

BASIS OF ARRANGEMENT PROPOSED BY THE INTER-AMERICAN  
PEACE COMMITTEE TO THE GOVERNMENT OF HONDURAS AND  
NICARAGUA, DECISION OF 5 AUGUST 1961 \*

BASE D'ACCORD PROPOSÉE PAR LA COMMISSION DE PAIX  
INTERAMÉRICAINNE AUX GOUVERNEMENTS DU HONDURAS ET  
DU NICARAGUA, DÉCISION DU 5 AOÛT 1961 \*\*

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\* Reprinted from Inter-American Peace Committee, *Report of the Inter-American Peace Committee to the eighth meeting of consultation of Ministers of Foreign Affairs of 1962*, Official Records of the Secretariat of the Organisation of the American States, Washington D.C., (OEA/Ser.L/III/CIP/1/62), p. 10-11 and 39-54.

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**Basis of Arrangement proposed by the Inter-American Peace  
Committee to the Governments of Honduras and Nicaragua**

1. The Government of Nicaragua will immediately withdraw its authorities from the territory.<sup>1</sup>

2. There is hereby established the Honduras-Nicaragua Mixed Commission, which will be composed of the Chairman of the Inter-American Peace Committee, as Representative of Honduras, and as Representative of Nicaragua. The Chairman of the Inter-American Peace Committee will be the Chairman of the Mixed Commission.

3. The Mixed Commission will begin its meetings in the place and on the date determined by the Chairman; it will go to the territory as soon as possible and will remain there for as long as may be necessary. During the time that the Mixed Commission is in the territory, the Chairman may be represented by the official of the Organization of American States whom the Secretary General thereof appoints for the purpose.

4. The powers of the Mixed Commission are:

- a. To aid the two governments in their efforts to guarantee the inhabitants of the territory a choice between the two nationalities and to permit those persons who may wish to do so to move to Nicaragua.
- b. Under the terms of the Arbitral Award of December 23, 1906, to fix on the ground the boundary line from the junction of the Bodega or Poteca River with the Guineo River as far as Portillo de Teotecacinte, as well as to determine the starting point of the natural boundary between the two countries at the mouth of the Coco River\*.
- c. To supervise the setting of markers for the boundary line laid out according to the preceding paragraph.

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<sup>1</sup> "Territory" is understood to mean the region which, according to the Arbitral Award of December 23, 1906, belongs to Honduras, and which Nicaraguan authorities have occupied for several years.

\* Secretariat note: See map No. 4.

5. In exercising the powers set forth in paragraph 4b., the Mixed Commission will avail itself of the Commission of Engineers already created by the two governments.

6. In the event of disagreement between the Representatives of Honduras and Nicaragua on the Mixed Commission, the Chairman will make the final decision. This power may not be delegated.

7. The Secretary General of the Organization of American States will provide the Mixed Commission with the technical staff and secretariat requested by the Chairman.

8. Under the terms of Article 1 of its Statutes, the Inter-American Peace Committee will suggest measures and steps conducive to a settlement of all questions that may arise between the two governments in carrying out the Arbitral Award of December 23, 1906, and that are not submitted to the Mixed Commission in accordance with this Basis.

**Decision of the Chairman of the  
Honduras-Nicaragua Mixed Commission  
Pan American Union, August 5, 1961**

**I**

The final paragraph of the Award of December 23, 1906, states the following:

From this junction (of the Poteca and Guineo rivers) the line will follow the direction which corresponds to the demarcation of the Sitio de Teotecacinte in accordance with the demarcation made in 1720 to terminate at the Portillo de Teotecacinte in such manner that said Sitio remains wholly within the jurisdiction of Nicaragua.

The "demarcation made in 1720," cited above, is the Act which appears as Appendix XIV of the Reply of the Government of Honduras in the proceedings in which the International Court of Justice rendered judgment on November 18, 1960.

The Honduras-Nicaragua Mixed Commission, with the advisory services of the Commission of Engineers, in accordance with paragraph 5 of the Basis of Arrangement, in the exercise of the power conferred upon it by paragraph 4b. of the aforesaid Basis and based upon the map which the said Commission of Engineers has made of the Sitio de Teotecacinte (i.e. estate or land-grant of Teotecacinte) as well as on its own observations on the site, has interpreted the abovementioned Act and, by unanimous decision, has determined the eastern and northern boundaries of the Sitio. In this way, the Mixed Commission has brought the demarcation of the dividing line to the point where the only section that remains to be determined is that from the northwestern corner of the Sitio de Teotecacinte to the Portillo (i.e. the pass or notch) of the same name.

