestre in 1832". There is no ground for withdrawing from Honduras, and assigning to Guatemala, the area so held by Honduras east of the Tinto river. In developing that area, it cannot be said that Honduras infringed any established right of Guatemala.

Reference has been made to the apparent change, after 1832, in the bed of the Motagua river near its mouth, and to its having taken the bed of the Tinto river. This change is mentioned in the "Instructions" of Marure and Larreynaga, of Guatemala, in 1844. Apparent confirmation is found in the report of the aerial survey which states that the lower Motagua river "has been changing its course in the past" and that "traces of its old beds are apparent over a wide belt below Tenedores". The aerial survey shows the Tinto river as flowing into the Motagua river a little over seven miles (measured in a direct line) above the mouth of the Motagua. It thus appears that what, in 1832, was the Tinto river "on the coast" is now the Motagua river from the point of the present confluence of the Tinto and the Motagua.

It appears from the Report of the aerial survey that there is a dispute between the engineers of the Parties with respect to the identity of the Tinto river, above the Laguna Tinta. The Tinto river, as shown on the map of the aerial survey, flows out of the southern end of the Laguna Tinta and, after running a short distance to the south, turns and flows in a northerly direction, a little over two miles, into the Motagua. The nature of the territory in the immediate vicinity is thus described in the report of the aerial survey: "The valley of Rio Motagua below Laguna Tinta is very swampy and has little if any cultivation. The average elevation of this area is less than ten feet above sea level and the presence of underground

water and also the overflow from the main river presents a difficult drainage problem. . . . The area is practically uninhabited except by a few fishermen along the coast and by the residents of two small settlements, one on each side of the mouth of the Rio Motagua. The settlement on the north side of the mouth is called La Barra and is peopled by Guatemalans. The one on the south side is also known as La Barra, but is inhabited by Hondurans.”

In view of the Guatemalan jurisdiction, as already found, over the territory north and west of the Motagua river, of the control by Guatemala of the river above the point of the confluence with the Tinto River, and of the developments by Honduras requiring appropriate recognition in the Cuyamel area, it is evident that the definitive boundary between the two Republics must be laid along the Motagua river from the point of the confluence of the Tinto river with the Motagua river to the mouth of the latter.

In the interest of a definite and satisfactory settlement to secure a lasting peace between the Republics, the Tribunal decides that the definitive territorial boundary should be the right bank of the Tinto river, issuing from the Laguna Tinta and flowing to the Motagua river, and the right bank of the Motagua river from the point where the Tinto river enters the Motagua river, to the mouth of the latter. As the boundary is thus laid on the right banks of the Tinto and Motagua rivers in this region, the control of the rivers themselves will be vested in Guatemala. As thus described, the boundary is established on the right banks of these rivers at mean high water mark, and, in the event of changes in these streams in the course of time, whether due to accretion, erosion or avulsion, the boundary shall follow the mean high water mark upon the actual right banks of both rivers.

5. From Cerro Escarpado to the Tinto river flowing out of the Laguna Tinta.

The distance from Cerro Escarpado to the point where the Tinto river leaves Laguna Tinta is approximately 14 miles. With respect to the territory to the south, and south-east and south-west, of Laguna Tinta, the aerial survey disclosed facts not theretofore appreciated. It appears that the peak called Cerro San Ildefonso is not located on the main water divide, as had been indicated on previous maps, but on a spur about one mile north of that divide. Locally, the name Cerro San Ildefonso is applied to the highest peak of the *cordillera* south-west of Cuyamel. It further appears that the Santo Tomas river does not rise near the crest of the Cerro San Ildefonso, but some miles to the west of that peak, and that the San Ildefonso river does rise on the western crest of that mountain and flows to the north emptying into a large swampy area which has several possible outlets at high water stage. The aerial report discloses a disagreement as to the name of the river, flowing from the south-west into the Laguna Tinta, which is called the Tinto river by the Honduran engineers and the Jimerito river by the Guatemalan engineers.

Reference has already been made to the developments by Guatemala along the right bank and south of the Motagua river from Los Amates to Cinchado. The record before the Tribunal establishes that not only above, but below Cinchado, along the right bank and south of the Motagua river, and as far as Laguna Tinta and the Tinto river, flowing therefrom into the Motagua river, Guatemala established her interests by a series of land grants which clearly antedated the concessions and

grants of Honduras in that area. During the nineteenth century it does not appear that Guatemala attempted to extend her developments to the east of the Tinto river, flowing from the Laguna Tinta into the Motagua; and it was not until about 1912 that Honduras sought by her concessions and grants to establish her interests to the west of that line. Since independence and until about 1912, Honduras had been engaged in developing the territory east of the Tinto river, through the Cuyamel area, and in the south in the direction of Cerro San Ildefonso.

