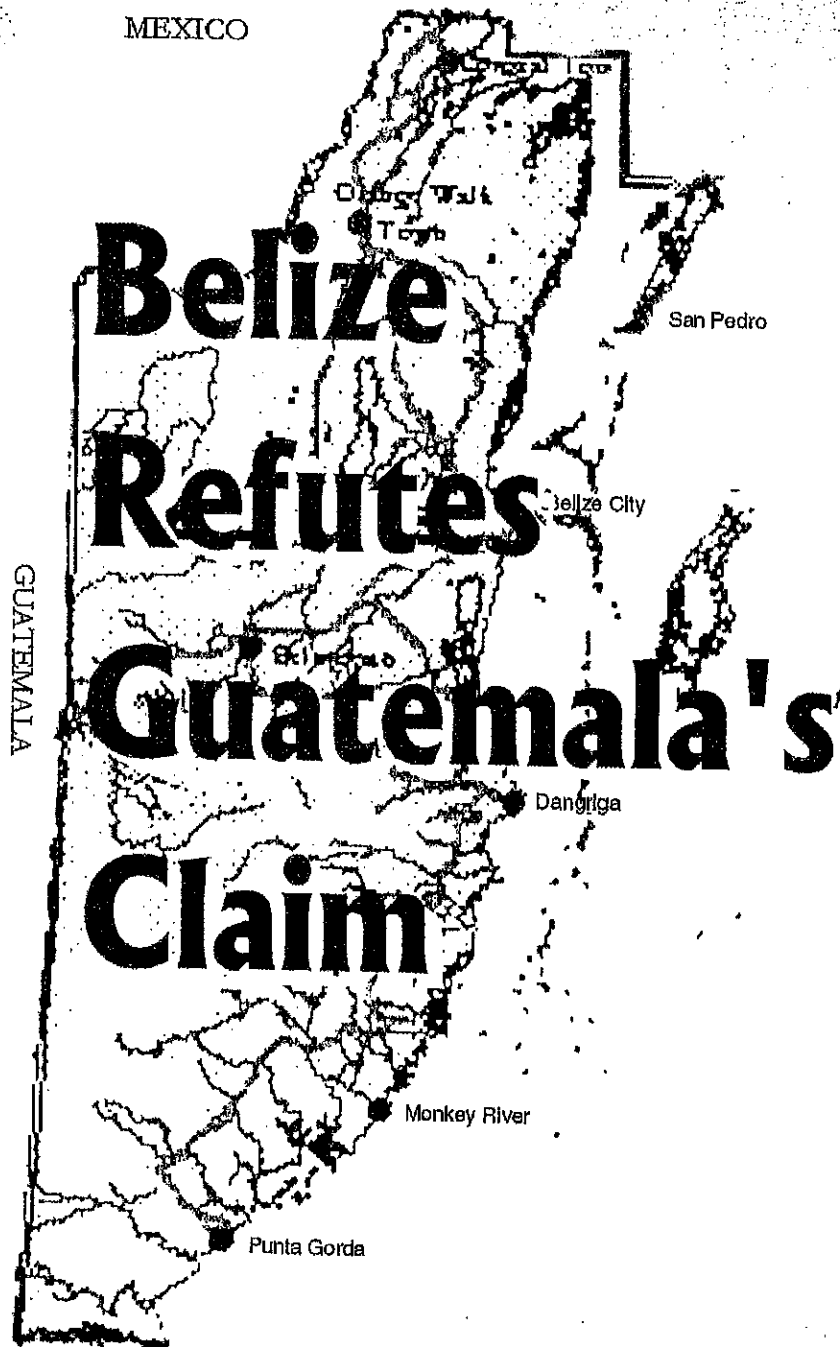


Mayo 21-22, 2001

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**Oral Presentations Made by Belize In
Response To Guatemala's Territorial Claim**

**ORAL PRESENTATIONS BY
BELIZE IN RESPONSE TO THE
GUATEMALAN CLAIM TO BELIZE**

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WITNESS OF HONOUR:

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PRESENTERS FOR BELIZE:

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21st and 22nd May 2001

*Headquarters of the
Organisation of American States
Washington, DC*

ORAL PRESENTATIONS BY BELIZE IN RESPONSE TO THE GUATEMALAN CLAIM TO BELIZE

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FOREWORD

Belize became independent on the 21st September 1981 from Great Britain in the face of a claim to its territory by the neighbouring Republic of Guatemala.

Guatemala contends that it inherited Belizean territory from Spain based on the doctrine of *uti possidetis*. Belize regards this Claim as specious and unfounded.

Belize has always sought to settle the Guatemalan Claim through negotiations. The latest round of negotiations was launched in July 2000 in Washington DC when Belize and Guatemala agreed to appoint Facilitators, with the Secretary General of the Organization of American States acting as a witness of honour, "whose role would be to move the process of negotiations toward a final resolution of the territorial *disputandum*."

The Facilitators directed Belize and Guatemala to deliver written statements of their claims according to the following schedule, with which the parties duly complied:

Guatemala	31 st March 2001
Belize	30 th April 2001
Guatemala [Reply]	15 th May 2001.

On the 21st and 22nd May 2001, representatives of Guatemala and Belize appeared before the Facilitators and the witness of honour and made oral presentations in support of their respective positions.

Belize has defended its right to exist as an independent nation based on the exercise of its inalienable right to self-determination, and the fact that before 1821 Great Britain had acquired good title over all that is today Belize by virtue of acquisitive prescription and historical consolidation. Belize also relies on two boundary treaties between Guatemala and the United Kingdom that definitively demarcate the frontier between Belize and Guatemala.

This booklet sets out the oral arguments made by Belize to the Facilitators and to the Secretary General. The Annex is important. It includes the report from Foreign Minister Pedro de Aycinena to the Guatemalan Chamber of Deputies in 1860 giving Guatemala's rationale for the 1859 boundary treaty. It also includes the 1931 Exchange of Notes which reveals the categorical position of the Government of Guatemala, as late as 1931, respecting the boundary between Belize and Guatemala.

Ministry of Foreign Affairs
Belmopan
May, 2001

Belize's Lead Statement

Assad Shoman

Distinguished Secretary General and Facilitators, His Excellency the Foreign Minister of Guatemala and members of the Guatemalan delegation:

The Belize delegation's oral presentation is in keeping with the procedures for the statement of our position and our refutation of Guatemala's territorial, maritime and insular claims to Belizean territory, as defined in the Agreement of February 7, 2001. In accordance with that Agreement, we submitted our response to Guatemala's Statement of Claim in terms that were appropriate to Guatemala's statement. Their presentation was framed in legal terms; our Response was framed in legal terms. Their Reply is also framed in legal terms, although they attempt to take us to task for stating very clearly what we know the legal position to be.

Let us be clear on this matter: we are not attempting to limit or re-define the functions of the Facilitators, nor are we being intransigent, as the Guatemalan Reply insinuates. Rather, we are motivated by the clear words of the Terms of Reference of the Facilitators, agreed by the Parties on 20 July, 2000, where it states at paragraph 3.1 that the parties are to submit documents and information to aid the Facilitators in identifying specific issues in dispute between the two States.

Guatemala's Statement specified those issues which it relies on to sustain its claim to the whole of Belize and its demand to be given more than half of our territory. We in turn specifically and, I submit, conclusively, refuted all the grounds on which Guatemala relies to sustain its totally unfounded claim. If for so doing they get some satisfaction by suggesting that we are intransigent, so be it. The international community, for twenty-five years, has not only supported our right to self-determination and territorial integrity but has insisted that, in order not to violate the hallowed international principle of the stability of boundaries, we should maintain our territorial integrity, and indeed the United Nations General Assembly

has called on the relevant organs of the UN "to guarantee [Belize's] security and territorial integrity" after its independence. [Resolution 35/20 of 1980, para.7].

That international community knows that Belize has been extremely patient with the spurious and anachronistic claim of the Governments of Guatemala to its territory, and that Belize has been trying for many years in good faith to find a peaceful solution to the dispute. That international community knows that on many occasions Guatemala has agreed to solutions by which they recognized Belize's territorial integrity, only to later renege on those commitments.

That international community would never give the slightest credence to Guatemala's ingenious charge that Belize is unwilling to give serious consideration to the suggestions of the Facilitators aimed at reaching a definitive settlement. At the same time, as that international community has repeatedly and solemnly declared, any such settlement must ensure the preservation of the inviolability and territorial integrity of Belize. [UNGA Resolution 3432 of 1975, para. 5]. In making clear to the Facilitators that we cannot, therefore, violate that mandate from the world community, we are simply restating the position, so that the Facilitators may recognize the limits of the courses of action open to all of us if we are not to violate the clear mandate of the United Nations.