Appendix 1 to this Decision is a map\* of the Teotecacinte area, signed by Messrs. McIlwaine, Lanza, and Rugama, members of the Commission of Engineers. Appendix 2 is a diagram\*\* of the western portion of the aforementioned map, in which the letter A indicates the northwestern corner of the Sitio, the letter B corresponds to the Portillo, and C to Cruz sin Brazo. The Representative of Honduras maintains that the section of the frontier that remains to be determined should consist of the two straight lines AC and CB. The Representative of Nicaragua proposes the straight line AB for this purpose. This constitutes the disagreement between the national representatives and, therefore, the subject of this Decision.\*\*\*

## II

The International Court of Justice, at the end of its aforementioned judgment of November 18, 1960, refers to the problem of the connection from the Sitio to the Portillo de Teotecacinte, as follows:

Nicaragua argues further that the delimitation in the operative clause leaves a gap of a few kilometres between the point of departure of the frontier line from the junction of the Poteca or Bodega with the Guineo or Namaslí up to the *Portillo de Teotecacinte*, which was the point to which the Mixed Commission had brought the frontier line from its western boundary point. An examination of the Award fails to reveal that there is in fact any gap with regard to the drawing of the frontier line between the junction of the Poteca or Bodega with the Guineo or Namaslí and the *Portillo de Teotecacinte*.

Immediately thereafter, the judgment concludes in this way:

In view of the clear directive in the operative clause and the explanations in support of it in the Award, the Court does not consider that the Award is incapable of execution by reason of any omissions, contradictions or obscurities.

For these reasons,

THE COURT,

by fourteen votes to one,

finds that the Award made by the King of Spain on 23 December 1906 is valid and binding and that Nicaragua is under an obligation to give effect to it.

This constitutes the legal truth. It is necessary, therefore, to consider that the operative clause of the Award, cited at the beginning of this Decision, contains the elements necessary for drawing the frontier line to connect the Sitio with the Portillo de Teotecacinte, or that these elements, together with

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\* Secretariat note: See map No. 5.

\*\* Secretariat note: See map No. 6.

\*\*\* Secretariat note: The memoranda of the Parties are available in Inter-American Peace Committee, *Report of the Inter-American Peace Committee to the eighth meeting of consultation of Ministers of Foreign Affairs of 1962*, Official Records of the Secretariat of the Organisation of the American States, Washington D.C., (OEA/Ser.L/III/CIP/1/62).

others available to the Governments of Honduras and Nicaragua, are sufficient for that purpose.

### III

In order to justify his interpretation of the paragraph of the Award quoted above, the Representative of Honduras asserts, as his major argument, that the boundaries of the Sitio de Teotecacinte, established in the demarcation of 1720, are an international frontier in their entirety.

In support of this position, the said Representative cites the following clause from the Report of the Commission of Investigation:

Whereas, from the point at which the River Guineo commences to form part of the River Poteca, the frontier line that may be taken is that which corresponds to the demarcation of said site of Teotecacinte until it connects with the Portillo of the same name, but in such a manner that the afore-mentioned site remains within the jurisdiction of Nicaragua;

This text was incorporated intact into the Award as the second from the last Whereas. Without doubt it provides a better basis for the thesis of the Representative of Honduras than the corresponding paragraph of the operative clause of the Award. In effect, the expression "...the frontier line that may be taken is that which corresponds to the demarcation..." is more logically interpreted to indicate that the boundaries of the Sitio, fixed in the demarcation, are an international frontier in their entirety than the expression "...the line will follow the direction which corresponds to the demarcation of the site of Teotecacinte in accordance with the demarcation...".

Nevertheless, if, first the Commission of Investigation, and, later the King of Spain had intended that their reference to the demarcation of 1720 was to be interpreted to mean that the frontier between the two countries, in the area which concerns us here, coincided with the boundaries of the Sitio de Teotecacinte established in that demarcation, would it not have been logical for them to express that intention in their conclusions, refining and clarifying the formula employed in the corresponding Whereas?

