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BELIZE

ASSAD SHOMAN
Senior Ambassador with Ministerial Rank

30 de abril de 2001

Sir Shridath Ramphal, Conciliador
Sr. Paul Reichler, Conciliador
S.E. Doctor César Gaviria, Secretario General, OEA

Honorables Conciliadores y Secretario General,

De conformidad con las recomendaciones impartidas por los señores Conciliadores con fecha 7 de febrero de 2001, en relación con el procedimiento para tratar los aspectos substantivos del diferendo territorial, y específicamente con las normas relativas a las presentaciones escritas de las partes, por la presente adjunto la Respuesta de Belice a la Declaración de Guatemala de fecha 30 de marzo de 2001.

Asimismo, junto con la Respuesta se les hace entrega de un Anexo con diversos documentos, los que deben considerarse como parte integrante de dicha Respuesta.

De acuerdo con las pautas establecidas por los señores Conciliadores, también adjunto una traducción de la Respuesta de Belice al idioma español, con la siguiente reserva. La traducción debe considerarse como una traducción informal y de cortesía. Pese a realizar todos los esfuerzos posibles para que la traducción refleje la máxima precisión posible, no estamos capacitados para certificar su fidelidad. Así también, si surgiere alguna diferencia entre las versiones inglesa y española de la Respuesta, la primera deberá tomarse como la única versión fiel y oficial para todos los efectos a que hubiere lugar.

Me valgo de la oportunidad para reiterarle a V.E. las seguridades de mi más alta consideración.

Atentamente,

cc. S.E. Gabriel Orellana Rojas, Ministro de Relaciones Exteriores de Guatemala

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OUTLINE

RESPONSE OF BELIZE TO GUATEMALA'S STATEMENT OF 30 MARCH 2001

INTRODUCTION

1. This is the written Response of Belize presented to the Facilitators in response to Guatemala's Statement of 30 March 2001, and pursuant to paragraph 1 of the Agreement on Procedure signed on 7 February 2001.

I Preliminary Observations

2. A. At the outset, Belize considers it desirable to clarify the substantive scope of the exchange of statements between the two parties. As stated in the Agreement of 7 February 2001, the written presentations are meant to set forth the basis of the territorial, maritime and insular claims of each party, or the refutation of the other party's claim. Belize sees this exchange as pertaining exclusively to the legal content of Guatemala's claim; and its present statement is accordingly framed in legal terms. Belize does not enter into a consideration of the solution of the differences *ex aequo et bono* – an approach which it has not consented to and which is beyond the scope of the Facilitators' role. In particular, Belize does not accept the generalised Guatemalan statement in paragraph 10 that "there are underlying circumstances that reach beyond the strict adherence to the law appertaining the case and to the historical justice which both continue to demand".

3. In the opinion of Belize, only the present legal position can be the starting point of any settlement of the differences between the parties. Belize must make it clear immediately that its title to its territory is not negotiable. There is no room for compromise on the question of its sovereignty over its mainland territory, its islands and its maritime areas. Belize, of course, accepts that the delimitation of maritime areas in accordance with the United Nations Convention on the Law of the Sea 1982 has yet to be carried out.

4. It must not be forgotten that the position of the independent State of Belize within the territory that is now under its control (and for more than a century and a half previously under British control) has been confirmed by an act of national self-determination acknowledged and ratified by the United Nations. It is impossible to disregard the repeated attention that was given to the question of Belize in the United Nations (the "UN"). It was considered regularly in the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and People ("the Committee of 24") from the inception of the UN until the independence of Belize in 1981. Whenever Britain reported on the position of Belize, Guatemala entered a reservation and Britain stated that it did not accept the reservation. Guatemala was evidently unwilling to test the validity of its assertion by taking advantage of the British acceptance of the jurisdiction of the ICJ that was operative in respect of the Belize question from 1946 to 1956 (see below, paras. 96-98). The Members of the UN, though they heard Guatemala's exposition of the legal basis of its claim, as well as Britain's response, initially lent only limited support to Guatemala and ultimately gave it no support at all. Guatemala was left totally isolated. When Belize became independent in September 1981 it was promptly admitted to membership by a vote of 144 to 1, with

no abstentions, Guatemala being the sole objector. The antecedent UN resolutions going back many years, read in the light of the stated positions of the parties, make it plain that in the view of virtually every member of the UN apart from Guatemala the territory of the newly admitted State was "of all their territory" (UNGA Resolution 35/20 of 1980).

5. The position of Belize is quite firm: there is no room for departure from strict adherence to the law or for modification of the corresponding political position. Equitable principles may only be invoked by Guatemala in relation to the division of adjacent maritime areas and, even then, only by reference to the approach adopted by the International Court of Justice in the *North Sea Continental Shelf* Cases[1] and comparable precedents.

6. B. As is evident from the main thrust of Guatemala's Statement, the difference between the parties relates to title to territory. Contrary to what Guatemala says in paragraph 63 of its Statement, the dispute does not deal "strictly with a border demarcation". Boundary demarcation is, of course, one aspect of the territorial separateness of Guatemala and Belize. They are contiguous to one another and their limits must, therefore, be determined by a border that is demarcated as well as delimited. But the essence of the dispute relates to title to territory. Guatemala is, in effect, claiming for itself more than half of the territory of Belize. It is in this light that the difference must be approached.

7. C. Belize notes the now explicit affirmation by Guatemala that its claim is limited to the area of Belize lying south of the River Sibun and extending as far as the established boundary between Belize and Guatemala, namely, the River Sarstoon. It is on Belize's title to this area, and Guatemala's corresponding lack of title, that the present statement will focus.

8. D. At the same time, Belize must draw attention to the anomaly inherent in Guatemala's limitation of its claim to the area of Belize lying south of the River Sibun. Guatemala's position rests on its view of the function and operation of the 1859 Boundary Convention[2]. This Convention relates to the boundary of the *whole territory* of Belize with Guatemala. If, as Guatemala contends, the Convention has come to an end, then it has come to an end in its entirety, and in relation to the whole territory of Belize. There is no basis for Guatemala's arbitrary division of Belize into two parts – a northern part to which Guatemala claims no title and a southern part to which it does claim title. There is a fundamental logical inconsistency in Guatemala's position. If the position acknowledged in the 1859 Boundary Convention remains valid in relation to the North, it must equally remain valid in relation to the South. Guatemala needs to explain the basis on which it now distinguishes between the two areas.

II The Structure Of The Present Response

9. The present Response will be presented in two Parts.

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[1] *ICJ Reports 1969*, p.3.
[2] Annex 1.

10. In Part One (paragraphs 13-84), Belize will set out the essentials of its legal position, together with items closely connected thereto. As will be seen, the approach of Belize differs fundamentally from that of Guatemala. Guatemala has chosen to base its case on a claim of title that it asserts originated in the days of Spanish rule over Central America. Guatemala contends that that claim of title has remained unbroken as it descended from Spain to Guatemala and that Guatemala's acknowledgement of the title of Britain that underlay the 1859 Convention has ceased to be effective.

11. Belize, on the other hand, identifies a completely different starting point for recognition of its title. This lies in the boundary provisions of the 1859 Convention. These were the subject of a precise and specific agreement between the Parties in 1931 relating to the identification of two cardinal points in the boundary – a recognition that is inconceivable on any basis other than the possession by Britain (and now Belize) of title to the territory lying east of the boundary reflected in that treaty[3]. This analysis renders it quite unnecessary to follow Guatemala in its account of the history of Spanish rule, of the treaty grants made by Spain to Britain, of the circumstances of the conclusion of the 1859 Convention, of the alleged non-fulfilment by Britain of Article VII of that Convention, and its effect, etc. Additionally, Belize points to the fact of Britain's and Belize's actual occupation and administration of the disputed area and to the equally significant fact of the absence of any evidence of competing Guatemalan occupation or administration of the area. Also, regard must be had to the exercise in 1981 by the people of Belize of the right of self-determination throughout the whole territory of Belize – an act which met with the virtually unanimous approval of the Members of the United Nations.[4]

12. In Part Two, (paras. 85-98 below), Belize will comment on a number of points made in the Guatemalan Statement which, in the submission of Belize, do not alter the matter but as regards which the Facilitators may wish to be further informed.

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[3] Annex 1.

[4] See above, para. 4.

PART ONE

THE ESSENTIALS OF BELIZE'S POSITION

13. Belize contends that Guatemala fundamentally misconceives the legal considerations relevant to this dispute. Belize's case rests firmly upon two legal foundations: treaty law and customary international law. Either one is by itself sufficient to confirm Belize's title to all its land and insular territory, as well as its rights to the associated maritime areas. Conversely, the elements that confirm the title of Belize also effectively negate any claim of title by Guatemala.

I Treaties

14. Guatemala appears to believe that the whole case of Belize rests upon the 1859 Convention and that if that Convention can be shown validly to have come to an end, the southern portion of Belize reverts to Guatemala. Guatemala's case rests upon the contention that the 1859 Convention was a treaty of cession that was validly denounced by Guatemala in 1884 and again in 1945, though Guatemala is quite inexplicit as to when it may really have ended. By reason of the alleged termination of the Convention, so Guatemala maintains, the ceded territory reverted to Guatemala. For reasons not stated by Guatemala, this reversion appears to be limited to the southern part of Belize, south of the River Sibun.