And let us also be clear about the process in which we are presently involved: Belize takes these proceedings very seriously; this is not a game for us, nor is it some nice legal match. We recognize that what we have here is a mortal threat from a militarily much more powerful neighbour that blatantly declares its intention to grab more than half of our territory, without regard to the rights of the people on that territory, without regard to the rights of our nation solemnly reaffirmed by the United Nations, without regard to the most hallowed principles of international law. In this context, we take great comfort in the mandate given to the relevant organs of the UN to guarantee our security and territorial integrity.

Of course we want a peaceful and just solution. Of course we will give the most serious consideration to whatever just proposals are made by the Facilitators. Our very existence in peace and security depends on a just and lasting solution. It was famously said with regard to a village in a war in the last century that it was destroyed in order to save it. Please do not try to submit us to the same twisted logic, to suggest that we must cut off our country from the waist down in order to live in peace.

At the same time, we are heartened by certain admissions in the Guatemalan Reply. We seem to be in agreement on the position that maritime boundaries depend on land boundaries, and therefore that those cannot be determined until we settle the question of the territory. Guatemala does not deny the existence of the Treaty of 1931, and it recognises the validity of the newly developed principle of what we might call *uti possidetis universalis*, a principle that we adopt and champion. These are positive steps that may begin to point the way forward for the Facilitators to propose solutions based on agreed positions of the Parties. I propose during tomorrow's sessions to make more concrete proposals for the benefit of the Facilitators, but for this Presentation we will follow the agreed procedure and make a clear statement of our own position and a clear refutation of Guatemala's positions.

Our presentation will be made in several parts, as follows. Firstly, I will state the Belize position in accordance with customary international law. Next, the distinguished British Queen's Counsel, Edward Fitzgerald, will address the matter of the Treaties. Senior Counsel Eamon Courtenay will then explain our position with regard to *uti possidetis*, and he will also address the questions of the insular and maritime claims. Ambassador Fred Martinez will deal with the very important points on self-determination and the determinations of the world community in the United Nations, and Attorney-at-law Janine Coye will explain the legal implications of the UN resolutions in terms of the link between self-determination and territorial integrity. I will then make some concluding remarks. In making our presentations, we will not repeat the copious

evidence we already submitted in our Response and accompanying Annexes, but simply summarize our main ideas. We know that the Panel will read those documents as integral parts of these our submissions.

The Position in Customary International Law

Assad Shoman

(i) Acquisitive Prescription

With the greatest respect, it is clear that the Guatemalan position does not reflect any understanding of the very essence of the international law principle of adverse possession. In paragraph 33 of their Reply, they state that "the Belizean argument indicates that the appropriation or the possession of something belonging to another carries as a consequence the acquisition of title over the thing. Following this crooked reasoning, the thief that appropriates something belonging to another would also acquire each day after the theft a better title", and they seek, in effect, to laugh at such a proposition. Well, they can laugh away, but it happens to be exactly so. They also have the quaint idea that acquisitive prescription depends on the territory being *terra nullius*, and go to great lengths to prove that the territory in question was not in fact *terra nullius*. They need not have exerted such efforts. We not only accept that the territory was not *terra nullius*, but indeed we embrace that fact as an integral part of our case for acquisitive prescription.

I beg the indulgence of the Secretary General and the Facilitators, who are no doubt familiar with these fundamental principles of international law, but for the benefit of our Guatemalan brothers allow me to quote some law on this issue.

Professor Malcolm Shaw in the fourth edition of his textbook of *International Law*, at pages 343-344, states:

"Prescription is a mode of establishing title to territory which is not terra nullius and which has been obtained either unlawfully or in circumstances wherein the legality of the acquisition cannot be demonstrated. It is the legitimisation of a doubtful title by the passage of time and acquiescence of the former sovereign...it is the legitimisation of a fact"

The second authoritative statement comes from Oppenheim's International Law, 9th edition, 1992 (page 706). As the learned author says there:

"There is no doubt that in international practice a state has been considered to be the lawful owner even of those parts of the territory of which it originally took possession wrongfully..."

Sir Gerald Fitzmaurice in his book entitled The Law and Procedure of the International Court of Justice, states:

"Prescription is a process of erosion and encroachment... But it is of the essence of the case that, in their inception, the acts concerned are illegal, any possession resulting from them is adverse and unlawful, and the whole process is contrary to the wishes of, and lacking in consent from, the real sovereign. The prescriptive title arises from the gradual change in the quality of these acts, or of their possession, produced by the combined effect of lapse of time or silence by the original sovereign. It is this last factor – tacit acquiescence amounting to a surrender of the title – that is the real and proximate cause of the change of sovereignty."

He states that the essence of a claim of acquisitive prescription is that encroachments are an adverse taking of possession, and that jurisdictional acts, which were at their inception illegal or invalid, have gradually operated to create a title by a process of tacit acquiescence on the part of the original sovereign, amounting in the end to a tacit abandonment or surrender of its sovereignty.

We have specific evidence here that Guatemala herself acknowledged that Spain had "abandoned" the territory which became British Honduras, and acquiesced in British encroachment up to the Sarstoon before 1821.

I will now quote from a document which is fatal to many parts of Guatemala's positions, and which other members of our team will have occasion to refer to. I therefore wish to submit it in its entirety as an exhibit to the Panel. It is the letter written by the Foreign Minister of Guatemala, Pedro de Aycinena,

and addressed to the Secretaries of the Chamber of Representatives, and dated 4 January 1860.

Allow me to point out that this very important piece of evidence has for years been suppressed by the Guatemalans; it is not to be found in the hundreds of pages of the White Book and its continuations, which pretend to give an exhaustive coverage of all relevant documents on the question of Belize. All attempts by our Ambassador in Guatemala to get this and a number of other documents from the Guatemalan archives have come to naught, he being told that the Foreign Minister himself must authorise their release, and he has not yet done so. When you read it you will understand why. This is a letter in which the Foreign Minister and negotiator of the 1859 Treaty explains honestly and clearly why the Treaty was signed and ratified, what the situation on the ground was, and what were the intentions of the parties.

On the point at hand, the distinguished Foreign Minister says:

"The advantages of establishing the hitherto undefined boundaries of the Republic on our Atlantic Coast have been acknowledged in several periods throughout our history, all the more so in the face of relentless encroachment by the population of Belize. We, in turn, have been prevented from gaining possession of uninhabited and deserted territories, over which we considered ourselves as Spain's successors, although we did not have the title of actual possession, nor had we been able to take or exercise any act of sovereignty."

"Since the time of the Federal Government (1823 – 39), steps had been taken with the goal of fixing those limits but all were fruitless and yielded no results. Ignoring our claims to the territories contiguous to the English settlement, which had been abandoned by Spain and not occupied by us, these areas continued to be occupied and exploited, before and after independence, beyond the limits established in the treaties with Spain. The English Government, considering this actual occupation as giving them legitimate title, defined the extent of the settlement as the river Sarstoon, according to a declaration made by the Minister of the Colonies, Sir George Grey in 1836, within the framework of a project for the creation of a Colony in Boca Nueva."

We, in turn, after a few claims and protests, tacitly maintained the status quo without pursuing new initiatives which apparently were futile."

That statement from the horse's mouth is, I submit, conclusive as to the facts of the case, and the law is equally clear. To restate the point quite simply: It does not matter that the rights of Spain were breached in the period prior to the date of independence; nor would it have mattered even if, as is denied, Guatemala had succeeded to Spain's authority and title in the area. Notional title must yield to actual possession. Adverse possession by Britain overrode the boundaries originally set in the treaties of 1783 and 1786, and so there was no title for Guatemala to inherit. But in any event, Britain's continued actual possession and actual display of sovereignty, and Guatemala's own failure to exercise any degree of sovereignty, throughout the years from the early 1800's to 1859, had undoubtedly established a good title by 1859.

With respect, Guatemala fundamentally misunderstands the approach of international law to the acquisition of title. For them, once a thief always a thief. But international law takes a different approach. It expressly recognises that the title of the original sovereign can be lost by absence, neglect or acquiescence in adverse possession. Equally, a good title can be acquired despite dubious legal origins. It can derive from continuity of possession and administration over an extended period irrespective of how it began. The fact of continuous possession and administration overrides the notional title of a state that merely claims title without possession or administrative control.