Far from doing this, both the Commission of Investigation in the conclusions of its Report and the King of Spain in the operative clause of the Award — which is the one to which the Honduras-Nicaragua Mixed Commission has been giving effect — further departed from the meaning which the Representative of Honduras gives to that formula when they chose the ambiguous expression "...the line will follow the direction which corresponds to the demarcation of the Sitio de Teotecacinte in accordance with the demarcation made...".

In addition, as the Representative of Nicaragua emphasizes, "...in the whereases which served as a basis for the recommendation of the Commission of Investigation for the operative clause, the Honduran thesis is clearly destroyed, since they state that the boundaries of the site of Teotecacinte

should not be followed in their *entirety* but only in *that part which corresponds to it* so as to connect with the Portillo of the same name” (p. 10 of the Representative of Nicaragua’s memorandum of July 29, 1961).

The paragraph of the Report of the Commission of Investigation in reference is as follows:

Therefore, the said site of Teotecacinte belonging to Nicaragua, as proved by the aforementioned document, which has not been refuted, it is obvious that upon arriving at the juncture of the southern extremity of the aforementioned Guineo river, that is at its point of confluence with the Poteca, the frontier line should be taken in such a way that the said site of Teotecacinte remains wholly within the jurisdiction of Nicaragua, for which effect the frontier line should follow that part of the line of demarcation of the site of Teoteca-cinte which corresponds to it in order to arrive at the Portillo of the same name and in such a manner that the site demarcated remains in Nicaraguan territory.

#### IV

As a corollary to his major argument, the Representative of Honduras maintains that the connection of the Sitio with the Portillo de Teotecacinte should be made by drawing the straight line Cruz sin Brazo-Portillo (CB in Appendix 2) since the demarcation of 1720 terminated in Cruz sin Brazo.

In effect, after citing the pertinent part of the Act of the demarcation of 1720, the said Representative describes Cruz sin Brazo as the “place where the measurement of the said Sitio was terminated, this point being the southwestern extremity of its perimeter” (p. 4 of the Representative of Honduras’ memorandum of July 30, 1961).

No objection can be made to the final clause of this sentence. Cruz sin Brazo is the southwestern extremity or corner of the Sitio de Teotecacinte. It may also be accepted that Cruz sin Brazo is the place where the measurement of the said Sitio terminated, although it will be recalled that the person who made the demarcation, Pedro Gutiérrez de Osorio, after having fixed Cruz sin Brazo measured the northeast corner of the Sitio, called “Saquinlí.” However, the claim that the Sitio and the Portillo de Teotecacinte must be connected by a straight line from Cruz sin Brazo, rests entirely on the premise that the entire boundary of the Sitio is an international boundary.

This conclusion is obvious. The Representative of Honduras expresses it as follows:

It is logical to think that the connection of the Sitio de Teotecacinte with the Portillo of the same name must start from the place where the demarcation terminates, the demarcation having already been converted by the Award into an international frontier (p. 7 of the memorandum of July 30).

Since the evidences examined so far are insufficient to justify acceptance of the fact that the demarcation of 1720 was converted, by the Award, into an international frontier, it would be unjust to attribute to the fact that the

demarcation terminated in Cruz sin Brazo the effect which the Representative of Honduras attributes to it.

## V

The following reasoning of the said Representative of Honduras is closely related to what we have just studied. To better understand it, it is preferable to refer to the map that appears as Appendix 1 to this Decision.

The argument consists in maintaining that, in view of the fact that the point of departure of the section of the dividing line in question is the confluence of the Poteca and Guineo rivers and its end is the Portillo de Teotecacinte, "...it should be understood that the grant of the Sitio de Teotecacinte to Nicaragua constitutes a deviation from the frontier recommended by the Commission of Investigation as the clearest, most precise and most natural one between the two points indicated."

The argument continues in the following manner:

The arbiter had to make this deviation in observance of paragraph 2 of Article II of the Gámez-Bonilla Treaty. This deviation notwithstanding, on reaching Cruz sin Brazo, after having followed the outline of the Sitio, it is observed that the connection of this point with the Portillo de Teotecacinte follows the direction which the arbiter sought in order to arrive at the Portillo de Teotecacinte from the point of departure (p. 8 of the memorandum of July 30).