Under concession granted by Honduras early in the twentieth century, the Cuyamel Fruit Company constructed a railroad from Omoa to Cuyamel and westward to the Santo Tomas river, and across that river, about two miles to the south of Laguna Tinta, and thence westward to Jimerito (about two miles south-east of Cinchado) on the river known as the Tinto or Jimerito. The record does not disclose the exact point reached by the construction under the first concession, but it appears that in 1913 the Company sought a concession from Guatemala to permit the extension of the railroad to the west of the Tinto river, and, failing in that effort, procured a concession from Honduras for the same purpose. Guatemala protested against the building of that extension and asserts that its construction was effected only because of the interest manifested by the Department of State of the United States of America in the view that the construction of the railroad and the incidental expansion of banana cultivation were of importance in aiding the development of the food supply essential in the prosecution of the Great War. It is shown that this suggestion was made and that it was acted upon by Guatemala with the clear understanding that the concession in controversy, and rights and activities thereunder, "should not be discussed in connection with the permanent settlement of the Guatemalan-Honduran boundary". It appears that the railroad was built to Cacao, a point on the Nuevo river about 34 miles from Omoa, and three miles southwest of Jimerito. The railroad was projected about four miles and a half further to the south-west, to Chachagualilla, but this part of the line was not completed. It appears from the report of the aerial survey that, on account of the prevalence of a plant disease affecting banana cultivation, the endeavor to develop this area was given up about eight years ago and that "railroad service has been practically abandoned along the Cuyamel railroad, with only a weekly scheduled freight to hold the franchise".

The Tribunal is concerned with the territorial boundaries of the two Republics and not with the private rights of property of the railroad company or other private rights, save as the creation of such rights may be deemed to have a bearing upon the question of the time and circumstances of the assertion of authority by the respective Governments. The question of private rights of property must be left to the provision of Article XVII of the Treaty of 1930 by which the Parties agreed "that private properties acquired under legitimate title prior to the date of the present Treaty, which may remain on either side of the dividing line, must be respected and shall have the benefit of all the guarantees provided in each country for the property of its nationals, by its constitution and laws, to which said property shall then be subject".

As to the territorial equities of the two Republics, with which the Tribunal is concerned in this region, it is apparent that Honduras could not create an equity, entitled to recognition in determining the definitive boundary, by authorizing railroad construction upon lands over which Guatemala had

previously asserted authority by her grants which in no way infringed any right which Honduras had then established. Nor can Honduras base such an equity upon an extension of the railroad line which was secured only by reason of the special circumstances above recited in connection with the Great War and with the understanding that the extension should be without prejudice to Guatemala's position.

The conclusion is that, in order to protect the just interests of the respective Parties, the definitive boundary in this section should be drawn from Cerro Escarpado north-east to the point where the Tinto river, issuing from Laguna Tinta, turns to the north on its way to the Motagua river.

In view of the location of the definitive boundary, as thus established, no award of compensation to either Party is found to be necessary.

THE DEFINITIVE BOUNDARY.

The definitive boundary as thus established, in its entire extent, is as follows:

Starting at the Salvadoran boundary at the point nearest the summit of Cerro Montecristo; thence in a northerly direction in a straight line to the headwaters of the nearest stream tributary to the Frio or Sesecapa river; thence in a northerly direction, following the median line of this tributary, downstream to its confluence with the Frio or Sesecapa river; thence following the median line of the Frio or Sesecapa river downstream to its confluence with the creek which rises on the southwestern slopes of Cerro Tecomapa and which is called Quebrada El Chaguiton in the survey of the Chaguiton land grant; thence following the median line of the creek called El Chaguiton upstream to its headwaters and continuing due north to the summit of the water divide between the drainage basins of the Atulapa and Frio or Sesecapa rivers; thence in an easterly direction in a straight line to the southernmost and higher of the twin peaks of Cerro Tecomapa; thence in an easterly direction in a straight line, a distance of approximately four hundred meters (400), to the confluence of two small creeks forming a tributary of the Quebrada Tecomapa or Agua Caliente; thence following the median line of the said tributary downstream in an easterly direction to its confluence with the Quebrada Tecomapa or Agua Caliente; thence following the median line of the Quebrada Tecomapa or Agua Caliente downstream in a north-easterly direction to its confluence with the Olopa river; thence following the median line of the Olopa river downstream to its confluence with the Quebrada de La Brea; thence following the median line of the Quebrada de La Brea upstream to a point sixty meters below the confluence of that stream with the Quebrada El Incienso; thence in an easterly direction in a straight line to the highest point of Cerro Oscuro; thence in a general easterly direction following the continental water divide to its junction with the water divide of the drainage basin of the Blanco river; thence in a northerly direction following the water divide between the drainage basins of the Chanmagua and Blanco rivers to its junction with the water divide of the drainage basin of the Quebrada de La Raya or Pezote; thence northerly in a straight line to the headwaters of the nearest tributary of the Quebrada de La Raya or Pezote; thence in a northerly direction downstream along the median line of the said tributary to its confluence with the Quebrada de La Raya or Pezote; thence in a northerly direction downstream along the median line of the said creek to its confluence with the Playon river; thence upstream