A. The 1859 Convention: Guatemala's misunderstanding of its character and effect

15. At the outset, it is necessary to repudiate briefly, but emphatically, one of Guatemala's opening contentions in para. 2 of its Statement, and repeated at para. 12 and, though less directly, in para. 24, that it was "forced" to sign the 1859 Convention or was placed under strong pressure to do so. There is not a shred of evidence to support this kind of allegation. Indeed, the evidence is quite to the contrary. It is not necessary to look further than para. 45, point "b.7" of the Guatemalan statement to find a reference to the fact that it was Guatemala that, in 1857, initiated discussions with Britain regarding the possibility of ceding Belize to Britain. Quotations from relevant correspondence regarding those discussions appear in paras. 65 - 66 below. They reveal no hint of any "force" used by Britain to persuade Guatemala to sign the subsequently concluded agreement. At para 24 of Guatemala's written presentation, the statement that the text proposed by the British negotiator "was accepted word by (sic) word" appears intended to suggest that Guatemala was pressured or forced to sign. The facts, however, prove exactly the opposite. As detailed below (see paras. 66 and 67), the fact is that there was such extensive consultation on the boundaries and on the texts of the treaty between the Guatemalan and British representatives that when the final text was produced there was absolutely no need for amendments, as the terms had been agreed by them over time. Additionally, the Guatemalan House of Representatives openly debated the Convention that was submitted to it for consideration by the Government and "after detailed deliberation" decided to inform the Government "That the House of Representatives: after having carefully examined the Convention... finds it beneficial and expedient to the interests of the Republic based on principles of sound policy..."(See p146 GWB). Further, as elaborated at paras. 23 – 32 below, Guatemala voluntarily entered into a subsequent treaty with Great Britain in 1931 confirming the 1859 Convention. It is well that the Facilitators

should have their attention thus drawn at the very beginning to the kind of unsustainable assertion that characterises so much of the Guatemalan Statement.

16. In other respects also central to Guatemala's case, its presentation of the content and status of the 1859 Convention is quite incorrect.

17. It was not a treaty of cession. Nothing in its wording suggests that it was. Indeed, everything is to the contrary. Its title describes it as a Convention "relative to the Boundary of British Honduras". Its Preamble speaks of "Her Britannic Majesty's Settlement and Possessions in the Bay of Honduras" as an existing fact, not as one yet to be achieved by virtue of the Convention. The Preamble also states the desire of the Parties "to define the boundary aforesaid". The substantive provisions of the Convention define the boundary between Guatemala and the British Settlement and Possessions in the Bay of Honduras "as they [that is, the two territories involved] existed previous to and on the 1st day of January, 1850, and have continued to exist up to the present time". The definition of the frontiers of British Honduras necessarily implied an acknowledgement on the part of Guatemala that the territory bounded by those frontiers belonged to British Honduras and not to Guatemala. Indeed, this is expressly stated in the third paragraph of Article 1:

"It is agreed and declared between the High Contracting Parties that all the territory to the north and east of the line of the boundary above described belongs to Her Britannic Majesty."

18. There can thus be no question of the territory of British Honduras (now Belize) reverting to Guatemala because of the alleged ending of the Convention. The Convention did not transfer territory from Guatemala to Britain. It merely established the boundary between Guatemala and the existing territory of British Honduras, which was clearly already under British sovereignty.

19. Another reason why the 1859 Convention cannot be regarded as a treaty of cession is that the territory to which it related was already British and, therefore, no treaty was required to transfer title to it to Britain. This point is developed in paras. 40 - 49 below.

20. Yet again, as is also developed below, Guatemala has not succeeded in establishing that it was at the time the lawful sovereign over the territory of Belize on the basis of Guatemala's alleged succession to Spanish territory in Central America.

21. Nor does Guatemala's repeated reference to the Clayton-Bulwer Treaty of 1850 between the United States and Britain assist it. Guatemala has argued that, as that Treaty excluded any further acquisition of territory by Britain in Central America, the 1859 Convention was deliberately worded to conceal its true character as a treaty of acquisition or cession. The argument is unsustainable on several grounds. One is the declaration made by Britain upon the conclusion of the Treaty that it was not to be understood as applying to the settlement at Honduras or its dependencies. A second is that the position was restated in the clearest terms in a supplementary article to the Dallas-Clarendon Treaty of 1856: " . . . [the] Settlement called Belize or British Honduras . . . bounded on the north by . . . Yucatan and on the south by the River Sarstoon was not and is not embraced in the Treaty entered into . . . on 19th day of April, 1850". Though this treaty did not enter into force, for reasons unrelated to

Belize, it stands nonetheless as an acknowledgement by the United States of Britain's position. As the ICJ has recently said in the *Qatar v. Bahrain* judgement of 16 March 2001, para. 89 " . . . signed but unratified treaties may constitute an accurate expression of the understanding of the parties at the time of signature". Thirdly, on 12 July 1860 the United States expressly stated to Guatemala that the 1859 negotiations have been "in harmony with the understanding of the subject entertained here and in London".

22. Further, it has to be observed that even if Guatemala were correct in its contention that the 1859 Convention has come to an end that would not lead to the reversion of the territory to Guatemala. As the ICJ has made quite plain in the *Libya/Chad* case, once a boundary treaty has been established, the continuance or not of the treaty does not matter. International law attaches controlling weight to the factual position arising out of the treaty. In the same case, the ICJ, referring to a treaty of 1955 which laid down an agreed boundary said:

"The establishment of this boundary is a fact which, from the outset, has had a legal life of its own, independently of the fate of the 1955 Treaty. Once agreed, the boundary stands, for any other approach would violate the fundamental principle of the stability of boundaries, the importance of which has been repeatedly emphasised by the Court . . .

"A boundary established by treaty thus achieves a permanence which the treaty itself does not necessarily enjoy. The treaty can cease to be in force without in any way affecting the continuance of the boundary . . . when a boundary has been the subject of agreement, the continued existence of that boundary is not dependent upon the continuing life of the treaty under which the boundary is agreed".[5]

The reasoning of the Court is even more applicable in the present case. Here, unlike the treaty in the *Libya/Chad* case, which was no more than 40 years old, the treaty is now nearly 150 years old and its essential boundary provisions have been applied over the whole of that period.

B. The 1931 Exchange of Notes: Guatemala's failure to appreciate its significance

23. Belize's case does not rest upon the 1859 Treaty alone. Guatemala totally neglects the existence of a further treaty concluded between Britain and Guatemala in 1931.[6] This took the form of an Exchange of Notes dated 25/26 August 1931. The agreement thereby constituted is as much a binding international treaty as if it had been described as a "treaty" or "convention" – as is shown by the fact that it was registered with the League of Nations as a treaty pursuant to Article 18 of the Covenant of the League of Nations. Guatemala has never questioned the existence, authenticity or validity of the 1931 Exchange of Notes, though it has undoubtedly known of it. A Guatemalan Foreign Ministry Official, Sr. Mendoza, who is believed to have been largely responsible for the production of Guatemala's *White Book*, referred to it at p. 248 of his book entitled *Britain and her Treaties on Belize (British*

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[5] *ICJ Reports, 1994*, p.37, paras. 72 and 73.

[6] The full text, as published in volume 128 of the League of Nations Treaty Series, 1932, at pp.428-438, is attached hereto as Annex 1.

Honduras),[7] as did Dr Francisco Villagrán Kramer, a former Vice-President of Guatemala, and a prominent member for many years of Guatemala's negotiating team, in paragraph 7 of his study entitled *Elements for the Analysis of the Case for Belize*.[8]

24. The substantive effect of this agreement is entirely to exclude any possibility that the 1859 Convention came to an end by any Guatemalan denunciation in 1884 or for any other reason at any date thereafter prior to 1931. The 1931 Exchange of Notes is described as being in respect of "the boundary between British Honduras and Guatemala, with Annexes". It refers to the 1859 Convention as laying down the boundary between the two territories of the Parties and quotes the definition of the boundary as given in Article 1, para. 2 of that Convention. The 1931 agreement states that joint commissioners appointed in 1860 "marked *in situ* the position of the terminal points of the southern section of the boundary, namely Garbutt's Falls and Gracias á Dios Falls. However, the full survey of the frontier was not completed at that time".

25. The 1931 agreement continued: "The Governments of the United Kingdom and Guatemala are now desirous of completing the demarcation". The text then describes the activities of the Commissioners who had been appointed in 1929 and had in that year decided to accept markers established at Gracias á Dios and Garbutt's Falls "as indicating the exact position of the two terminal points". The Commissioner's Report formed an enclosure to the Exchange of Notes. The Guatemalan response of 26 August 1931 to the British Note of August 25, 1931 states expressly:

"The Government of Guatemala agree to accept the concrete monuments erected at Garbutt's Falls and the Rapids of Gracias á Dios . . . These monuments, thus determined, form part of the boundary line between British Honduras and the Republic of Guatemala".

26. The Facilitators will observe that the boundary between Garbutt's Falls and Gracias á Dios Rapids largely corresponds to the southern part of Belize lying between the Sibun and Sarstoon Rivers, which is the subject of Guatemala's present claim. No reservation was made by Guatemala at the time of the Exchange of Notes regarding any claim by it to title over the part of British Honduras lying east of the boundary between those named points.

27. It is the position of Belize that this 1931 Exchange of Notes conclusively disposes of any Guatemalan contention that the 1859 Convention had come to an end before that date. Even if there could have been any doubt at that time regarding the status of the 1859 Convention (*quod non*), it must have been laid to rest by the Exchange of Notes which, at the least, must be seen either as having confirmed or revalidated the 1859 Convention, or as constituting acceptance by Guatemala of the boundary established by that Convention, with all the implications that such acceptance necessarily had for the status of the territory of Belize lying east of that boundary.

28. Nothing has happened in the ensuing seventy years to shed any doubt upon the continuing validity and effect of the 1931 Exchange of Notes. At no time has

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[7] 2nd ed., English translation, 1959. See Annex 2 hereto.
[8] Annex 3 hereto.

Guatemala ever disavowed or rejected this agreement. It must, therefore, be taken as irrefutable evidence of the existence between Guatemala and British Honduras (now Belize) of a frontier extending between the two points defined in the agreement. The legal existence of this boundary is no less real because it was not fully demarcated or opened up.

29. The 1931 Agreement is of the greatest significance. There is more to it than the establishment of two boundary pillars. Its importance in relation to the title of Belize to the southern part of its territory is self-evident. How could Guatemala subscribe to the re-statement of the boundary in that area if the boundary did not exist? How could a boundary exist if it did not separate two territories: the territory to one side of it (the western side) belonging to Guatemala and the territory to the other side (the eastern side) belonging to British Honduras, now Belize? The obvious answers to these questions entirely exclude the possibility of any valid claim by Guatemala that at the present day the territory of Belize lying east of the line between Garbutt's Falls and Gracias á Dios belongs to Guatemala.