The words "most natural," with which the Representative of Honduras refers to what he calls "the frontier recommended by the Commission of Investigation," are difficult to interpret since no section of either the straight line from the confluence of the Poteca and Guineo rivers to the Portillo, or that which would connect the southeastern corner of the Sitio with the Portillo, constitutes a natural boundary.

In any event, the aforesaid line between the southeast corner and the Portillo does approximate the one from Cruz sin Brazo to the Portillo, in that particular section, and this fact carries considerable weight as a supplementary piece of evidence. In itself, or in relation to the arguments examined so far, it is insufficient to warrant acceptance of the interpretation of the operative clause of the Award under study in the sense that Cruz sin Brazo should be part of the international boundary.

Furthermore, the undersigned considers it valid to maintain, as does the Representative of Honduras, that the Award had to make a deviation from the frontier in order to recognize Nicaragua's rights to the Sitio; but he makes it clear that, in his opinion, what was abandoned by this deviation was not the straight line between the terminal point of the natural boundary and the rest of the demarcation, but simply the rule of establishing natural boundaries to which the King of Spain had adhered up to that point.

## VI

Finally, the Representative of Honduras claims that “by explicit actions Nicaragua has recognized that Cruz sin Brazo is a point in the international boundary” since in 1880 “the Sitio de Teotecacinte was resurveyed and a stone corner marker was erected at Cruz sin Brazo...” (p. 11 of the memorandum of July 30). Later he adds that “...in view of the action taken by the Government of Nicaragua in making the resurvey and erecting an international corner marker in the aforementioned place..., a corner marker which has been in existence for more than 60 years, there is no basis for contending...” that Cruz sin Brazo, as Nicaragua insists, is located in Nicaraguan territory.

The Act of the resurvey made in 1880 appears as Appendix 20 of the Rejoinder of the Government of Nicaragua in the proceedings in the International Court of Justice. Its perusal brings out the fact that the resurvey was made at the request of an individual, the owner of a plot in the Sitio, who asserted that since this plot belonged to various individuals, “questions frequently arise among the co-owners.”

The Government of Nicaragua, then, ordered the new survey of the Sitio in order to avoid controversies among individuals. Consequently, it is impossible to attribute to that survey the effects claimed by the Representative of Honduras. Furthermore, the Mixed Commission has had no knowledge of any act of the Nicaraguan Government, relative to the resurvey of 1880 or to any other measures or actions, which could be interpreted as a recognition, either explicit or implicit, of Cruz sin Brazo as a frontier point or “international corner marker.”

## VII

On his part, the Representative of Nicaragua maintains that the straight line between Murupuxí and the Portillo (AB in Appendix 2) complies with the Award and follows the southwesterly direction which the frontier follows in the sector in question. He then alleges the following:

The Mixed Boundary Commission of the Republics of Honduras and Nicaragua clearly stated in Act. No. 4, signed in Danlí on June 26, 1901, that since the time both Republics were colonial provinces of Spain, the ridge of the Dipilto mountain range had been considered as the common boundary between them, for which reason it found a basis for definitely establishing as the boundary line between the two countries the divide along the crest of the aforementioned mountain range. Only by preserving the line claimed by Nicaragua can the DIVIDE (between the watersheds) agreed upon by the Mixed Border Commission in 1901 be maintained.

In keeping with the Award made by the King of Spain, that line is identified as a straight line from the Portillo de Teotecacinte to the Rincón de Murupuchí. By identifying the line in this manner Nicaragua’s rights to the waters that flow toward the south of the Depilto mountain range are respected and the resolution of



the Royal Award which orders that all of the Sitio is to remain within Nicaraguan jurisdiction is fully complied with (p. 5 of the memorandum of July 29).

The Representative of Honduras, in turn, maintains that there is no basis for the claim that the point of connection of the Sitio with the Portillo should be Murupuxí (p. 9 of the memorandum of July 30).

## VIII

The undersigned has reached the conclusion that both the line proposed by Nicaragua and the one Honduras wishes adopted are in agreement with the terms of the Award. In reality, both “follow the direction which corresponds to the demarcation of the Sitio de Teotecacinte in accordance with the demarcation made in 1720” and both terminate in the Portillo “in such a manner that the said Sitio remains wholly within the jurisdiction of Nicaragua.”