In our Response dated 30 April 2001 we give abundant evidence to prove conclusively that the entire area of present-day Belize, from the Hondo to the Sarstoon, was effectively occupied and administered by the British settlers, with the approval and support of the British Crown, before 1821. In that area they lived and worked, their courts had jurisdiction, their land laws provided persons with freehold property that could legally be bought and sold. Greater proof of sovereignty

no place has, or need have. I need not burden you with a repetition of what we have fully set out in our Response and accompanying annexes, especially when Señor Aycinena has himself been kind enough to provide us with a clear statement of the actual situation:

"On examining this situation, we could not fail to recognise that the right we had constantly alleged of being presumptive heirs of Spain's sovereignty, was considerably weakened due to our lack of means to take possession of these territories that had been deserted and abandoned by Spain herself and subsequently by us. Furthermore, such a right, in the face of actual possession and practical exercise of sovereignty, regardless of the means by which they were acquired, could lead to a prolonged discussion and although supported with some foundation by us, did not offer any reasonable hope for success."

"It was recognised that we could not argue against the sovereignty already being exercised with full Spanish acquiescence in 1821 when we became independent, and that, in the case at hand, the issue would be reduced to territorial occupation occurring after that date only."

"In this regard, setting aside the theoretical points of law that could assist us, we were faced with the practical difficulty of modifying the existing boundaries. Even if we were to prove the point - presumably true despite Britain's contention to the contrary - that the limits were extended as far as the Sarstoon River after Independence, the truth was that since we had never taken possession of these territories, nor had we recognised them, nor maintained agents to represent us in them, it would render it impossible for us to determine or fix which part was occupied during Spanish rule and which part was occupied thereafter. This loomed as an insurmountable obstacle against materialising our claim."

"These and other considerations surrounding the issue, taken together and seen from all perspectives, were given to the President for his consideration. He took the decision required by the case, and recognizing the existing facts, instructed that all fruitless discussions be ended, given that they were of no substantive importance and did not merit continuing."

If only the present representatives of the Guatemalan State would take the same wise and enlightened view of that President and realize that fruitless discussions do not merit continuing, and agree to respect the boundaries that have been real and existing for almost 200 years and that have been agreed by treaty 142 years ago and reconfirmed, again by treaty, 70 years ago. We note with satisfaction the Guatemalan adoption of the ancient English legal aphorism, that nothing is settled until it is settled right, and surely "right" in this context, in the sense of what is required both by law and by justice, is to respect the borders that have been settled, and respected on the ground, for close on 200 years. Allow me to commend to you a modern universal legal aphorism: everything is settled, when it is settled for 200 years!

I said I would not repeat the evidence of possession and the exercise of sovereignty that we have already submitted, but as a way of providing some visual relief, allow me to refer to three or four critical maps of the period:

[Several maps were displayed, showing British possession up to the Sarstoon from as early as 1814]

(ii) Historical Consolidation

But the rights that Belize derives from adverse possession are also to be seen in the context of the wider concept of historical consolidation. By that process, the fact of possession for virtually two hundred years serves to establish and crystallize a title regardless of the circumstances in which possession originally came about. In the Eritrea/Yemen case, the Tribunal spoke of the concept of "historical 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".

It is clear that one of the key tests is to contrast the two competing claims of the states claiming sovereignty. Original title can be defeated if sovereignty has not continued to be exercised by what Judge Huber in the Island of Palmas case

calls "the actual display of state activities such as belong only to the territorial sovereign". So it is appropriate to test the respective claims of Britain and Belize on the one hand and Spain and Guatemala on the other hand by reference to the dual test of who was in actual possession on the ground and who was actually displaying sovereignty by state activities such as administration of the area, the issue of land grants, the administration of justice. By reference to every one of these tests there can be no doubt as to who was in actual possession and exercising actual sovereignty at all material times up to and including the present.

Again, I will not repeat the evidence we have presented in our written submission, but the Panel, and the distinguished members of the Guatemalan delegation themselves, will readily appreciate and admit that the evidence there presented conclusively proves:

(i) That by 1821 Britain had already established title as against Spain by the process of acquisitive prescription.

(ii) That certainly by 1859 it was Britain and not Guatemala that was in actual and settled possession of the land as far as the Sarstoon, and it was Britain and not Guatemala that had for some decades been displaying all the incidences of sovereignty.

(iii) That in any event the overall process of historical consolidation of the title between the end of the 18th century and the present is such that it could not seriously be doubted that sovereignty belongs to Belize and not to Guatemala.

Still, it would be useful to remind ourselves that it was the Guatemalan Foreign Minister himself who, at the time of the conclusion of the 1859 Treaty, admitted all the facts – and, I might add, the law – necessary for us to ground our case for title by acquisitive prescription and historical consolidation. And it would no doubt assist the Panel if we were to list a very small select number of instances, both before Señor

Aycinena's statement and after, in which Guatemala, by omission or commission, tacitly or explicitly, recognised our sovereign rights over the territory. Although we document eighteen such instances in our Response, spanning the period from 1887 to 1993, we will highlight here a few of these and some others:

In 1825, by Ley 4, the decree that declares the territory comprehended within the State of Guatemala, several provinces are listed and within each are listed the towns and settlements therein. A study of those in Verapaz and Peten shows clearly not only that none are within the territory of Belize, but that none are even near it.

In 1839, the Constituent Assembly of Guatemala, which had just declared independence, divided the country into seven departments and two districts. Not only is Belize not included, but the exhaustive list of towns and settlements within Verapaz and Peten does not include any settlements even near to the border with Belize.

We refer to this in our statement and include the law and the list in our Annexes, because although Guatemala had, in its Statement, at paragraph 45 b.4, referred to this, it did not provide the text nor the table, and misleadingly stated, in relation to the Peten, that "the latter comprised the coasts located between the Sibun and Sarstoon rivers". I don't want to belabour the point, but there are several instances of Guatemala, deliberately or otherwise, providing misleading and untrue statements. Another of these, for example, we mention at paragraph 53 of our Response. There has also been, through the years, a tendency to deliberately omit critical evidence. The seminal letter of Señor Aycinena is but one example; this we unearthed from an article written by Wayne Clegern in 1960.

Indeed, and especially since Guatemala calls in aid the writings of Wayne Clegern and even attached one of them in their Annex, you might like to know that Mr. Clegern, who had been working in Guatemalan archives in 1959, reported that many

key documents on the Belize issue were missing from the archives. He later found that they had been removed after President Ubico had set up the Department for Belize Affairs. Because the Guatemalan authorities thought he was on their side (his article included in the Guatemalan annex was written before he had access to Guatemalan archives), they allowed him free access to these documents. He reported that many valuable documents were hidden away in the cupboards of the Directorate General, some of them being documents that Jose Luis Mendoza thought better to suppress when he prepared the book 'Britain and her Treaties on Belize', and some of them being documents that Mendoza thought best to edit before publication. Clegern reported that Mendoza's erasures and changes still figure on the documents in bold blue pencil.

Really, members of the Panel, in this context it is a bit much that Guatemala should choose in its Reply (paragraph 19) to baselessly accuse Belize of distorting statements and of making statements that detract from the truth. We vigorously deny those allegations and demand that Guatemala withdraw them.

But to continue our story of official acknowledgments by Guatemala of British and Belizean sovereignty:

It is important to note here that Guatemala has attempted, in its submissions to the Panel, to use the fact that a treaty had been signed between the two countries in 1847, after which Guatemala had addressed a note to Chatfield making a reservation as to its rights pending with Britain over boundaries. This is misleading, as it is only half the truth. The other half is that the 1847 Treaty was not ratified, and that in 1849, Guatemala and Britain signed and this time ratified the Treaty of Friendship, Commerce, and Navigation. The Treaty did not mention Belize at all, and Guatemala did not enter any reservation with respect to that territory. If that isn't misleading, tell me what is.

In 1853, the Guatemalan government issued a decree, Ley 14, detailing the terms of what is in effect a Treaty of extradition between the authorities of Belize and Guatemala. Indeed, the law incorporates the decree of the Superintendent of Belize of 23 February 1852.

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 Guatemala did not regard the proposals (including acceptance of British title) as unacceptable.

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. Now, 20 years later, Guatemala seeks again to turn back the clock and make absurd demands on our territory.

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 appeal 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.

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 boundary.

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."

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.

Distinguished Secretary General and Facilitators: you will by now no doubt feel thoroughly convinced that we have conclusively proven our case, and that therefore your task is an easy one. But here comes the good news: what I have so far presented is far from being the strongest case for Belize's right to territorial integrity and independence. By far our strongest and clearest case relies on the actual agreements made by the Guatemalan State in 1859 and 1931. I will now, with your kind permission, invite the distinguished Queen's Counsel, Edward Fitzgerald, to present this case to you.

The Treaties Of 1859 And 1931

Edward Fitzgerald, Q.C.