30. Belize notes that Guatemala has completely avoided any mention of the 1931 Exchange of Notes in the Guatemalan *White Book* as well as in the document book which Guatemala has presented to the Facilitators as containing the documents that it believes pertinent to its case. Nor is the treaty mentioned in Guatemala's Statement to the Facilitators and in the annexes thereto. Belize imputes no motivation to Guatemala regarding this omission but only observes that, on the basis that such omission has been inadvertent, Guatemala should now reconsider its legal position in order to achieve consistency with the terms of its indubitable and inescapable international obligations.

31. In short, the first main part of Belize's case rests upon two treaties: the 1859 Convention and the 1931 Exchange of Notes. Each of them alone is sufficient to support Belize's title. But when the two of them are read together, as they must be, the case for the continuance and current validity and applicability of the territorial provisions of the 1859 Convention is overwhelming.

32. Belize is fully confident that if the issue of title were to come before the International Court of Justice that Court would, as shown in its approach to such matters in recent cases, notably *Libya/Chad*[9] and *Qatar/Bahrain*[10], dispose of the question simply by reference to the treaties of 1859 and 1931. The Court would not follow Guatemala into the complicated, controversial and now manifestly irrelevant and illusory historical web that it has chosen to weave.

II Customary international law

33. Even if the effect of the 1859 Convention and the 1931 Exchange of Notes were to be disregarded (*quod non*), consideration of customary international law alone would amply support the position of Belize.

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[9] *ICJ Reports 1994*, p. 6, esp. p. 20 and following.
[10] *ICJ Reports 2001*, 16 March 2001.

34. The position in customary international law is not at all as Guatemala seeks to present it. Every point that matters in the Guatemalan contentions is open to doubt, contradiction or rejection both on legal and factual grounds.

35. It is not necessary for Belize to question the original existence of Spain's general title in Central America, though it has to be mentioned that in the area of what is now Belize there is virtually no evidence of regular and effective Spanish occupation. There is, moreover, evidence that no part of Belize was ever considered by Spain as part of the Captaincy-General of Guatemala, but rather that the whole territory was considered as being within the authority of the Spanish Governor of Yucatan. This runs counter to the Guatemalan contention that the whole of Belize, including the area to which Guatemala now limits its claim, was administered as part of the Captaincy-General of Guatemala.(See Gustavo A. Perez Trejo, *Documentos Sobre Belice o Balice (1958)* in Annex 26*)*

36. Nor is it necessary for Belize to question the validity and effect of the various treaties between Spain and Britain in the 18th Century granting rights to the British woodcutters in the region. It is accepted as a fact that the limits laid down in those treaties were transgressed by the settlers. This was not done covertly and was undoubtedly known to the Spanish (and later the Central American Federation and Guatemalan) authorities.

37. As a matter of law, there is nothing that protects treaty provisions, any more than customary international law rights, from the law-changing effect of the conduct of the parties. The general principle is reflected in Article 31(3)(b) of the Vienna Convention on the Law of Treaties where, in relation to the interpretation of treaties, it is provided that "there shall be taken into account, . . . (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation".

Thus adverse possession by Britain, known to Spain and not made the subject of protest or opposition by it, was quite capable in law of over-riding the boundaries set in the Treaties of 1783 and 1786, as well as the restrictions on the activities of the woodcutters therein laid down.

38. To restate the point quite simply, the *facts* override all the legal arguments advanced by Guatemala. It does not matter that the rights of Spain may have been breached in the period prior to the date of the independence of the Central American States in 1821; nor that Guatemala may have succeeded to Spain's authority and title in the relevant area; nor that the 1859 Convention may have reflected a bargain that may not have been fulfilled by Britain. None of these arguments - all of which are rejected by Belize - can affect the factual realities on which the title of Belize to its territory is based. The fact that Guatemala contends that it has succeeded to Spain's rights in respect of British Honduras (now Belize) more than a century ago is insufficient to establish that it is sovereign over the territory in dispute today. This issue was addressed squarely in the *Island of Palmas* case:

> "If a dispute arises as to the sovereignty over a certain portion of territory, it is customary to examine which of the States claiming sovereignty possesses a title – cession, conquest, occupation etc. – superior to that which the other States might possibly bring forward against it. However, if the contestation is

based on the fact that the other Party has actually displayed sovereignty, it cannot be sufficient to establish the title by which territorial sovereignty was acquired at a certain moment; *it must be shown that the territorial sovereignty has continued to exist* and did exist at the moment which for the decision of the dispute must be considered as critical. *This demonstration consists in the actual display of State activities, such as belongs only to the territorial sovereign.*"[11]

Whatever rights of sovereignty Spain and Guatemala (*quod non*) may have had at some point in time in the early 1800s over the territory in dispute must give way to "actual display of State activities" by Great Britain and Belize for nearly 200 hundred years.

39. We have here a classic example of a process of historical consolidation in which the fact of possession for virtually 200 years serves to establish and crystallise a title regardless of the circumstances in which possession came about. In the *Eritrea/Yemen* case[12] the Tribunal spoke of the concept of "historic title" as being a "title that has been created, or consolidated by a process of prescription, or acquiescence, or by possession so long continued as to have become accepted by law as a title. Those titles too are historic in the sense that continuity and the lapse of a period of time is of the essence".[13]

A. The evidence of British possession and administration of the area south of the River Sibun

40. As is shown in summary form in the work by Professor R. A. Humphreys on the *Diplomatic History of British Honduras, 1638-1901* (1961),[14] supported by the original documents, the British settlers gradually established their activities in, and possession of, the area south of the River Sibun from 1801 onwards; and some had reached the Sarstoon even by 1802. At no time do they appear to have encountered any opposition from, or protest by, any Guatemalan authority.[15]

41. The following items evidence British presence in, and possession of, territory south of the River Sibun prior to 1850 (being the date referred to in the 1859 Convention):

(i) By 1791-1800, Superintendent Barrow, the administrator of the area appointed by the British Government, reported that Deep River, well to the south of the Sibun, had been occupied by British settlers.[16]

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[11] 2 *UNRIAA*, at pp.838-839. Emphasis supplied.
[12] Phase One: Territorial Sovereignty and the Scope of the Dispute (1998), 114 *International Law Reports*, p. 2
[13] *Ibid*, p. 35. For an authoritative statement of the law relating to prescription and historical consolidation, see Oppenheim's *International Law* (9th ed., 1992, by Sir Robert Jennings and Sir Arthur Watts, pp. 705-710), reproduced in Annex 4.
[14] Annex 5 (extracts)
[15] It should be recalled that many of the local records available for the demonstration of all aspects of British authority in British Honduras were destroyed by the hurricanes which devastated large parts of Belize in 1931and 1961.
[16] Humphreys, p. 15.

(ii) In 1802 he reported that settlers had by then occupied not only the south side of the River Sibun but also other places "further to the southward, as Stand Creek, Deep River, etc."[17]

(iii) Also in 1802 the Honduras Merchants Committee reported that the southern advance of settlers had brought them nearly in sight of the Spanish fortifications of Omoa – a place so far to the south of the Sarstoon as to be in the territory of what is today Honduras.[18]

(iv) In 1806 the settlers were again reported as having reached Deep River and in the same year the settlers sought protection for the mahogany cutters in the southern rivers, namely, Deep River, Golden Stream and Rio Grande.[19] At that time, further north, but still south of the Sibun, 38 settlers were said to be living at Mullins River. South of that river was Stann Creek, which was the usual watering place for ships of the British fleet. It was occupied by woodcutters who shipped considerable quantities of wood from there.[20]

(v) In 1814 the settlers addressed a Memorial to the Prince Regent stating that woodcutting had advanced to the Moho River and asking for this river to be recognised as the southern boundary of the settlement – a river only a little more than 15 nautical miles north of the Sarstoon.[21] And this development was confirmed by Superintendent Arthur in 1816. As Professor Humphreys points out, this advance took place in territory that was "solely occupied by Indians and where the writ of Spain had never run".[22] He also observes that these penetrations were not initially accompanied by agricultural settlement. A Colonial Office Memorandum of 20 January 1835 stated:

"The distance from the north of the Sarstoon to which that river is actually occupied by the British Settlers cannot be very correctly ascertained . . . *but it seems sufficiently certain that where it is not occupied by the British, it is not occupied at all.*"[23]

(vi) On 17 June 1825, a leading merchant in Belize, Mr Marshall Bennett, wrote to Mr Horton at the Foreign Office the following letter, which is here reproduced in full:

"Should His Majesty's Government deem it expedient to make any arrangements with the Government of Guatemala and Mexico in which the British Settlement of Honduras may become a subject of discussion, it is humbly submitted that the boundaries which **for a series of twenty years or more** have been uniformly considered by the successive Superintendents as the limits of the settlement and which it would be by no means inconvenient for the Government of Guatemala and Mexico to confirm should be the limits as marked down in the accompanying Chart viz.

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[17] *Id.*
[18] *Id.*
[19] *Id.* See also Burdon, II, p.91. Annex 6 (extract).
[20] *Id.*
[21] *Ibid.*, p.16. See also Burdon, II, p.167. See Annex 6.
[22] *Ibid.*, at p.17. Guatemala produces no evidence to support the assertions in paras. 38.a.2 and 48 of its Statement that any part of the territory of Belize "had been inhabited permanently by Spanish subjects and Guatemalan citizens"; or that Spanish nationality had been granted to the settlers in any part of Belize.
[23] FO72/452, pp. 252-253. Emphasis supplied. See Annex 11.

The South Bank of the River Hondo from its source to its mouth and to Latitude 18° 9" Longitude 87° 17" being the Northern boundary.

From the source of the said River Hondo Southward intersecting the River Walliz or Belize at a distance of 70 miles from the coast in a right line say Longitude 89° 49" to the source of the River Gorda [the name by which the Sarstoon was previously known] that being the Western Boundary.

From the source of the River Gorda Latitude 15° 37" Longitude 89° 49" to its mouth and from thence to Latitude 16° 40" Longitude 87° 17" the same being the southern boundary and extending from said Latitude and Longitude in a right line due north to Latitude 18° 9" Longitude 87° 17" that being the Eastern Boundary." (Enclosed in Horton to Planta, 9 July 1825, FO15/4; for text and accompanying map see Annex 27. Emphasis added. This shows that from as early as 1805 the Sarstoon was considered as the southern boundary of the settlement and its source as its western boundary.)