following the median line of the Playon river to its confluence with the Zanjón de Laguna Verde; thence north-easterly in a straight line to the confluence of the Templador and Sulay rivers; thence north-westerly in a straight line to the highest point of Cerro Ojo de Agua del Amate; thence northerly in a straight line to the summit of Cerro San Cristobal; thence north-westerly in a straight line to the summit of Cerro Sepulturas; thence north-westerly in a straight line to Bonete del Portillo; thence northerly in a straight line to Cerro Jute; thence north-easterly along the crest of the ridge on which Cerro Jute is situated to the water divide between the drainage basins of the San Antonio and Tizamarte creeks; thence in a north-easterly direction along the water divide between the drainage basins of the Quebrada Sesemiles and the Pexja river to its junction with the water divide of the drainage basin of the Managua river; thence northerly along the water divide between the drainage basins of the Pexja and Managua rivers to a point at the junction of the secondary water divide in the Managua River basin at the settlement called Palmichal on the preliminary map of the aerial survey; thence following this secondary water divide in a north-easterly direction to the Managua river; thence along the median line of the Managua river downstream to the mouth of the first creek north of the village of Aldea Nueva; thence in a north-easterly direction in a straight line to a point on the Morja river due east of the south-east corner of the La Francia clearing; thence in a north-easterly direction in a straight line to a point at the junction of the secondary water divide between the Juyama and Encantado rivers with the main water divide between the Motagua and Chamelecon drainage basins; thence in a north-easterly direction in a straight line to a point at the junction of the secondary water divide between the Bobos and Animas rivers with the main water divide between the Motagua and Chamelecon drainage basins; thence in a north-easterly direction in a straight line to a point at the junction of the secondary water divide between the Animas and Negro rivers with the main water divide between the Motagua and Chamelecon drainage basins; thence in a north-easterly direction following the meanders of the main water divide between the Motagua and Chamelecon drainage basins to a point at its junction with the secondary water divide between the two principal branches of the Chiquito or Platanos River; thence in a north-easterly direction in a straight line to the highest point of the mountain designated as Cerro Escarpado, situated near the junction of the secondary water divides between the Chiquito or Platanos, the Nuevo or Cacao and the Chachagualilla river basins; thence in a north-easterly direction in a straight line to a point at the center of the Cuyamel Railroad bridge over the Santo Tomas river; thence in a north-easterly direction in a straight line to the southernmost point on the right bank of the Tinto river, which flows out of the Laguna Tinta; thence along the right bank, taken at mean high water mark, of the Tinto river downstream to its point of discharge into the Motagua river; thence along the right bank, taken at mean high water mark, of the Motagua river downstream to its mouth on the Gulf of Honduras. As thus described, the boundary is established on the right banks of the Tinto and Motagua rivers at mean high water mark, and, in the event of changes in these streams in the course of time, whether due to accretion, erosion or avulsion, the boundary shall follow the mean high water mark upon the actual right banks of both rivers. All the above points are described as shown on the preliminary map of the aerial survey hereto annexed and made part of this Award.

Done at the City of Washington, in the District of Columbia, United States of America, this twenty-third day of January, nineteen hundred and thirty-three, in three copies, in English and Spanish, one of which is to be placed in the archives of the Special Boundary Tribunal and the others to be transmitted to the Agents of the respective Parties.

CHARLES EVANS HUGHES, *President.*

LUIS CASTRO-UREÑA.)
EMILIO BELLO-CODESIDO,) *Arbitrators.*

ATTESTED:

B. COHEN,
Secretary of the Tribunal.