The logical consequence of this conclusion is the necessity to supplement the operative clause of the Award with additional points of evidence. These are analyzed in the following chapters.

## IX

In the first place, paragraph 6 of Article II of the Gámez-Bonilla Treaty and, above all, the manner in which the Arbiter applied the rule contained therein, seem to indicate the course to a just decision.

The aforesaid disposition is couched in these terms:

Article II. The Mixed Commission, composed of an equal number of members appointed by both parties, shall meet at one of the border towns which offers the greater convenience for study, and shall there begin its work, adhering to the following rules:

...

6. The same Mixed Commission, if it deems it appropriate, may grant compensations and even fix indemnities in order to establish, insofar as possible, a well-defined, natural boundary line.

The Award complies so faithfully with this rule on the fixation of natural boundaries that it established a natural frontier from the Atlantic Ocean to the Sitio de Teotecacinte. In order to have an exact idea of what this signifies in terms of proportions, it is sufficient to recall that this section of the frontier measures approximately 500 kilometers in length and that the distance between the point where it terminates (southeast corner of the Sitio) and the point where the entire demarcation is to terminate (Portillo de Teotecacinte), following the outline of the Sitio, is only 25 or 30 kilometers. It was so difficult to obtain such a high proportion that the Arbiter considered himself obligated to justify the extremes to which he had recourse.

In effect, the next to the last Whereas of the Award states that if the selection of the confluence of the Poteca with the Coco or Segovia “...might

give rise to doubts and controversy under the supposition that Honduras would be favored... on the other hand, and as compensation for having taken the mouth of the Segovia... the bay and town of Cape Gracias a Dios remain within the domain of Nicaragua, which, according to facts beyond dispute and with a greater right, would correspond to Honduras...”.

# X

The course that this decision should take is made clearer when it is recalled that the Government of Honduras, when the controversy was defined in 1901, and later when the process was brought before the Arbiter, requested recognition of the fact that “...from the Portillo de Teotecacinte, terminal point of the third section of the frontier as already determined and the place where one of the headwaters of the Limón river rises, the frontier continues downstream in the bed of this river until it joins the Guineo river.” With respect to this matter, the national representatives have expressed some of their most penetrating arguments.

The Representative of Nicaragua qualifies the claim of the Government of Honduras that the line connecting Murupuxí and the Portillo follow a course south of the Limón River, as would the line starting from Cruz sin Brazo, as “contrary to the very essence of the Award and to the judgment of the International Court of Justice...” since it would make “the decision of King Alfonso XIII, as it pertains to the demarcation of the western region of the Sitio de Teotecacinte, a judgment that is defective by reason of what is known in Law as *ultra petita*, inasmuch as it would appear to give Honduras more than it officially requested.”

For his part the Representative of Honduras considers that the foregoing contention “is entirely beyond the competence of the Mixed Commission, whose function is to demarcate the frontier established by the Award of the King of Spain, in accordance with the demarcation made in 1720”.

The question of the competence of the Honduras-Nicaragua Mixed Commission is a complicated one. It seems evident that when it acts, as in the present case, in observance of paragraph 4b. of the Basis of Arrangement, it is a Commission of Demarcation and the mere perusal of the extensive observations of Lapradelle (pp. 144-166, *La Frontière*, Paris, 1928) on the legitimate sphere of action of such agencies is sufficient to make one aware of the difficulties of this subject.

In the case of a decision by the Chairman of the Commission the problem is even more delicate, since the Basis of Arrangement limits itself to stating that, in the event of disagreement between the national representatives, “the Chairman will make the final decision”.

With the cooperation of both Representatives, the undersigned has attempted to make up for the obvious deficiency of such a meager disposition. Thus, he was able to establish a procedure thanks to which each Representative has requested, in writing, that this decision be made; the terms

of disagreement have been defined; and the respective arguments have been presented. The schematic nature of this procedure, nevertheless, supports the position taken by the Representative of Honduras, substantial in itself, relative to incompetence.

Consequently, no attempt will be made to resolve any question of a technico-juridical nature. No pronouncement will be made on the Nicaraguan thesis of *ultra petita*.