(vii) By 1825 Superintendent Codd felt able to describe the southern boundary as being at the Sarstoon. In a letter to London, the terms of which merit extended quotation, he wrote:

"I . . . now transmit to you a sketch (not of actual survey) though sufficiently accurate for any reference with the explanation it appears to me to require of that part of the continent now occupied by the British.

That part of the Territory coloured red represents the limits defined in the Treaty with Spain in the year 1783. That coloured yellow was annexed by additional articles to the same Treaty in 1786 and the whole respected by the Spaniards until the year 1798 when they made an attack upon the Settlement and were defeated. The Treaty being thus violated the British from this time maintained possession by force of arms and did no longer confine themselves to the prescribed boundaries but cut Mahogany in every direction on the portion coloured green from the River Sarstoon adjacent to the Gulf of Dulce as far to the Northwards as the South of the Rio Hondo which is represented to me as the North and South limits of this Settlement.

The Settlers at present occupy to the extent of 200 miles to the west from the sea shore, but the Country in that direction is unexplored.

The nearest Spanish town West of the Settlement is called Peten. It is an insignificant place and might be taken as the Western boundary or back line in any new Treaty or even a North and South line from the source of the river Belize till it bears west of the sources of the Rivers Rio Hondo and Sarstoon respectively which would comprise all the country occupied by the Settlers. For that part defined by the Treaties of 1783 and 1786 have long since been nearly exhausted and two thirds of the wood now cut comes from without such limits.

. . . "[24]

[24] FO 15/4, 8 July 1825, Edward Codd to R. Horton. A transcription of the full text of this letter is attached as Annex 7. The content of this letter is evidently known to Guatemala as it is noted in *GWB*, p.43. The original sketch is too large for reproduction as an annex but a full sized copy will be produced to the Facilitators at the hearing. See the next item, item (viii) below.

(viii) The map enclosed with a letter of 29 April 1826 from Mr. Cooke to Mr. Secretary Canning headed "Sketch of that part of Yucatan at present possessed by the British. 1826", is a particularly cogent item of evidence.[25] This shows the northern part of Belize shaded red to indicate the area covered by the 1783 Treaty, the central part coloured yellow to indicate the area covered by the Treaty of 1786 and the southern part coloured blue "held by force of arms since 1798, the last attack of the Spaniards". The southern part extends to the River Sarstoon. Also significant, however, is the fact that a line is drawn due north from the River Sarstoon and is marked "Supposed line of the Western Boundary of the British Possessions". Both these features confirm that certainly by 1826 British possessions extended as far south as the Sarstoon.

(ix) In 1826, the first edition of *The Honduras Almanack* stated:

"The tract of territory now practically held by the British, occupies a line of sea coast of about 250 miles, from the Rio Hondo, the ultimate boundary of the Mexican Republic, to the River Sarstoon, on the commencement of the States of Guatimala (*sic*) . . .".[26]

(x) On 24 November 1827 Superintendent Codd, in reporting to Viscount Goderich on the boundary with Mexico, pointed out

"that the English, having previously been obliged to return from the more Northern parts, had entrenched themselves as far Southward as the River Sarstoon and hold this area by truce as conquered from Spain, a right supported by the establishment of a Garrison".[27]

(xi) On 1 December 1827 Superintendent Codd reported to Viscount Goderich a threatened visit by a Guatemalan cruiser to drive away British vessels found loading to the south of the River Sibun. In view of the considerable Mahogany works and property held by the settlers to the South of that River, he requested protection from the Admiral Commanding at Jamaica.[28] Nothing more is reported of this matter so presumably the Guatemalan action did not materialise.

(xii) By 1834

"at a meeting of judges and magistrates assembled in Council with the Superintendent, it was unanimously agreed that the area of which the settlers were in full and undisputed possession at the time of Central American Independence was bounded by the Hondo on the north, the Sarstoon on the south, and, in the west, by an imaginary line due north from Garbutt's Falls on the Belize to the Hondo and due south to the Sarstoon".[29]

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[25] Two versions of this map are annexed hereto as Annex 8. See also Humphreys, at p. 18. Version A has been found in the PRO as FO925/1912. Version B is printed as Fig LVIII, no. 86, in Breton and Antochiw, *Cartographic Catalogue of Belize* (1992), p. 173. This is a less simplified version of Version A, and may well be the original from which Version A was derived. It bears the same legend as Version A regarding the colouring of the sketch, the supposed line of the western boundary and the clear indication that to the south of the River Sarstoon lies "Guatimala (sic) Territory".

[26] Humphreys, at p.18.

[27] Burdon, II, p.297.

[28] *Id.*

[29] The text of the Report is reproduced in Annex 9. See also Humphreys, p. 22.

(xiii) A very large map entitled "Mexican Yucatan", inscribed at the top "Map D, Copy annexed to Memorial, dated Colonial Office 25 October 1834", shows the whole area of British Honduras.[30] No scale is given.

- It contains towards the top a number of manuscript annotations relative to the border between Mexico and British Honduras which need not be detailed here. Towards the south it marks clearly the River Sarstoon, on which is inscribed ""Sarstoon" The Southern British Boundary"".
- Slightly further to the west is the inscription "Supposed position of "Gracias á Dios Falls – Their true position to be determined by British and Guatemalan Commissioners".
- Towards the top right-hand corner (NE) there is the inscription: "All Keys and Islets which are situated between the Hondo and the Sarstoon are in actual British occupation, and must be comprehended in the Treaties". A similar inscription appears towards the bottom right-hand corner (SE): "All Keys and Islets between the "Hondo" and the "Sarstoon" are in actual British occupation and must be comprehended within the Treaties of Boundaries".
- Towards the west there is the inscription: "These double red lines, inter-shaded yellow, mark the Western boundary of the British possessions to be determined by Treaty with Guatemala".

This map should be read in conjunction with the extracts set out in Annex 11 below from a Colonial Office Memorandum of 20 January 1835 of 261 manuscript pages entitled "Memorandum on the tenour of the instructions proper to be given for negotiations for the relinquishment by Spain of her rights over the territory occupied by the British in the Bay of Honduras",[31] a revised and updated version of an earlier Colonial Office Memorandum of 25 October 1834. The Instructions were possibly prepared for the use of Mr. Villiers in the approach that he made to Spain in April 1835.[32] But for present purposes, the extracts are significant as showing the extent of British possessions in the area and the corresponding absence of any Guatemalan presence there.

(xiv) A map dated September 1835 drawn by L. J. Hebert and printed at the Quarter Master General's Office, London, scale unstated, shows the whole area of British Honduras and appears to be a simplified version of item (xiii) above.[33]

(xv) Also in 1835, the British Government in London took the view that the boundaries of British Honduras extended from the Hondo in the north to the Sarstoon in the south and in the west lay along the line of longitude of Garbutt's Falls.[34]

(xvi) . From 1837 onwards the Superintendent began making Crown grants of land on the Deep River, the Moho and the Sarstoon, i.e. outside the old treaty limits.[35] In 1839 he was instructed that objections should no longer be made to the cultivation of

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[30] See Annex 10A. A copy of the full size map measuring approximately 802 x 858 mm will be available if required at the hearing on 21 May 2001.
[31] FO72/452.
[32] See Humphreys, pp. 38 and 39, and below, para. 44. For extracts, see Annex 11.
[33] Annex 10B.
[34] Colonial Office memorandum, 20 January 1835, cited in Humphreys, p. 37.
[35] Humphreys, p. 24.

the soil but that revenue from this source should be treated as a territorial revenue of the Crown.

(xvii) In 1843 there was published an Admiralty Chart, prepared in the period 1830-1839 by Commanders Owen and Barnett, entitled "West Indies from Cape Gracias á Dios to Belize". This shows the east coast of British Honduras as far south as the Gulf of Honduras and then east from there along the coast of what is now Honduras.[36] The chart is significant because:

(a) it shows the River Sarstoon, marking on it the Rapids of Gracias á Dios and places the word "Boundary" just south of the river; and

(b) as an Admiralty Chart, it was a public document and could thus have been known to Guatemala. Guatemala has itself said that an Admiralty Chart "because of its origin must be considered an official map".[37] No record has been found of any Guatemalan protest in respect of the representation on this 1843 chart of the boundary of British territory being the line of the River Sarstoon.

42. There are a number of additional points in Guatemala's Statement that call for comment.

43. Guatemala appears to believe that the occupation of the territory of British Honduras by the settlers and Britain was in some way dependent upon Spain having abandoned the territory and its having become *res nullius*.[38] This reflects a misunderstanding of the way in which acquisition of title as a result of adverse long-term possession operates. There is no need for the title of the original sovereign to have been abandoned or to have lapsed so as to render the area involved a *res nullius*. The title of the original sovereign is over-ridden and replaced by the title of the new sovereign. No intervening status of *res nullius* is required and Belize does not need to contend that any such status ever arose, and has not done so.

44. Moreover, the possession acquired on behalf of Britain by the British settlers operated as much against any successor of Spain (as Guatemala claims to be) as it did against Spain itself. When, in 1835, Britain requested Spain formally to cede to it title over the territory of Belize, it did not do so for the purpose of obtaining a title that it did not otherwise possess but with a view to forestalling any claim that the newly independent States of Central America might make by reason of the impending recognition by Spain of their independence. As the wording of the British note[39] makes plain, the cession requested was not of a previously undisputed title, but the

"ceding to Great Britain [of] any right of Sovereignty which it may be conceived still rests, as regards the British Colony of Honduras, in the Crown of Spain . . . The actual sovereignty of Great Britain is an improbable matter of dispute – the Country has been long, and will, doubtless, long remain under British sway; it can answer the purpose of no country to question its tenure, but Spain is in a situation to accord an additional satisfaction in the possession of it".

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[36] The map is reproduced in Annex 12, from Breton and Antochiw *Cartographic Catalogue of Belize* (1992), p. 102, no. 87, and Figure LIX, p. 87.

[37] *GWB*, p.91.

[38] Guatemalan Statement, para. 39.