Mr. Secretary General, distinguished facilitators: With respect, Guatemala is putting forward an extraordinary proposition when they suggest that a frontier which has stood for 142 years could be set aside, and that more than half of Belize - a free and independent nation recognised by the United Nations - could somehow be declared to belong to Guatemala. To accept that proposition would be to ignore the border treaty of 1859, to ignore the further treaty of 1931, and to violate the most fundamental principles of international law.

So let me briefly state the position of Belize on the legal status of the treaties, and of the territory to which Guatemala seeks to lay claim:-

(i) Firstly, we rely on the 1859 Treaty as a valid and binding declaration of the boundaries between Guatemala and British Honduras. We say that Treaty was exactly what it said it was - a boundary treaty, not a treaty of cession; that it was freely entered into; and that Guatemala's purported denunciation of it in 1946 after more than eighty years was both wholly unjustified and far too late.

(ii) Secondly, we rely on the 1931 Exchange of Notes as itself a valid and enforceable treaty, which was registered as a treaty with the League of Nations without a murmur of dissent from Guatemala. By the terms of that treaty, Guatemala acknowledged and confirmed the boundary established by the 1859 Convention and thereby the allocation of territory declared in that treaty. And this again makes a nonsense of the suggestion that the Treaty of 1859 could now be invalidated 142 years after its conclusion, and -seventy years after its re-affirmation.

(iii) Finally, we say that the border, once established in 1859, acquired a life of its own independent of the treaty which

gave it birth. And that border cannot be set aside without violating one of the most fundamental principles of international law - that the stability of frontiers is essential and should be respected.

[A] THE 1859 TREATY: The Rival Submissions

I turn, firstly, then to the 1859 Treaty.

Guatemala first claims that before the treaty, the territory of Belize belonged to Guatemala. Guatemala then claims that the treaty was forced on her unwillingly; that this was a disguised treaty of cession and was, as such, invalidated by 'simulation'; and furthermore that Guatemala was entitled to repudiate the treaty because of Britain's non-compliance with the obligations of Article 7.

We make five points in reply. Firstly we say the land was never Guatemalan; secondly that Guatemala entered into the treaty freely and without coercion to secure a settled boundary in her own interests; thirdly that, on its plain words, the treaty was a boundary treaty and not a treaty of cession; fourthly that there is no basis to invalidate the treaty on grounds of "simulation" - whatever that may mean; and finally that Guatemala had no right to terminate the treaty on grounds of the alleged breach of Article 7.

I will deal with these five points in turn.

1. The de facto position pre-1859

Firstly, Guatemala claims that the 1859 treaty was a treaty of cession of territory she already possessed. But this is wholly inconsistent with the actual facts on the ground in 1859, as Mr. Shoman has so convincingly demonstrated. Indeed Guatemala itself recognized this to be the case at the time. Sr. Aycinena, the Guatemalan Foreign Minister, made two key admissions in his report to the Guatemalan Chamber of Representatives in 1860 justifying the

conclusion of the treaty. He expressly stated in that report-

(i) Firstly that the territory into which the settlers had advanced from the Sibun to the Sarstoon and which Guatemala now claims had been - I quote - "relinquished and deserted by Spain itself and subsequently by Guatemala".

(ii) Secondly that those territories had never been in the actual possession of Guatemala, nor had she "exercised any act of sovereignty over them".

We have the full text of Sr. Aycinena's statement. It is fatal to Guatemala's claim. We ask you to read it in full.

Against that background we submit that the position is clear. To the Guatemalan claim that this was a treaty of cession, we respond that there was *nothing* to *cede*. Guatemala may have had a *claim*. But Guatemala did *not* have a *title*. And this was something that Guatemala itself recognized at the time in the words of its own foreign minister.

2. The absence of coercion

I turn secondly to the claim now made that Guatemala was coerced unwillingly into ceding territory by "the adverse circumstances prevailing at that time; the British threat of continuing its territorial advances; the imperial struggle taking place over Central America". This is precisely the sort of "vague and general" allegation which the International Court of Justice condemned as manifestly insufficient to justify a charge of coercion in its judgment in the *Icelandic Fisheries* case. In fact, the so-called "adverse circumstances" referred to bear no relation to the serious and specific types of coercion recognised by international law as capable of invalidating a treaty. Coercion is only made out in cases where there is either force or the threat of force. This is now recognised by Articles

51 and 52 of the Vienna Convention. But here there is nothing of this sort. Nobody held a gun to Sr Aycinena's head. No British troops were mobilized on the frontier. On the contrary:

(i) In May 1857, Guatemala *itself* initiated what Sr. Aycinena himself described as, I quote, "a proposal for a definite establishment of boundaries". Guatemala's reasons for seeking this boundary treaty were entirely self-interested. She wanted a clear boundary. She also wanted Britain as a friendly and law-abiding neighbour that was capable of controlling what Guatemala considered to be the lawless occupants of the Belizean hinterland. Those were the reasons expressly given by Sr. Aycinena to the chamber of deputies. In exchange Guatemala was prepared to, and did, recognize British sovereignty. As Sr. Aycinena put it Guatemala lost nothing of substance, and gained much by so doing.

(ii) Article 7 was, of course, agreed by Britain as an additional inducement. But would Britain need to offer any additional inducements if it was, as Guatemala claims, proceeding by way of coercion?

(iii) Thereafter, the Guatemalan House of Representatives openly debated the Convention submitted to it for consideration by the government and, "after detailed deliberation" decided to inform the government - I quote - "that the House of Representatives after having carefully examined the Convention ... finds it beneficial and expedient for the interests of the Republic and based on principles of sound policy". The minority who opposed it spoke freely. That whole process of leisuredly consideration, and due deliberation, is the very antithesis of what one would expect in a case of coercion.

The history itself therefore shows that this was a treaty freely chosen by Guatemala to define the boundaries, by which she recognized British sovereignty for sound and self-interested reasons of her own. So much for the allegation of coercion.

3. The 1859 treaty was not a treaty of cession

I turn thirdly to the Guatemalan claim that this was a disguised treaty of cession.

Language of the treaty

The first test to be applied in interpreting the nature of the treaty is the ordinary meaning of the terms of the treaty. That is the primary test laid down in Article 31 of the Vienna Convention which is, in this respect, merely declaratory of established principles of international law. The parties must be taken to have said what they meant to say. Applying that test, the actual wording of the treaty, and its expressed object and purpose, point conclusively to its being a boundary treaty, and not a treaty of cession.

Consider first the preamble. It refers to the fact that the boundary between the British settlement and possessions, and those of Guatemala "has not yet been ascertained and marked out". It explains the object of the Treaty as being "to define the boundary aforesaid". This is not the language of a treaty of cession.

But then look at Article 1, the key and operative article; it speaks only of the boundary. But more than that, it is expressed so as to be declaratory of the existing position: "it is agreed ... that the boundary ... was and is as follows".

At paragraph 27 of their Replication, the Guatemalan government relies on an alleged contradiction between the words of the preamble that "The boundary... has not yet been ascertained", and the words of Article 1 declaring what the boundary was, and is. But there is no such contradiction. The fact that the precise limits of a boundary have not been ascertained does not mean that no boundary existed. Indeed the process of ascertaining a boundary (as opposed to creating it) logically presupposes the existence of a boundary capable of ascertainment.

As for Article 7, Guatemala can derive no support for its claim that this was a treaty of cession for compensation from the terms of Article 7 itself. Compliance with Article 7 is in no way expressed as a condition for the validity of the frontiers declared in Article 1. Article 7 assumes that the frontier is permanent and, on that assumption, proposes a joint enterprise for the mutual benefit of the two parties – namely the construction of the cart road between Guatemala City and the Atlantic.

Object and purpose

The plain terms of the treaty make clear what its primary purpose was – namely to define and settle the frontiers between the two states. Article 32 of the Vienna Convention only permits reference to the background history where there is genuine ambiguity in the actual terms of the treaty. And here there is none. So much for the claim that this was a treaty of cession.

4. The Allegation of Simulation

I turn to Guatemala's claim that, because the treaty was "simulated", they still retain the right even today to have it declared invalid or a nullity. We say they are wrong on two counts: wrong in their factual allegation of simulation, and wrong in the legal principle they rely on as a basis for nullity.