The foregoing notwithstanding, the fact that the Government of Honduras requested the Arbiter to indicate the Limón River as the international boundary in the sector of the Teotecacinte area in question, must be examined as one of the supplementary pieces of evidence, the value of which has been brought out by the declaration that the lines proposed by both national representatives conform to the terms of the pertinent paragraph of the Award.

## XI

The bases which can be deduced from the rule on natural boundaries, from the way in which the Arbiter respected this rule, and from the original petition of the Government of Honduras having been established, special force is acquired by the argument of the Representative of Nicaragua, summarized at the end of Chapter III above, that the frontier should not follow the limits of the Sitio de Teotecacinte in their entirety but only in “that part which corresponds to it,” just as the Commission of Investigation recommended in the part of its Report quoted in the same chapter.

Unfortunately, the expression contains no indication as to which portion of the line of demarcation of 1720 should correspond to the frontier. It is necessary, therefore, to look for the point at which it is justifiable to abandon the boundary of the Sitio de Teotecacinte so as to return to the tracing of a natural boundary and, thus, bring to an end that which the Representative of Honduras so opportunely terms a “deviation.”

The search commences in the Rincón de Murupuxí, since the frontier has been established up to this point by agreement between the national representatives.

Some meters to the west of the corresponding corner marker is the stream called Arenal, whose bed is well defined at this point; however, approximately 400 meters downstream, where it is crossed by a trail, it widens and its borders lack those characteristics which facilitate the determination of the middle or center of the bed. During several months of the year it is dry.

A Border Commission, such as that established by the Governments of Honduras and Nicaragua in accordance with the Gámez-Bonilla Treaty, might perhaps have chosen this stream — in spite of its deficiencies for the purpose — so as to cease as rapidly as possible the tracing of artificial boundaries; but the undersigned would have no justification for following this

course since by so doing he would be introducing a new element to solve the problem submitted to his decision.

In effect, the rule stated in paragraph 6 of Article II of the Treaty is “to establish, insofar as possible, a well-defined natural boundary line.” If, because of the physical characteristics noted, it is debatable that the stream Arenal meets the requirements of a “well-defined” line, there is no doubt that its designation as an international boundary line is beyond the limited sphere of what is juridically “possible” for the undersigned Chairman.

Consequently, the western boundary of the Sitio de Teotecacinte, which is, in the understanding of the undersigned, a straight line from the corner marker of Murupuxí, south 8 degrees, 31 minutes, 30 seconds west, according to the triangulation of the Commission of Engineers, should be followed. After approximately 600 meters, this boundary crosses the Limón River, one of whose headwaters rises in the Portillo de Teotecacinte.

Not only does the Limón River carry water all during the year, but also, as can be verified by referring to the map (Appendix I), the Poteca, designated by the Arbiter as a boundary line from its confluence with the Coco, is the same Limón River, its volume increased by the waters of the Guineo.

If the whole of the frontier traced by the Award were examined in the light of the argumentation of the Representative of Honduras relative to the deviation which this demarcation undergoes in the southeast corner of the Sitio de Teotecacinte, the eastern and northern boundaries of the Sitio, together with the 600 meters south from Murupuxí, would clearly appear as the only break in continuity in a perfect natural boundary.

By reason of the foregoing, the undersigned Chairman of the Honduras-Nicaragua Mixed Commission, with a basis in the power conferred upon him by paragraph 6 of the Basis of Arrangement,

*Decides:*

That from the corner marker of Murupuxí (A in Appendix 2) the boundary line will be a straight line south 8 degrees, 31 minutes, 30 seconds west, to its intersection with the center of the bed of the Limón River and, from that point, will continue upstream along the center of the bed of the Limón River and that one of its headwaters which rises in the Portillo de Teotecacinte (only one shown in Appendix 2) until it meets the terminal point of the third section of the boundary line, fixed by the Mixed Border Commission of Honduras and Nicaragua in Act IV of its meeting on June 26, 1901.

Pan American Union, on the fifth day of the month of August in the year one thousand nine hundred and sixty-one.

Vicente Sánchez Gavito, Chairman  
Honduras-Nicaragua Mixed Commission

Modesto Lucero  
Secretary