[39] Reproduced in Guatemala's Facilitators Handbook at p. 184 and Annexes to its Statement "Siglo XIX", No. 5

The note reiterated that the districts were already in the possession of the British settlers. The stated boundaries are "more extensive than those originally granted by Spain but no more so than has long been tacitly acknowledged a British Settlement, as there is now and has been in the temporary or continual occupancy of the Colony". The British approach produced no written response, though orally the Spanish Foreign Minister indicated that he foresaw no difficulty with the request.[40] Spain never denied the accuracy of the historical statements made in the opening British note of 5 April 1835.

45. Guatemala suggests[41] that Britain itself did not regard the area of Belize between the Hondo and Sibun Rivers as being part of British territory. In support of this Guatemala mentions two British statutes of 1817 and 1819 that refer to this area as being "a settlement for certain purposes in the possession and under the protection of His Majesty, but not within the territory and dominion of His Majesty". What Guatemala fails to appreciate is that the distinction thus drawn between, on the one hand, a settlement "in the possession and under the protection of His Majesty" and, on the other, an area "within the territory and dominion of His Majesty" was a distinction drawn only in terms of English law. In terms of international law, the statement that the territory is in the possession and under the protection of the Crown is sufficient to demonstrate that the territory was occupied *à titre de souverain*. Moreover, the very fact that in 1817 and 1819 the British Parliament legislated for the area (by establishing jurisdiction over murders committed there) would be regarded by an international tribunal as an assertion of British sovereign authority over the area.

46. Also pertinent in this connection is a decision of the British Privy Council (the highest court of appeal for cases from the colonies) in 1880 in which the following was said:

"Without going into the various acts previously done or exercised by the Crown with regard to this colony, or attempting to fix the precise date when the territorial sovereignty was first assumed, it is sufficient for the decision of this case to say that the *fact, which is fully established, that grants of land were made by the Crown as early as the year 1817, offers ample evidence that in that year at least the Crown had assumed territorial dominion in Honduras*".[42]

47. On the basis of the material just set out, Belize maintains that Britain had acquired, even by 1817, possibly even by 1805, and certainly by 1850, a customary international law title to the area of Belize extending from the River Hondo in the north as far south as the River Sarstoon by reason of the facts of possession by British settlers and the exercise of authority in the area by the Crown *à titre de souverain*.

48. The area of British Honduras as it stood in 1850, (the year of the Clayton-Bulwer Treaty) is shown on a sketch map included in a Foreign Office memorandum dated 20

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[40] See generally, Humphreys, *op. cit*; pp. 38-41. Under the heading Siglo XIX, Annex 5, the Guatemalan Statement annexes a document in Spanish, described in part as being "respuesta por parte del Conde de Ofalia" dated 11 August 1835. Belize can find nothing in this document that contradicts the analysis of the episode in Humphreys. The concluding paragraphs of the document suggest that the authorities in Spain foresaw some difficulties in expressly and formally acceding to the British request but were not necessarily opposed to the British request. The document produced by Guatemala from the Spanish archives evidently does not contain the conclusion of the Spanish consideration of the matter.

[41] Statement, para. 42.

[42] *A-G for British Honduras v. Bristowe* (1880) 6 H.L. 143 at pp. 147-148), Annex 14.

February 1887,[43] as extending from the Hondo in the north to the Sarstoon in the south and from the coast westwards as far as a line drawn northwards from Gracias á Dios Falls through Garbutt's Falls to the Blue Creek, a tributary of the Hondo. In wording reminiscent of Mr. Cooke's map of 1826,[44] the area between the Sibun and the Sarstoon is marked "Occupied by the British by force of arms since 1798, the last attack of the Spaniards".

49. Thus, from well before 1850, there can be no questioning the presence and authority of Britain in British Honduras. The public, official and continuous character of Britain's authority over the whole of the territory of Belize is further evidenced by the mass of governmental correspondence relating to the affairs of Belize that was published contemporaneously in the British *Parliamentary Papers* (See Index reproduced in Annex 28) and was thus in the public domain and available to the diplomatic representatives of Guatemala. And to this must be added, what has never been denied, the fact that throughout the territory Britain exercised all normal governmental power – legislative, judicial and executive – to the exclusion of any other authority.

50. In addition to the positive evidence of Britain's authority in British Honduras, there have been numerous instances of specific Guatemalan acknowledgement of Britain's title to the whole of the country:

(i) In 1887 Guatemala protested against an alleged trespass on its territory in the neighbourhood of Plancha de Piedra in the region of Peten, invoking as its basis the existence of the boundary – something it could scarcely have done had it disputed British title in British Honduras.[45]

(ii) In 1896 discussions took place between Guatemala and British Honduras regarding the possibility of constructing a railway line connecting the Guatemalan province of Peten with the Atlantic Coast in British Honduras. Guatemala made no reservations regarding Britain's title in British Honduras.[46]

(iii) In 1902 the Guatemalan commander stationed in a village near Garbutt's Falls sought permission to pass through British Honduras in order to proceed to Yolloché, a place in Mexico. Permission was not granted.[47]

(iv) When in 1908 Guatemala raised with Britain a question relating to the opening and clearing of part of the boundary between Plancha de Piedra and Benque Viejo, Britain explained that the failure to inform Guatemala was an oversight. Guatemala never challenged the existence of the boundary or Britain's rights to the east of it.[48]

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[43] FOCP 5412, Doc. 1, p. 29. See Annex 15.
[44] See above, para. 41(viii).
[45] FOCP 5622, Inclosure 1 in No. 42, and No. 77 at p. 75. See Annex 16.
[46] FOCP 6881, No. 25, 23 July 1896; FOCP 7057, p. 5, Inclosure 1 in No. 7. See Annex 17.
[47] FOCP 8231, Nos. 1, 2 and 3. See Annex 18.
[48] Mendoza, p. 239. See Annex 2.

(v) In 1916 there was a further incident on the border leading to a Guatemalan protest and a British reply. But, again, Guatemala never challenged the existence of the border or Britain's rights to the east of it.[49]

(vi) In February 1923 Guatemala went so far as to raise the possibility of a joint demarcation of the boundary, but Britain appears to have declined the suggestion.[50] Yet the very fact that the suggestion was made is indicative of Guatemala's acceptance of the existence of the boundary and of Britain's rights to the east of it.

(vii) A similar inference may be drawn from the Guatemalan response in 1925 to a British proposal for demarcation, namely, that Britain should do it unilaterally and that it should be inspected by Guatemalan engineers before being approved.[51]

(viii) In 1925 Britain put forward a further proposal for demarcation. This was accepted by Guatemala in 1926 subject to the following, among other, observations: "The significance and comprehension of the present agreement are exclusively confined to the demarcation of the above mentioned boundary".[52] Whatever this observation may have meant, its positive sense being unclear, its words clearly indicate acceptance by Guatemala of the existence of *some* boundary, with all that that implies.

(ix) In 1926 there was further correspondence regarding demarcation which again evidences Guatemalan acceptance of the existence of a boundary and of British territory to the east of it.[53]

(x) In 1927, Britain requested, and Guatemala gave permission for British surveyors to make astronomical observations on the south bank of the River Sarstoon – again evidencing the fact that that river was accepted as the boundary.[54]

(xi) Another cogent item evidencing Guatemalan acceptance that Britain possessed sovereignty over the defined area of British Honduras, including the area up to the boundary in the River Sarstoon, is the note sent by Guatemala to Britain on 13 December 1928 seeking the waiver by Britain of import taxes on mahogany being shipped along a river in British Honduras and then to pass along the River Sarstoon to the sea. The Sarstoon was said to form "the boundary between the Republic of Guatemala and the British colony of Belize".[55] What clearer acknowledgement could there have been of British title to the southern part of British Honduras?

(xii) Again, it is appropriate to refer to the 1931 Exchange of Notes, the significance of which as an acknowledgement of British title to Belize has been set out in paragraph 28 above.

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[49] *Ibid.*
[50] *Ibid.*, p. 242.
[51] *Id.*
[52] *Ibid.*, p. 244.
[53] *Ibid.*, p. 245.
[54] *Id.*
[55] Annex 19. Belize National Archive, 2255-28.

(xiii) In 1968, a Mediator appointed by the United States made certain proposals for the settlement of the dispute. Their starting point was acceptance of the fact that Britain was sovereign over the whole of the area of Belize. By reason of the unacceptability to Belize of a number of other proposals of the Mediator, his recommendations were rejected by Britain. Nonetheless, it would appear from the wording of para. 29 of the Guatemalan Statement that Guatemalan did not regard the proposals (including acceptance of British title) as unacceptable.

(xiv) The Heads of Agreement concluded between Britain, Belize and Guatemala in 1981 were developed on the basis that Guatemala acknowledged the full territorial extent of Belize.

(xv) On 13 February, 1992, the Foreign Minister of Guatemala wrote to the Foreign Minister of Belize "regarding the publication of an International Tender from the Ministry of Energy and Mines in my country for petroleum exploration and exploitation in various areas of your country". [The advertisement appeared in the 9 December issue of the Oil and Gas Journal](See Annex 29). He added that "In fact, the delimitation of the area of the Bay of Amatique, identified as A-6-91, was not discussed with nor approved by this Ministry. Your Excellency may be sure that this error has been inadvertent and in order to assure your Government that it is not the intention of the Government of Guatemala to create any friction with Belize, this area will not be appropriated for tender to any company whatsoever. By the same token, the upcoming tender to appear in the month of June shall contain only specific delimitation areas so as not to bring about any possible misinterpretation". The area in question was in Belizean waters, off the coast of the southern part of the area comprehended between the Sibun and Sarstoon Rivers. This surely provides incontrovertible proof of Guatemala's recognition of Belizean sovereignty over the area between the Sibun and the Sarstoon Rivers, as recently as 1992.

(xvi) On 31 July, 1992, the governments of Belize and Guatemala signed a Joint Statement in which they referred to the fact that they had not yet signed a treaty finally establishing their land and maritime boundaries, and that such a treaty is one element of the expected outcome of the negotiations. They agreed "to accept that any mention to their respective territory in any agreements, their execution or implementation thereof, will be made based on the existing reference monuments" (see Annex 30). It is impossible to interpret this agreement other than as an acknowledgement by each side that the other possesses territory on the other side of the as yet undetermined boundary.