As to the facts, Guatemala suggests that the language of the treaty conceals a disguised act of cession because Britain wished to avoid any accusation by the United States that she was acquiring territory in Central America in violation of the 1850 Clayton-Bulwer agreement. But it was clearly understood by both the USA and Great Britain that the Clayton-Bulwer treaty did not apply to British Honduras. The position was restated in the clearest possible terms in a supplementary article to the Dallas-Clarendon treaty of 1856. And this treaty was actually ratified by the US with the supplementary article intact. That shows that the US had no objection to confirming the exclusion of British Honduras from the application of the

Clayton-Bulwer Treaty. Moreover, upon conclusion of the 1859 treaty, the United States expressly stated that the 1859 negotiations have been "in harmony with the understanding of the subject entertained here and in London". So there was no question of the United States complaining of fraud, or simulation.

As to Guatemala's submission as to the legal effects of the alleged simulation:- There is no substance at all in their claim that they could seek a declaration from an international court that the treaty was void because of the alleged simulation of not mentioning the alleged territorial cession. Neither Britain, nor the Guatemalan foreign minister, nor the US at the time regarded this as a case of simulation. To them it was a simple recognition of reality. Guatemala is not alleging that it was itself deceived by fraud or misrepresentation. So article 49 of the Vienna Convention does not apply. In the circumstances, Guatemala has identified no basis in international law for its assertion that the treaty could be avoided because of what they call "simulation." They have not explained their concept of simulation, a concept which is nowhere mentioned in the Vienna Convention. They have cited no authority to support the existence of the concept. They have cited no authority to justify its application to void a treaty.

Moreover, Guatemala has surely lost any right to seek to invalidate the treaty on grounds of the simulation they alleged. It has lost that right by reason of its own express assertion that the treaty was valid throughout the period from 1859 to 1946, and by reason of its own acquiescence in the validity of the treaty throughout the period. If there was any simulation, it was a simulation to which Guatemala was a willing party for many years. In these circumstances, the international law principle enshrined in article 45 of the Vienna Convention applies. The principle that a party should not benefit from its own inconsistencies debars Guatemala from even raising the point that the treaty could be invalidated on this basis. Adapting the words of the Arbitrator in the Costa Rica/Nicaragua boundary case, Guatemala was "silent when it ought to have spoken and so has waived the objection now made".

Alleged breach of Article 7

I turn finally to Guatemala's claim that the 1859 treaty is invalidated by reason of non-compliance with Article 7. It is not accepted that Britain breached Article 7 of the treaty. If there was any failure to implement article 7 it was a joint failure. Nor is it accepted that any breach of Article 7 could possibly be sufficiently fundamental to justify the repudiation of the whole treaty. The recognition of the frontier was never made conditional on completion of the road, so the non-completion of the road cannot invalidate the frontier.

Failure to invoke supposed ground for termination within a reasonable time

But there is a more conclusive response to Guatemala's reliance on Britain's alleged breach of Article 7 to justify the repudiation of the treaty. And that is, quite simply, the time factor. It is a clear principle of international law, now enshrined in Article 45 of the Vienna Convention, that a party alleging a breach must not by its conduct acquiesce in the continued validity of the treaty. By necessary implication it must exercise the right to terminate within a reasonable time. So, if Guatemala was to repudiate the treaty for non-compliance with Article 7, she had to do so within a reasonable time. This Guatemala did not do. Indeed Guatemala took no steps to denounce the treaty until 1946. By then it was far too late. Not only had more than 80 years elapsed. But Guatemala had already affirmed the original treaty of 1859 in the later treaty that is comprised in the 1931 Exchange of Notes.

[B] The 1931 Exchange Of Notes

That brings me to our second major point. For Belize's case does not rest on the 1859 treaty alone. We rely in addition on the further treaty concluded between Britain and Guatemala in 1931. This took the form of the Exchange of Notes dated 25/26 August 1931. The agreement contained in that Exchange of Notes is as much a binding international treaty as if it had been

described as a "treaty" or convention. That is why it was registered with the League of Nations as a "treaty pursuant to Article 18 of the Covenant of the League of Nations". And Guatemala never protested at its registration.

Guatemala has never before questioned the existence, authenticity or validity of the 1931 Exchange of Notes. But Guatemala has chosen not to recognise its full significance. The effect of it is entirely to exclude any possibility that the 1859 Convention had been terminated by any alleged breach of Article 7 in the years between 1859 and 1931, or that any reliance can now be placed on Guatemala's allegation that there was simulation in the 1859 Treaty.

I turn now to the express words of the 1931 Exchange of Notes. The text can be found at Annex 1 of the Belize Response. I have here a copy of the original signed by Senor Skinner Klee, the illustrious grandfather of one of the Guatemalan delegates here today.

The English Note is dated 25th August 1931. It refers to the fact that the boundary between British Honduras, and Guatemala "was laid down" in the 1859 Convention. It goes on to describe how the joint commissioners had in 1929 established concrete markers to mark the boundary at Garbutt's Falls and Gracias a Dios Falls. The note then *confirms* on behalf of the British Government that the concrete monuments erected by the commissioners correctly mark the terminal points of the boundary. Finally the Note invites the government of Guatemala to give a similar assurance on its part as to the fact that the boundary has been correctly marked by the concrete monuments; and it states that "the present note and Your Excellency's reply will constitute the agreement between the government of the United Kingdom and Guatemala on this matter".

The Guatemalan response is unequivocal. It accepts the concrete monuments as definitively marking the boundary

between British Honduras and the Republic of Guatemala. I quote the relevant parts. They expressly state:

"The government of Guatemala agrees to accept the concrete monuments erected at Garbutt's Falls and the Rapids of Gracias a Dios."

And later:

"These monuments, thus determined, form part of the boundary line between British Honduras and the Republic of Guatemala."

What the monuments did was to mark the boundary between Guatemala and British Honduras in the southern part of Belize. And you will see that it is the very area to the east of that agreed boundary that Guatemala now claims. And yet, at the time of that Exchange of Notes, in 1931, Guatemala made no reservation laying claim to that part of British Honduras lying east of the boundary. And they made no reservation that in any way questioned the validity of the 1859 Convention - though the boundary confirmed in 1931 is the same boundary laid down in the 1859 Convention.

Our position is simple and straightforward. The 1931 Exchange of Notes rules out any Guatemalan contention that the 1859 Convention had come to an end. In effect the 1931 Exchange of Notes reaffirms the 1859 Convention. It rules out any reliance by Guatemala on the claim that the 1859 convention was a simulation and therefore void. Guatemala knew all the facts that it now relies on to prove *simulation* when it *reaffirmed* the 1859 Treaty in 1931, but it entered no reservation. The 1931 agreement further rules out any further reliance by Guatemala on Britain's alleged breaches of Article 7 between 1859 and 1931. Guatemala knew of all the facts they now rely on when it reaffirmed the 1859 Convention in 1931, but it went ahead. And by that reaffirmation it has debarréed itself as a matter of law from now turning around and alleging the invalidity of the treaty.

In the light of the 1931 Exchange of Notes, the government of Belize has called on Guatemala to reconsider its position. In its response, Guatemala does not dispute that in 1931 it did re-affirm the Treaty. Guatemala says that the treaty of 1931 is ancillary to the 1859 treaty. We do not understand what Guatemala means by describing this separate treaty as "ancillary." They appear to suggest thereby that any invalidity in the 1859 treaty also invalidates the 1931 treaty. But this is not the case. The 1931 Exchange of notes is an independent treaty. Whatever the position in relation to the 1859 treaty, the 1931 treaty cannot depend for its validity on any compliance, with the obsolete requirements of article 7 of the earlier treaty. We ask then – On what basis recognized in the Vienna Convention does Guatemala claim the right to repudiate the boundary treaty of 1931?

Guatemala suggests that the 1931 treaty belongs to a second period of the history of this dispute, dating from 1859 to 1946, in which Guatemala complied with the Treaty and sought to ensure the fulfilment of its terms. That may be so. But they then make a quantum leap. They assert that somehow, despite their affirmation of the 1859 treaty in 1931, a right to repudiate the treaty crystallized in 1946. But nothing had happened between 1931 and 1946 to justify such a repudiation of the 1859 treaty. Still less had anything happened to justify the repudiation of the 1931 treaty and the abrogation of the border which that treaty expressly recognized. The grounds for repudiation are now set out in the Vienna Convention. And we ask Guatemala again: On what basis do they claim the right to repudiate the 1931 treaty?

Our submission is simple. Guatemala has identified no proper basis to repudiate the 1931 treaty. And by 1946 it was too late, far too late, to seek to repudiate the 1859 treaty's border provisions when they had been expressly reaffirmed in 1931. We therefore submit that the 1931 Treaty leaves no room for further argument as to the status

of the territory lying to the east of the boundary it affirms. It belongs to Belize and not to Guatemala.