(xvii) On 4 August, 1992 Belize and Guatemala signed a "Joint Project To Renew And Extend The Road Network Linking Belize And Guatemala"(See Annex 31). The wording of this agreement recognises that, for example, Pueblo Viejo is "in the Toledo District [of Belize]" and that Benque Viejo del Carmen is "in Belize", and it refers to Melchor de Mencos, in Guatemala, as being "at the border with Belize."

(xviii) On 16 April 1993, Belize and Guatemala issued a joint press release following a ministerial meeting arising out of the illegal felling by Guatemalans of mahogany trees within the territory of Belize. Guatemala accepted that the logs had been felled in Belize's territory. Such an acknowledgement cannot be reconciled with the present position of Guatemala.

B. Absence of evidence of Guatemalan possession of the area

51. Moreover, throughout the period in which Britain was acquiring and consolidating its possessory title in the area, there is no evidence of any conflicting presence of Guatemala or assertion of authority by it. Yet, as a matter of law, evidence of this kind would be necessary if Guatemala were to be able to establish its title. The representatives of Guatemala were entirely aware of this need. In a note to the Guatemalan Minister of Foreign Affairs dated 14 November 1857, the Guatemalan Minister in Paris, Sr. Martin said:

"It would be very convenient in this case for the better success of the negotiation, if I had the means of proving that it is after 1821 that the English subjects have extended their occupation to the territory of Guatemala, exceeding the boundary which was traced in the treaty celebrated with Spain in 1786".[56]

Sr. Martin's request was met in the scantiest manner in the Guatemalan Foreign Minister's reply of 2 January 1858. He said:

". . . I believe that the idea that those encroachments were only committed before 1821 is not exact. There exists in this Ministry a geographical map of said Settlement, drawn in the year of 1816, which may be considered official. From it, it appears that, at the time, the boundaries of Belize extended only to the River Sibun and since they have been extending them arbitrarily until they have advanced nearly a degree and a half, since the English now occupy as far as the River Sarstoon, and it is so shown on Mr. Baily's map".[57]

The items which Guatemala now mentions in this connection are quite unconvincing and cannot in any degree serve to counter the evidence of British possession set out above and accepted by Guatemala.

52. The examples cited in the Guatemalan Statement, para. 45, together with the comments of Belize, are as follows:

53. The first item, (para. 45, b.1), refers to the Guatemalan Constitution of 1825. Apart from the fact that the constitutional provision is no more than a domestic assertion of a claim, in substance it does nothing to prove that Guatemala was actually in possession of the areas claimed. Article 35 states: "The territory of the State comprises: to the north, all the villages of the districts of Chiquimula with Izabal, and the San Felipe Fortress in the Golfo Dulce, Verapaz and the Peten . . .". This leaves entirely open the question, which is the one that needs to be resolved, of whether the limits of Verapaz and Peten extend into what is now Belize. The Guatemalan Statement is rather misleading in that it adds the words " . . . (later, the Province of Verapaz), neighbouring with the Establishment of Belize, its border being the River Sibun", without any support from the text of the Constitutional provision.

54. The next item, (para. 45, b.2), refers to a voyage of "the armed cruiser sent in 1827 to patrol the coast of the territory of the State of Guatemala, including the maritime area of the Province of Verapaz between the Sarstoon and Sibun Rivers."

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[56] *GWB*, p. 92.

[57] *GWB*, p. 94. Guatemala has not produced the map referred to.

However, no details are given of this patrol, or of the name of the vessel; and no evidence is provided in support of the assertion. It may have been the episode referred to in para. 40(x) above, in which case it may never have materialised. In any case, even if it had, one patrol in half a century hardly contributes to making a case for active possession of the territory of Belize.

55. Item (para. 45, b.3) refers to a concession granted to the "Eastern Coast of Central America Commercial and Agricultural Co." on 6 August 1834, approved by the Legislative Assembly of the State of Guatemala on 14 August 1834. The same paragraph states that the "Decree and Official Map of the Province of Verapaz was published in London by Whittaker and Co. "for the knowledge of British subjects" ". But the Company was promptly warned by the British Government that if it received from a foreign Government a grant of land "which is included within the limits of a British settlement, such persons must take the consequences of their connivance with the encroaching pretensions of such foreign government". The Company was informed of the limits of the British settlement in the Bay of Honduras. The Company failed within a few years and its Charter was forfeited. Despite the decrees of the Guatemalan authorities issued in relation to the Company, there is no evidence that they were translated into facts on the ground or came to be anything more than paper claims.[58]

56. As to the "Official Map" referred to in para. 45, b.3 of the Guatemalan Statement, this bears the legend

"The Territory of Verapaz ceded by the Federal Government of Central America to the Directors of the British Company of Agriculture, Commerce and Colonisation with Part of the Surrounding Country compiled and corrected from the latest Authorities and Original Surveys never before Published".

The map that is reproduced in the Annexes to the Guatemalan Statement[59] is accompanied by the following statement printed below it:

"1839 – Mapa de la British Col. Co. . Map of the "British Company of Agriculture, Commerce and Colonisation". The English Company of this name had obtained from the Government of Guatemala the concession to colonise on the North Coast. Said Company had a map made, on which the zone of the concession is marked in black. This map, made by the English, to protect English interests, demonstrates that in 1839 the territory of Belize (British Honduras) reached as far as the River Sibun, but no further South, notwithstanding the "conquest" of the territory from the River Sibun to the River Sarstoon which the English Government allege to have effected".

57. However, examination of the map as reproduced in the Annexes to the Guatemalan Statement (it does not appear to be numbered) reveals a rather different situation. The only area marked in black on that map (and it is marked very prominently) lies some distance south of the River Sarstoon and covers only an area bounded by part of the shore of the Gulf of Honduras, the Motagua River to the south

[58] See Humphreys, pp.42-43.
[59] Siglo XIX.

and Gulf of Dulce to the north – a region falling entirely and indisputably within the limits of Guatemala.

58. Para 45, "b.4": Guatemala asserts that the territorial division of Guatemala into seven departments in 1839 included two districts, Izabal and Peten, and that " the latter comprised the coasts located between the Sibun and Sarstoon rivers". Although Guatemala refers to an enactment of the Assembly of the State of Guatemala of 12 September 1839, it does not provide the words or the text of the enactment. A copy of this decree, with its accompanying table, however, is in our possession.(See Annex 32) Nowhere does it state, as Guatemala would have the Facilitators believe, that one of these districts "comprised the coasts located between the Sibun and Sarstoon rivers" . What is more, the Table accompanying the law lists nine villages or settlements existing in the "Comandancia del Peten", and not one of them is within the established boundaries of Belize. Indeed, they are far from the border, giving further proof that even the areas within present-day Guatemala near to Belize's border were not inhabited by Guatemalans or administered by the Guatemalan authorities. Thus, beyond mere assertion, this item does nothing to prove that Guatemala exercised effective authority over "the coasts located between the Sibun and Sarstoon Rivers", or any part of present-day Belize. Moreover, even had the enactment said what Guatemala falsely claims that it said, such a statement would, in the absence of any evidence of administrative conduct in the area, amount to mere assertion and no more.

59. Para 45, "b.5": Guatemala also invokes as evidence of the authority exercised by it over the area that is now Belize "the note dated July 8th, 1847, attached to the Treaty of Commerce signed in 1847".

60. The operative part of the Guatemalan Note, in its own words, was intended

"to record expressly the understanding in which we have proceeded and are proceeding, considering that the treaty signed on June 25 in no way involves or affects the rights of the Republic of Guatemala in the boundary matter relative to the concessions in the territory of Belize, to which the treaty of 1783 and the Convention of 1786 between His Britannic Majesty and His Catholic Majesty relate".

61. The understanding of Belize is that this note was an attempt to preserve the position of Guatemala, such as it was, in relation to the boundaries within which the British woodcutters were permitted to operate under the treaties of 1783 and 1786. To be effective, the Guatemalan position required acceptance by Britain. No such acceptance was forthcoming. For one thing, the 1847 Treaty had nothing to do with boundary matters or title to territory. For another, the British Consul evidently took care in his reply to avoid giving Guatemala the assurance it sought:

"Without instructions, I can give no opinion on this subject. Nevertheless . . . I conceive that the Treaty of Amity, Commerce and Navigation . . . need not affect any arrangement which the Government of this Republic may desire to conclude at a future time with Great Britain respecting boundaries".[60]

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[60] British Note of 19 July 1847, Annexes to the Guatemalan Statement, Siglo XIX, No.6 and *GWB*, p.67.

62. Belize cannot understand what possible use the reference to these notes can be to Guatemala in supporting its assertion that between 1821 and 1859 it exercised "acts of domain" over the territory of Belize. Quite to the contrary: the correspondence did no more than elicit from Britain the response that the issue between the two sides was one of boundaries, not of title to territory.

63. In para. 45, "b. 6" Guatemala also adduces Decree No. 49 of 28 December 1850 as evidence supportive of its claim to have actually exercised power in the territory between the Sibun river and the Sarstoon river. But to be effective as an item of evidence, Guatemala would need to produce the register of recorded concessions mentioned in Article 5 of the same Decree. The absence of this register demonstrates the weakness of Guatemala's contentions in this respect. Moreover, the decree itself is nothing more than a self-serving assertion on the part of Guatemala.

64. In para. 45, "b.7" Guatemala next invokes what it calls "the offer of cession to Great Britain of the disputed territory of Guatemala" and cites in this comment "Note and draft of the 1857 Treaty". But here again the documents speak against Guatemala's contention. Instead of asserting the existence of Guatemalan control over the area between the Sibun and Sarstoon Rivers, the documents repeatedly acknowledge the actual situation in the area which was one of possession and control by Britain. Even if one examines only the correspondence printed by Guatemala in its *White Book*, it is clear that Guatemala acknowledged the fact of British penetration south of the Sibun. True, Guatemala's view was that this penetration violated the limits set by the treaties with Spain, but that is not the point now. The position of Britain and Belize is that the extension of British possession was conduct of a prescriptive nature; the only issue now is whether in fact such an extension occurred and whether it encountered any Guatemalan presence on the ground. The Guatemalan documents themselves evidence *by their words* the fact of British possession and *by their silence* the absence of any competing Guatemalan activity actually within the area.