ICJ Autonomous Status Of The Frontier

But finally I come to our third major point. And that is this: Even if the Treaty of 1859 were invalid, the frontier that it recognised is not. And that is because, as a matter of international law, the validity of the frontier established in 1859 does not depend on the continuation of the treaty that created it. A wider principle of international law operates. It follows that, even if Guatemala were correct in its contention that the 1859 Convention has come to an end, and its contention that Belize belonged to it before 1859, that would not lead to the reversion of the territory to Guatemala. For, as the International Court of Justice has made quite plain in the Libya v. Chad case, once a boundary treaty has been established, the establishment of the boundary is a fact which "has a legal life of its own" independently of the fate of the treaty which created the boundary. As the court said at paragraph 73 of its judgment:-

"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."

The reasoning of the court is even more applicable to this case. So too is the "fundamental principle of the stability of boundaries". In the Libya v. Chad case the treaty was no more than forty years old. Here the treaty is now 142 years old. And its essential provisions have been applied over the whole of that period. The boundary has stood, it has been confirmed and demarcated, and the people of southern Belize living between the Sibun and the Sarstoon have now known for 142 years that they are living in Belize and not in Guatemala. If treaties mean anything, if reality means anything, if international law is

to have any function in ensuring stability and certainty, then this border has long assumed the necessary permanence to be *fixed* and immutable as a matter of law. And its fate cannot, as a matter of reason or justice, depend on further labyrinthine historical dispute as to the fulfillment or non-fulfillment of the *vague*, and *non-essential*, requirements of Article 7. Still less can it depend on vague and inaccurate allegations of coercion, or meaningless and obscure talk of simulation.

We therefore respectfully invite the facilitators to suggest that the time has come for the Guatemalan claim to the territory of Belize to be consigned to the past. For the past is where it belongs. We say that the time has come to move on – for the sake of certainty, for the sake of justice, but above all for the sake of future peace between the people of Guatemala and the people of Belize.

The Inapplicability Of The Doctrine Of UTI POSSIDETIS

H.E. Eamon Courtney S.C.

INTRODUCTION

The Republic of Guatemala relies on the doctrine of *uti possidetis juris* in support of its unfounded Claim to more than half the territory of Belize. Such reliance is, with respect, misconceived.

1. The Doctrine of Uti Possidetis

In international law, the doctrine of *uti possidetis* had its genesis in Latin America in the second decade of the 19th century. The doctrine held that states emerging from Spanish decolonisation inherited the colonial administrative borders that existed at the time of independence.

The application of the doctrine in Latin America served two purposes: *i)* to ensure that there was no *terra nullius* in Spanish America when the Empire crumbled and, *ii)* to reduce conflicts over borders between the newly independent states.

The Doctrine had no application to colonial territories that were not a part of the Spanish administrative departments or areas that were subject to rule by other colonial powers.

As the doctrine was applied by the Central American Republics *inter se*, a fundamental distinction was drawn between *uti possidetis juris* and *uti possidetis de facto*. The former refers to the legal right to possession of territory based on what Spanish colonial documents claimed as territory. The latter relates to the legal right to possession based on the territory that was actually possessed by Spain at the time of independence of the new state. This means such possession as derived from the actual exercise of Spanish administrative control in the particular area.

These fundamentally different interpretations of the doctrine are vitally important. It will be shown that the Republic of Guatemala strongly advocated that the doctrine is to be understood to mean *uti possidetis de facto* i.e. the right to possession based on administrative control over an area of territory.

In the 20th century, a variation of the doctrine was introduced outside of the Americas, principally in Africa. In 1964, by a Resolution of the Organisation of African Unity, the basic principle of stability of borders that underpins the doctrine of *uti possidetis* was declared to be applicable to the African continent. At this time, however, most of Africa was *already* independent. This resolution was therefore, principally, a political statement directed at states where disputes were brewing. It was a political directive to settle differences by treaty based on pre-existing borders rather than by resorting to force. The doctrine is now regarded as an established principle of customary international law.

Uti possidetis Universalis is a hybrid. It has evolved as a part of the law of state succession in order to address boundary disputes between states of the same colonial power as well as between states of different colonial powers. It is different from *uti possidetis Latin America* which sought to preserve the administrative boundaries of one colonial power.

2. Guatemala's contention

In 1821, the Captaincy-General of Guatemala proclaimed its independence from Spain. In 1823, the United Provinces of Central America – a federation – was declared. This Federation dissolved in 1838/9 and the five Central American Republics emerged as separate independent states. Their international borders were, in the main, those that existed as internal administrative divisions of the Captaincy-General of Guatemala.

Guatemala contends that the area between the Sibun River and the Sarstoon River formed a part of the Spanish

Empire. They argue that the United Provinces of Central America exercised jurisdiction over the area as a successor state of Spain, and that therefore Guatemala succeeds to this part of Belize. According to their written submission dated 31st March 2001, and their Reply of the 15th instant, their Claim is based on the doctrine of *uti possidetis juris*.

However, before the Guatemala – Honduras Special Boundary Tribunal, the Republic of Guatemala, "with conviction and energy", argued for *uti possidetis de facto*. I quote from the award:

"Guatemala contends that by reference to the *uti possidetis* of 1821 the Parties meant to have the line drawn 'in conformity with a fact rather than a theory, the fact being what the Spanish Monarch had himself laid down, or permitted, or acquiesced in, or tolerated, as between Province and Province, in 1821' and that the test of that line should be 'the sheer factual situation' as it was at the time."

In this new century Guatemala, it seems, has had an epiphany! Conveniently, they now argue the complete opposite: that *uti possidetis* is to be understood to mean *uti possidetis juris*.

By framing their argument in this fashion, Guatemala abandons *uti possidetis de facto* because they cannot sustain a claim relying on possession arising from the exercise of administrative control over the southern half of Belize. Let us discover what was the 'sheer factual situation as it was at the time'. We look to the words of the illustrious Councillor of the Republic of Guatemala Pedro de Aycinena, in his report to the Chamber of Deputies:

"On examining this situation, we could not fail to recognise that the right we constantly alleged as being presumptive heirs of Spain's sovereignty, was considerably weakened due to our lack of means to take possession of these territories that had been deserted and abandoned by Spain herself and subsequently by us. Furthermore, such a right, in the face of actual possession and practical exercise of sovereignty, regardless of the means

by which they were acquired, could lead to a prolonged discussion and although supported with some foundation by us, did not offer any reasonable hope for success."

More than a century and a half ago, the Claim was regarded as hopeless by the Government of Guatemala. Today, on the 21st May 2001, it is still hopeless!

3. Belize's contention

We say, that prior to 1821 Spain had abandoned all rights to the territory. And so said Aycinena. Only British settlers, Africans and indigenous people occupied it, and it was completely administered by British settlers in the name of the British Sovereign. And so said Aycinena. Indeed, it was a British possession and no longer a part of the Spanish empire. And so said Aycinena. In such circumstances, the doctrine is wholly irrelevant.

I adopt as my own the comprehensive submission made by Ambassador Shoman on the acquisition of title by Historical Consolidation, and rely on it without restating it fully.

A. Uti possidetis relates only to land that was a part of the Spanish Empire at the time of independence, and Belize was not.

British Title to Belize

From the middle of the 1600s British settlers were present in Belize cutting logwood. This physical presence of British settlers was maintained, with brief interruptions resulting from Spanish expeditions, throughout the 1700s. These Spanish expeditions originated in Yucatan, Mexico. In fact, they failed to permanently dislodge the settlers or to subjugate them in any way to Spanish authority. Up until the end of the 18th century, the settlers remained in the territory, for the most part undisturbed, notwithstanding official British recognition of Spanish sovereignty. Thereafter, they occupied the territory in reliance on the sovereignty of the British Crown.

It is incontrovertible that there was never a physical occupation by Spanish settlers in what is present day Belize. It is noteworthy that in neither of their written presentations has Guatemala sought to suggest otherwise or to submit any evidence of such occupation.

Uti possidetis inapplicable prior to independence

Britain assumed sovereignty over British Honduras by 1817, if not before. At that time, the Captaincy-General of Guatemala was still a part of the Spanish Empire. Therefore, the doctrine of *uti possidetis* was completely unknown in international law! It follows ineluctably that the United Provinces of Central America in 1821, or Guatemala in 1839 could not have inherited from Spain that which Spain did not have.

As between England and Spain the doctrine of *uti possidetis juris* is entirely inapplicable for resolving title to British Honduras, now Belize.

B. The doctrine of uti possidetis juris is confined to succession of states of the Spanish Empire and therefore inapplicable as between Spain/Guatemala and England

But we go further. Assuming for the purposes of argument only that the Doctrine of *uti possidetis juris* was relevant, and we reject that entirely, it would be relevant only as between former Spanish colonial departments.