65. Thus, on 14 February 1857, Sr. Martin (the Guatemalan Minister in Paris) wrote to the Guatemalan Foreign Minister saying that he expected to go to London in the following months "to initiate the negotiation of a boundary treaty and to solicit just compensation for the territory unduly invaded by the British in Belize".[61] What can this sentence mean other than that the British were already significantly present between the Sibun and Sarstoon, albeit described by Sr. Martin as an "invasion"? What matters is not Guatemala's legal characterisation of the British presence, but Guatemala's acknowledgement of the fact of such presence.

66. Guatemala was fully aware of the extent of British possession in the region as appears clearly from the following extract from a despatch by Mr. Stevenson to the British Foreign Secretary dated 24 June 1857, reporting his conversation with Sr. Martin:

"I have twice met Don Francisco Martin on the subject of those boundaries, and explained to him the extent of the British occupations, beyond the original limits of the Spanish Treaties, as the nature and foundation of the British claim to a line of

[61] Guatemalan *White Book*, p. 72. See Annex 20.

boundary that would cover all such actual occupations and effectually prevent all future trespasses by either party.

In suggesting this claim to a certain and well-defined line of boundary, I explained that many of these actual occupations had existed for periods ranging between thirty, forty and fifty years, and that it would be impossible, from the nature of the country and the scattered possessions of the wood-cutters, to circumscribe each individual occupation, or otherwise to deal with the difficulty of boundary than by including the whole of such possessions within the limits of certain clearly defined lines, drawn within well-known or easily determined points.

This, Don Francisco Martin appeared very readily to concede, although he seemed to doubt whether I had been rightly informed as to the length of possession of many of the occupations in question, south of the Sibun. Upon that point, however, I have no hesitation in saying that I believe all the information I have received and furnished to have been perfectly correct.

I think and hope that the result of all these explanations has been a successful step towards the determination of the boundaries of the British possessions. I reduced to writing the lines which were acquiesced in, subject to some collateral understanding, with which, I informed Don Francisco Martin, I could not deal, but which he was to take some other occasion for bringing before your Lordship.

The general outline of boundary so arranged, is as follows, viz.: -

East, from the Hondo to the Sarstoon, on the shores of the Bay of Honduras, including all the cays and islets off the mainland within the same latitude;

South, from the mouth of the Sarstoon to the Gracias á Dios Falls on that river (Sénor Martin tells me these Falls have some other known name);

West (south of the River Belize), on a line drawn from Gracias á Dios Falls to Garbutt's Falls, on the River Belize, and (north of the River Belize) on a continuing line drawn due north until it either intersects the Blue Creek branch of the Hondo, or reaches a point in the same parallel as the source or head of Blue Creek, as actual survey will determine; and

North, from such point of intersection, or of parallel, down Blue Creek to its confluence with the Hondo, and thence down to the mouth of the Hondo.

To this general outline of boundary some minor details and stipulations were added or suggested, and acquiesced in; and the whole result, as it appeared in my Memorandum, was left with Don Francisco de Martin for more careful perusal, and afterwards, with one or two marginal notes of his own, placed in the hands of Mr. Bergne, at the Foreign Office, to be shaped into Articles for a Treaty of Boundaries.

I have since perused those Articles as they have been prepared, and think that they are quite comprehensive enough to settle the question of boundary, if finally acquiesced in by the Minister for Guatemala, and if they be also accepted and

confirmed in a separate Treaty with Mexico, so far as concerns its contiguous State of Yucatan.

I may also mention that I have introduced a stipulation that the State of Guatemala is confined to the defined limits of the British possessions in so far as it binds thereon: and that all claim on the part of Guatemala to any part of such British occupations is entirely abandoned".[62]

67. The description of the boundary in this report is almost exactly mirrored in the draft prepared by Sr. Martin which is quoted *in extenso*, without a date, in Sr. Mendoza's book.[63] The draft is said to have been delivered to Lord Clarendon on 7 July 1857.[64] The principal difference between the two texts is that the Guatemalan draft proposes an article on the compensation to be made by Britain in the form of a guarantee against any enterprise that might be attempted by adventurers to the detriment of Guatemala. But as far as the important geographical elements are concerned, the two documents correspond with each other, particularly in the acknowledgement that the southern boundary is at the River Sarstoon and that the territory of Belize comprises "the entire east coast and the adjacent islands".[65]

68. It may, in passing, be noted that in the explanatory memorandum accompanying the Guatemalan draft Sr. Martin specifically stated that, despite Guatemala's view that Britain's possession over the settlement of British Honduras did not have the character of a perfect possession,

"the Government of Guatemala *relinquishes from now on the discussion of the principles raised by these points; declares itself convinced of the expediency of accepting the accomplished facts; is honoured and satisfied to have as a neighbour a nation so powerful and enlightened; is pleased to recognise the mutual interests which arise from the said proximity between England and Guatemala and congratulates itself in thinking that because of such plausible motives, she may obtain advantages which would be worth as much perhaps to her, under the present circumstances, as restitution to her of possession and sovereignty over all the territory, which is the subject of the present negotiation.*"[66]

This clearly demonstrates that Guatemala accepted the "accomplished facts", which in this context can mean nothing other than British occupation and control of the entire territory of Belize, from the Hondo to the Sarstoon.

69. Para 45, "b.8": The last item produced by Guatemala as "an act which only the title holder of the territorial sovereignty could have exercised" is what it describes as "a copy of the 1859 official map of the Republic of Guatemala". It must be said straightaway that the copy of the map annexed to the Guatemalan Statement is so

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[62] British F. O. Confidential, Print 5490, p. 173. See Annex 21. That Guatemala is acquainted with this source of material is evident from the fact that amongst the documents that Guatemala itself has submitted to the Facilitators are some extracts, source unidentified, but which appear to be either from the British Parliamentary Papers or from the F. O. Confidential Print. See Guatemalan *Annexes*, Siglo XIX, No. 8.

[63] Mendoza, pp. 127-8. See Annex 2.

[64] *Ibid.*, p. 129.

[65] The text of the Guatemalan draft is reproduced in Annex 2.

[66] Mendoza, *op. cit.*, pp. 129-130. The emphasis placed on the passage quoted above follows the emphasis placed in the text in Sr. Mendoza's work.

much reduced as to be almost impossible to read. In particular, it is impossible to identify from it either what may have been the limits of the Departments of Peten and Vera Paz or what may be the significance of the shaded portion – seemingly in two different degrees of shading – in the north-east corner of the map. In itself, the map provides no evidence of any actual occupation by Guatemala of the area between the Sibun and the Sarstoon for there is no identifiable location of any Guatemalan population.

70. It is to be remarked that the 1832 map of the Department of Vera Paz by M. Rivera Maestre, which is also included in the Annexes to the Guatemalan Statement, Siglo XIX, Annex 4, goes no way at all to showing that the Department of Vera Paz covered any part of the Atlantic Coast between the R. Jabon (presumably the River Sibun) and the unnamed river which corresponds to the River Sarstoon. The coastal region and its hinterland stretching back to the mainland is entirely blank.

71. No less "official", and therefore significant in the eyes of Guatemala, is the 1876 map of Guatemala, the significance of which derives from the fact that it is stated to be "Levantado y publicado por orden del Smo. Gobierno ("made and published by order of the Government"), prepared by Herman Au, engineer, engraved and printed in Hamburg by Charles Fuchs and published by L. Friederichsen & Co, Hamburg. It also carries the notation "Depositado para Centro-Americano con los Sres. Hockmeyer & Co. in Guatemala and Retaluleu".[67] The scale is 1:700,000. The map clearly shows the southern boundary line along the River Sarstoon and from the point of the meeting between that river and the River Gracias á Dios, the straight line drawn in a north-north-westerly direction. The region to the east of the boundary is called "Belize". There is no indication of any Guatemalan town or settlement in the area south of the River Sibun (or, indeed, elsewhere in Belize). The area of the Republic is stated to be 38,800 square miles and manifestly does not include Belize.

72. Even if it be said that this map reflects the boundary established in 1859 and, therefore, does not shed much light on the extent of Guatemala before that year, note may still be taken of the fact that still in 1876 there is no indication of any Guatemalan settlement in the area and, incidentally, of the fact that at that time Guatemala officially acknowledged the operation and effect of the boundary drawn in 1859.

73. In the light of the above comments, it is manifestly impossible for Guatemala to sustain its contention in paragraph 47 of its Statement that

> "the evidence show that between 1821 and 1859, not only the State of Guatemala but also the Republic of Guatemala, kept an active claim and protest against the illegal occupation of its territory by Great Britain, and that, in addition, it exercised acts of dominion in said territory. Hence, the illegal occupation did not furnish Great Britain any legitimate grounds to uphold that she had acquired said territory by prescription".

74. Of the eight items presented in paragraph 45 as "b.1" to "b.8", not one of them matches up to the concept of "active claim and protest":

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[67] Annex 22.

"b.1". This does not show that the constitutional claim of Guatemala extended to the southern part of Belize. It is, in any case, a unilateral, domestic act of Guatemala.
"b.2". Even if it were established as a fact (which it is not), this item does not amount to an exercise of authority on the mainland or, indeed, even on the islands past which the cruiser is alleged to have sailed;
"b.3". Though the grant of concession might have constituted an act of authority, it led to a warning from the British Government that if the company received from a foreign government a grant of land within the limits of a British settlement, it must take the consequences of its connivance with "the encroaching pretensions" of such foreign government. Moreover, the grant came to nothing and the Company's charter was forfeited. So the grant amounted to no more than a paper claim;
"b.4". Again the geographical scope of the departments is not clear and, without evidence of further governmental action, provides no proof of possession;
"b.5". This is nothing more than a reservation of Guatemala's position as to the effect of the treaty of commerce on the boundary and was entirely unnecessary in the circumstances since the treaty had no bearing on boundaries;
"b.6". In the absence of any proof of being followed by acts of registration by concessionaires in the area of southern Belize, this is no more than a paper claim;
"b.7". The supporting document shows nothing more than that the offer of cession in 1857 acknowledged the prior effective British occupation of the area;
"b.8". The map is reproduced in so reduced a form that it is impossible to discern what it really shows.

75. The items deployed by Guatemala in support of its assertion of "active claim and protest" show by their very paucity that over the period of nearly 40 years from 1821 to 1859 Guatemala did virtually nothing to demonstrate its authority over the area. The kind of evidence of sovereign presence that one might have expected during such a period would have numbered not eight dubious and inconclusive items, but dozens of real ones. There would have been at least one formal protest. There was none. There would have been evidence of population owing their allegiance to Guatemala, of their numbers and location, of acts of administration such as the passing of laws and the performance of executive and judicial functions. No such evidence is produced or any other material which even impliedly establishes the presence of Guatemalan authority. But despite these defects in the Guatemalan case, it is noteworthy for one feature favourable to the position of Britain: Guatemala, in asserting that by reason of its own behaviour Britain's conduct did not furnish any legitimate grounds to uphold that she had acquired the territory "by acquisitive prescription", is in effect acknowledging that, if the facts were right, as a matter of law title could be secured by acquisitive prescription. And at various other points in its Statement, Guatemala acknowledges the fact of British occupation of the area (e.g. para. 50, which refers to "the *de facto* occupation of that same area by Great Britain from 1825 through 1859").

C. Summary of Belize's case in customary international law

76. It may be convenient to recall in summary form the main features of the customary international law case for Belize as set out above:

77. (i) Guatemala appears to find it impossible to shed the mind-set that was formed and expressed over a century and a half ago that the legal position must always be judged by reference to the terms of the 1783 and 1786 Treaties. Those

treaties were superseded by events. The continuance on the ground for virtually 200 years of a state of affairs indicative of British, and subsequently Belizean, sovereignty over the area is more than sufficient to have replaced Spanish sovereignty. The constant repetition by Guatemala, not without variation from time to time, of arguments looking back to an irrecoverable past cannot serve to replace the indispensable ingredient of continuing sovereignty, namely, continuing possession and continuing administration. Paper claims are no substitute for the physical control of territory.

78. (ii) International law accepts and acknowledges the concept of historical consolidation of title based on the facts of possession. Although there is no prescribed period for the effective operation of this process, there is no case in which possession for 150 years, unconfronted by any conflicting possessory title, has been deemed ineffective to establish title. Moreover, as regards the establishment of British title by the year 1850, the date of the Clayton-Bulwer Treaty, the period of more than 25 years since the prior disappearance of any sign of Spanish authority in the area, and the absence of any real demonstration of Guatemalan authority there, would have led to the perfection of British title by the process of acquisitive prescription. The fact that the original limits to British presence were set by treaties does not prevent time and facts curing the original illegitimacy of any trespass beyond those limits. The variation of treaty provisions by the conduct of the parties is an accepted and prominent feature of the interpretation and application of treaties.

79. (iii) British presence and administration of the area to the south of the River Sibun and gradually extending to the Sarstoon from a time when records are relatively sparse – and the corresponding absence of any sign of Spanish or Guatemalan authority – is evidenced by the following items:

(a) Reports in 1791-1800 of the presence of British settlers as far south of the Sibun as Deep River;

(b) A report in 1802 to similar effect;

(c) A report in 1802 that the settlers were within sight of the Spanish fortifications at Omoa;

(d) Reports in 1806 that the settlers were at Deep River and Mullins River; and that the mahogany cutters were active at Deep River, Golden Stream and Rio Grande;

(e) A report in 1814, confirmed in 1816, that the woodcutters had reached the Moho River, only 15 nautical miles north of the Sarstoon – an area at that time occupied solely by Indians and where the writ of Spain had never run;

(f) In 1825 the British Superintendent in Belize described the Sarstoon as being the southern boundary;

(g) In 1826 a map sent to London recorded the extension of the limits of British settlement to the Sarstoon; and the *Honduras Almanac* also so described the southern boundary;

(h) This was confirmed by a report from the Superintendent in 1827, by a meeting of the Council in 1834 and by a map produced in 1835;

(i) In 1837 the Superintendent began making Crown grants of land as far south as the Sarstoon;

(j) In 1843 a British Admiralty Chart, publicly available, showed the Sarstoon as being the southern boundary.

80. (iv) By 1835 Britain considered that its possession of territory beyond the limits of the Treaty grants of 1783 and 1786 was sufficiently established to justify *ex abundanti cautela* a request to Spain to confirm the situation by a formal cession. Though no Spanish agreement was expressly recorded, equally no Spanish denial of the position has been found.

81. (v) The language of British statutes of 1817 and 1819 does not run counter to this position, but stands as an assertion of British legislative authority over the area.

82. (vi) The British Privy Council (the highest British court of appeal for the Colonies) held in 1880 that the Crown had territorial dominion in Honduras as early as 1817.

83. (vii) The exercise of British authority in British Honduras is also shown by the large mass of material in the British Public Records Office relating to British administration in Belize throughout the 19th and 20th Centuries.

84. (viii) Guatemala has, for its part, repeatedly acknowledged British title throughout Belize by acting in a manner that is explicable only on the basis of Guatemalan acceptance that the territory lying east of the line running north from Gracias á Dios to Garbutt's Falls and thence to the border with Mexico was British. (See para. 50 above.)

PART TWO
VARIOUS POINTS IN GUATEMALA'S ARGUMENTS THAT DO NOT ALTER THE POSITION

I The legal consequences of Guatemala's emergence into independence: irrelevance of the doctrine of *uti possidetis*

85. Guatemala devotes some space to the assertion of its position as successor in title to Spain (paras. 49-62). Some of Guatemala's arguments are based upon the attribution by it to Britain of arguments which have hitherto formed no part of the discussion. For example, Guatemala asserts that Britain argues that there was a dereliction of title by Spain (*derelictio*, para. 51) and that the territory became *res nullius* and "therefore" i.e. only for that reason, capable of occupation (para. 52).

86. Arguments of this kind really have no relevance to the present difference. There is no reason why Belize should dispute the existence generally of the doctrine of *uti possidetis factis* (which is Guatemala's approach to the doctrine) or deny that in principle Guatemala, in common with the other parts of former Spanish colonial empire, succeeded at the moment of independence to the relevant parts of such Spanish territories as Spain may have retained title to at the moment of independence and over which it actually exercised authority. The real point is that even during the period of nominal Spanish authority, Spain would not have retained title in the face of adverse British possession outside the 1783 and 1786 treaty limits. So the doctrine of succession and of *uti possidetis* does nothing to help Guatemala. The reason why Guatemala did not inherit southern (and, indeed, northern) Belize from Spain was because by 1821 Spain had already lost title there – as the terms of the British diplomatic initiative of 1835 made clear. And insofar as Guatemala may have inherited any title from Spain over any part of Belize (*quod non*), it lost title to it by reason of its own inaction in the face of Britain's acts of possession. Besides, as pointed out in paragraph 35 above, there is evidence that the relevant area was considered by Spain as being within the authority of the Spanish Governor of Yucatan and not of the Captaincy General of Guatemala.

87. Moreover, it should be recalled, as was pointed out by Chief Justice Hughes in the *Guatemala/Honduras Boundary Dispute*[68] that the concept of *uti possidetis* at the time of the independence of the former Spanish colonies only operated as between those States that were part of the Spanish colonial regime. The concept would not, therefore, then have applied as against a third State, Britain, and would not have served to vest in Guatemala by mere succession a title capable of overriding Britain's possessory title.

II The nature of the controversy

88. Guatemala states in para. 63 that Belize claims that "the dispute deals strictly with border demarcation". The error of this statement has been pointed out in para. 6 above.

89. Guatemala states in para. 64 that the 1859 Convention is "essentially, a treaty of territorial cession". The error of this statement has been pointed out in paras. 16-20

[68] 1933, 2 UNRIAA, pp. 1322-1323. See Annex 23.

above. In view of the nature of the response there given by Belize it is unnecessary to follow Guatemala into its discussion of whether Article VII of the 1859 Convention was performed by Britain. Whatever may be the correct position in that regard (and Belize does not accept the Guatemalan analysis), the fact remains that performance or non-performance of Article VII cannot affect the present title of Belize to the territory that it possesses and administers. (See para. 22 above.) This title also flows from factors independent of the 1859 Convention, namely, Britain's title to the area resulting from its prior possession of the southern territory, beyond the limits of the Spanish grants, without protest or competition from any other source, from perhaps as early as 1798 onwards.

III. Maritime and insular Claim

A. Insular claim

90. Guatemala advances in relation to the islets and cays the same arguments that it has used in relation to the southern portion of the territory of Belize, namely, that they were not considered to be part of the usufruct granted by Spain and therefore must be considered as "usurped territory".

91. This contention suffers from the same basic flaw as Guatemala's argument relating to title to the mainland territory. Whereas for Guatemala the idea that the areas in question were usurped without authority is both the beginning and the end of the case, for Belize the "usurpation" (if such it was) is only the beginning. The "usurpation", which consists of a taking of possession in contradiction of the rights of Spain, starts the process of British acquisition of title by adverse possession which hardens into a firm title on the basis of historical consolidation. So, whatever the treaties of 1783 and 1786 may have said, they are overridden or bypassed by the fact of British possession for a long period prior to 1850.

92. In short, the Guatemalan assertion (in para. 74) that "in regard to insular territory, Great Britain cannot argue prescription by indefinite possession because any possession that it may have had would be in violation of the grant treaties and prescription could not perfect itself on account of said possessions" is quite wrong, as stated in para. 37 above.

93. In any event, even as early as 1834, the association with the mainland of the cays and islets off the coast of Belize between the River Hondo and the River Sarstoon was recognised, as is indicated by the following inscription that appears on the map of British Honduras annexed to the Memorial "dated Colonial Office 1834", believed to have been prepared by L. Hebert. "All keys and islets which are situated between the "Hondo" and the "Sarstoon" are in actual British occupation and must be comprehended in her Treaties".[69] In 1851, there is a document evidencing the willingness of the Governor to grant a lease for a period of ten years over the cays in Glover's reef[70] and in 1858 another relating to "Long Kaye."[71] In the discussions between Guatemala and Britain regarding the boundary,[72] both sides produced drafts which acknowledged that the British possessions included all the cays and islands off

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[69] See Breton and Antochiw, *Cartographic Catalogue of Belize*,(1992), pp. 103 and 177, and Annex 10A.

[70] See Annex 13 A.

[71] See Annex 13 B.

[72] See above, paras. 66-67.