The position, as it applied between Guatemala and Honduras, was quite succinctly described in the Opinion of the Special Arbitral Tribunal in *Guatemala v. Honduras* of 1933:

The expression uti possidetis undoubtedly refers to possession. It makes possession the test. In determining in what sense the Parties referred to possession, we must have regard to their situation at the moment the colonial regime was terminated. They were not in the position of warring States terminat-

ing hostilities by accepting the status of territory on the basis of conquest. Nor had they derived rights from different sovereigns. The territory of each party had belonged to the Crown of Spain. The ownership of the Spanish monarch had been absolute. In fact and law, the Spanish monarch had been in possession of all the territory of each. Prior to independence, each unit being simply a unit of administration in all respects subject to the Spanish King, there was no possession in fact or law, in a political sense, independent of his possession. The only possession of either colonial entity before independence was such as could be ascribed to it by virtue of the administrative authority it enjoyed. The concept of "uti possidetis of 1821" thus necessarily refers to an administrative control that rested on the will of the Spanish Crown."

This quotation establishes the following in relation to *uti possidetis*, as it existed in 1821:

i. The territory of each party must have belonged to the Crown of Spain in which ownership of the Spanish monarch had been absolute. In fact and law, the Spanish Monarch must have been in possession of all the territory of each.

ii. Prior to independence, each unit must have been simply a unit of administration in all respects subject to the Spanish King.

In the celebrated case of *Libya v. Chad* the ICJ makes it patently clear at para 122 that:

"It must however be pointed out that the application of this principle is not without its difficulties on the ground, especially where the administrative boundaries are not clear, but at least it can be said that it gave a definitive starting point. While there is no doubt that, at least, in principle the doctrine of *uti possidetis* juris is applicable and applied among all the former Spanish colonies, one cannot say so regarding non-former Spanish territories." [Emphasis added]

Distinguished Facilitators, the Republic of Guatemala is attempting to turn back the hands of the clock. It is seeking in

2001, to retroactively apply *uti possidetis juris* to a territory that was by 1817 no longer under Spanish sway. In the *Burkina Faso v. Mali* case, the ICJ ruled against this:

"By becoming an independent state, a new State acquires sovereignty with the territorial base and boundaries left to it by the colonial power. This is part of the ordinary operation of the machine of State succession. International law – and consequently the principle of *uti possidetis* – applies to the new State (as a State) not with retroactive effect, but immediately and from that moment onwards. It applies to the State as it is, i.e., to the "photograph" of the territorial situation then existing. The principle of *uti possidetis* freezes the territorial title; it stops the clock, but does not put back the hands."

Uti possidetis universalis does not avail Guatemala in 2001. But it does avail us! It applies to the independent state of Belize "as it is, i.e. to the 'photograph' of the territorial situation then existing." *Uti possidetis* freezes our territorial title: Belize, an independent state as defined and delimited in the independence Constitution with all our land, sea and cays. And we so submit.

C. The Treaties of 1859 and 1931 Override Uti Possidetis

The Republic of Guatemala does not deny the boundary treaties of 1859 and 1931 between itself and the United Kingdom. Once concluded, these treaties took legal effect and had legal consequences. As was pointed out most eloquently by Edward Fitzgerald QC, these two Treaties established the border between the two countries, which border has a life of its own.

International law has developed a definitive approach to resolving boundary/territorial disputes where the disputants rely on treaties on the one hand, and *uti possidetis* on the other. The principle that has emerged is that where a court finds that there is a boundary established by agreement or other definitive instrument then *uti possidetis* is to be disregarded.

I pray in aid, and commend to your good selves, the decision in *Libya v. Chad*, and specifically the following extracts from paragraphs 75 and 76 thereof:

*"It will be evident from the preceding discussion that the dispute before the Court, whether described as a territorial dispute or a boundary dispute, is conclusively determined by a Treaty to which Libya is an original party and Chad a party in succession to France. The Court's conclusion that the Treaty contains an agreed boundary renders it unnecessary to consider the history of the 'Borderlands' claimed by Libya on the basis of title inherited from the indigenous people, the Senoussi Order, the Ottoman Empire and Italy. Moreover, in this case it is Libya, an original party to the Treaty rather than a successor State that contests its resolution of the territorial or boundary question. Hence there is no need for the Court to explore matters which have been discussed at length before it such as the principle of *uti possidetis*.... The 1955 Treaty completely determined the boundary between Libya and Chad."*

I would also rely on the very recent case before the ICJ, viz. *Qatar v. Bahrain*. This case related to competing cases over a number of islands and certain maritime areas. Both countries were part of the dominion of the United Kingdom. In respect of the Hawar islands, some of the islands in dispute, the Rulers of Qatar and Bahrain were informed in writing on 11th July 1939 that the British government had decided that the Hawar islands belonged to Bahrain I quote from the judgment:

*"The parties' lengthy arguments on the issue of sovereignty over the Hawar islands raised several legal issues: the nature and the validity of the 1939 Decision by Great Britain; the existence of an original title; effectivities; and the applicability of the principle of *uti possidetis* jure to the present case. The Court will begin by considering the nature and validity of the 1939 British Decision."*

After considering the parties' arguments on the 1939 Decision, the Court found that the Decision was "binding on the parties." It then said:

*"The conclusion thus reached by the Court on the basis of the British decision of 1939 makes it unnecessary for the Court to rule on the arguments of the Parties based on the existence of an original title, effectivities, and the applicability of the principle of *uti possidetis* jure to the present case."*

These two cases establish that where there is a binding treaty or other binding ruling [1939 Decision] applicable to a boundary or territorial dispute, the treaty or decision shall prevail and render otiose claims based on *uti possidetis*.

We therefore rely on the 1859 Boundary Convention signed by Aycinena and the 1931 Exchange of Notes signed by Skinner Klee, which definitively establish the common border between Belize and Guatemala, to submit that the arguments relying on *uti possidetis* advanced by Guatemala are entirely irrelevant and inapplicable.

We say:

What Aycinena has agreed to, Orellana should accept, what Skinner-Klee has agreed to, Skinner-Klee should accept!

Guatemala's Insular And Maritime Claim

(i) Insular

The claim of Guatemala to the islands and cayes of Belize, like its claim to southern Belize, is based on *uti possidetis juris*. Again, they do not offer an iota of proof of occupation or exercise of administrative control over any of the islands of Belize by Spain or Guatemala.

Guatemala denies Belize's title to the cayes and islands on the allegation that no title can accrue to Belize because the islands were "usurped". They allege, without proof, that Belize's occupation is on the basis of force.

The Treaty of 1859 provides "that all the territory to the north and to the east of the line of boundary... belongs to her Britannic Majesty". There is absolutely no doubt that it was the intention of both Guatemala and Britain that this description included the cayes lying off Belize. In 1857, Stevenson, who was negotiating the boundary treaty with Minister Francisco Martin of Guatemala, wrote to Lord Clarendon setting out the description that he had agreed with Minister Martin. The description specifically included "all the kayes and islets off the mainland." In the letter to Lord Clarendon, Stevenson explains that after they had agreed the description and terms, he handed over the description to the lawyers in the Foreign Office "to be shaped into articles for a Treaty of boundaries." He recounts further, that he got back the draft from the lawyers and "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 acquiesced in by the Minister for Guatemala..." In the event, the Minister for Guatemala acquiesced in this description. We submit that they must have concluded that the legal description as appears in the Treaty was fully reflective of their prior agreement and in compliance with the instructions to the legal draftsman.

Furthermore, if Guatemala is right that the cayes and islands belong to them, then it would mean that Belize would

be completely surrounded. Guatemala would envelop Belize on the west, on the south and on the east and Mexico would cap the north. It would be an extraordinary conclusion to draw that the British voluntarily concluded a treaty that doomed Belize to the fate of a landlocked state. Reason militates against such a strained construction.

Our position is that the taking of possession in contradiction to any right held by Spain over the islands and cayes of Belize was the first step in the process of acquisition of title by the British via adverse possession which by passage of time and exercise of authority and acts of occupation crystallized into a firm title.

The argument of Guatemala that both the permissive and the prohibitive language of the treaties of 1783 and 1786 excluded the islands specifically and by implication is rendered ineffectual because any intent of these treaties was overtaken by the uncontroverted fact of British possession for a long period prior to 1850.

In fact, in 1821, the very year of the declaration of independence by the Captaincy-General of Guatemala, the colony's Superintendent Colonel Arthur received permission from London to construct a lighthouse on the coral atoll of Lighthouse Caye. It was noted in the letter granting permission that similar permission had been earlier given to construct a lighthouse on a different cay: Glovers Reef. In February 1831, permission was sought from the Governor of the territory by a British settler to occupy "Southwest Caye at Glovers Reef", the previous occupant having "been lost ... some time back".

In 1834, the map of British Honduras annexed to the memorial dated "Colonial Office 1834" contained the following inscription "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."

In 1851, the Governor indicated his willingness in writing to grant a lease for ten years over the cayes in the Glovers

Reef Atoll. And in 1858, the Governor granted a lease of "Long Kaye" by way of an Indenture to one Phillip Gill for ten years.

These instances are clear indicators not only of presence, but also of the exercise of sovereignty over the islands and cayes of Belize by both the local and British authorities.

(ii) Maritime

Both Belize and the Republic of Guatemala accept that the delimitation of their respective maritime areas, and that of Honduras, depends on the definitive settlement of the territorial dispute. Having regard to Belize's sovereignty over its mainland, islands and cayes, we are prepared to enter into appropriate negotiations with Guatemala and Honduras as contemplated by the Articles 15, 74 and 83 of Law of the Sea Convention.

Excellencies, the claim by the Republic of Guatemala harks back to ancient times. It brings to mind a quote from F. Scott Fitzgerald's *The Great Gatsby*. I quote:

*"So we beat on; boats against the currents;
borne ceaselessly backwards into the past."*

We say to our brothers and sisters across our common border: it is time to turn; it is time to look forward.

In the name of the people of Belize, thank you for your attention.

Self Determination And The United Nations Resolutions

H.E. Alfredo Martinez

The greatest political decision taken by the People of Belize was on September 21st, 1981—they took a collective decision to form an independent State that was neither British, Spanish, nor Guatemalan but distinctly Belizean. This collective national act of self-determination was conceived in democracy and birthed in freedom by a people that were united in historical characteristics which defined them as a distinct group in the world community of cultures and nations—the Belizean People.

The Belizean people had unequivocally exercised their right to transform their political existence as a colonized people into the freed people of a Nation-State. They had irrevocably proclaimed to the world their own existence and their desire to live under a distinct set of principles, rules and regulations enshrined in their own Constitution. They had defined which peoples make up the nation of Belize, and affirmed that the territory known as Belize was that territory whose boundaries were described by the 1859 Treaty between the United Kingdom and the Republic of Guatemala and the 1893 Boundary Treaty between the United Kingdom and the Republic of Mexico. The Belizean people designated those institutions that would be the sustenance of their democracy; and embraced a foreign policy distinctly their own.

Four days after this historic act of self determination by the Belizean People, the United Nations General Assembly, by Resolution 36/3 voted to admit Belize as a full member of the international community. The vote was an acclamatory 144 to 1 with no abstentions, Guatemala in sombre isolation - being the only one to vote against. All the nations of the world recognized that history and their own efforts had coincided to create a new nation—the Belizean Nation—whose people were possessed of inalienable rights to self-determination and independence over all their territory in accordance with the most sacred principles of the United Nations.

This recognition by the world community that the Belizean people had a homeland within a clearly defined territory, did not occur overnight. Indeed, the question of Belize was for a long time, regularly considered by the Special Committee on the Situation with regard to the Implementation of the Granting of Independence to Colonial Countries and People (the Committee of 24), by the Fourth Committee of the United Nations General Assembly and by the General Assembly itself in Plenary Session, from the inception of the United Nations until the Independence of Belize in 1981.

At first, the context of this consideration was the annual transmission of information by the United Kingdom on self-governing territories for which it was responsible. In the course of this, Guatemala expounded its claims to the whole of Belize, using fallacious arguments about the incursions of the British colonists, *uti possidetis*, and the non-performance by the United Kingdom of its obligations to construct a cart road under the 1859 Anglo-Guatemalan Treaty and the consequent nullity of that Treaty. The United Kingdom, along with Belizean spokesmen, responded forcefully and fully to Guatemala's contentions on every occasion.

Guatemala initially attracted a small measure of support among some Central American and a few South American States, whereas the majority of States, led by those of the Caribbean and the Non-Aligned Movement, gave full support to the position of the United Kingdom and Belize.

But in the end, Guatemala was left alone. Alone in its refusal to recognize Belize as an Independent State, and it was only until 1991, ten years later, that it did so.

If we are to examine the United Nations Resolutions on Belize from 1975 onward, and the debates and exchanges that led to their adoption, it is clear that the international community recognized from the outset that the State of Belize comprised all of the territory encompassed within the area from the Rio Hondo to the Sarstoon River and from its western Boundary with Guatemala to its offshore islands.

General Assembly Resolution 3432 of December 1975 was of signal importance and was adopted after the vast majority of the member countries of the United Nations came to view the postponement of Belize's independence by Guatemala's dubious claim as increasingly unacceptable, and I quote directly from the Resolution:

"The General Assembly.....

Noting the firm desire of the Government and people of Belize, which has been frequently expressed for many years past, to exercise their right to self-determination and to proceed to independence as soon as possible in peace and security and with their territory intact,.....

Regretting that certain differences of opinion between the administering power and the Government of Guatemala concerning the future of Belize have hitherto prevented the people of Belize from exercising their right to self-determination and independence in peace and security, in accordance with their freely expressed wishes,

Considering that these differences of opinion can and should now be speedily resolved by negotiations carried out in close consultation with the Government of Belize and in full acceptance of the principles referred to above,

1. Reaffirms the inalienable right of the people of Belize to self-determination and independence.
2. Declares that the inviolability and territorial integrity of Belize must be preserved;
3. Calls upon all States to respect the right of the people of Belize to self-determination, independence and territorial integrity and to facilitate the attainment by them of their goal of a secure independence;

And it continues in Paragraph 5:

5. Declares that any proposals for the resolution of these differences of opinion that may emerge from the negotiations between the administering Power and the Government of Guatemala must be in accordance with the provisions of paragraphs 1 and 2 above....."

This Resolution - 3432 of 1975 - was adopted by a vote of 110 to 9, with 16 abstentions. At the following sessions of the General Assembly, from 1976 until 1979, Resolutions 31/50, 32/32, 33/36 and 34/38, containing ever stronger language, were passed with increasing majorities. All firmly called for respect of the inviolability and territorial integrity of Belize.

Finally, General Assembly Resolution 35/20 of 1980 called in no uncertain terms for Belize to become an independent state before the conclusion of its 36th Session. This historic Resolution reaffirmed the territorial integrity of Belize and the inalienable right of the people of Belize to "the secure and full independence of all their territory". The United Kingdom was called upon to convene a constitutional conference to prepare for the independence of Belize, and to ensure "the security and territorial integrity of Belize".

This Resolution was adopted in Plenary Session by an unprecedented vote of 139 to 0, with 7 abstentions, Guatemala having absented itself from the voting.

Sixteen days later, here at the Organization of American States, on November 27, 1980 to be precise, Member States present at the Sixth Plenary Session of the General Assembly adopted the following Resolution AGRES 501(X-O/80) from which I will quote extensively:

"The General Assembly,

Noting that at its XXXV Session in the United Nations General Assembly adopted, without one dissenting vote, Resolution 35/20 on November 11, 1980 in which it reaffirmed the inalienable right of the people of Belize to self-determination, independence, and territorial integrity, and declared that Belize should become an independent state before the conclusion of the XXXVI Session of the United Nations General Assembly; and

Bearing in mind that Article 1 of the Charter of the Organization of American States provides that the Organization is a regional agency of the United Nations,

RESOLVES:

1. To endorse United Nations General Assembly Resolution 35/20 of November 11, 1980 on the question of Belize.
2. To offer its cooperation, in keeping with the principle of self-determination, to facilitate the constitutional evolution of Belize as a sovereign, independent State of the Americas, in accordance with United Nations General Assembly Resolution 35/20 of November 11, 1980 and thereafter to assist the independent State of Belize to develop harmonious and friendly relations with its neighbours and other States in the hemisphere."

[I need not remind those present here that OAS Resolutions are passed by consensus.]

Therefore, when Belize became independent by an act of self-determination of its people, fully endorsed by the international community as godfathers and guarantors, it did so within boundaries recognized by the General Assemblies of both the United Nations and of the Organization of American States, borders considered "invincible" by Member States of both organizations. The territory referred to was unquestionably that continuously occupied by the people of Belize prior to independence.

The resolutions of the United Nations on Belize, and that of the OAS, and the proceedings that led to their adoption, admit of no other conclusion. By adopting those Resolutions, the General Assemblies resoundingly endorsed those boundaries established by Treaties in 1859, 1893 and 1931. And the fact that the states members voted for those Resolutions having heard the positions of the United Kingdom and Guatemala was clear recognition that the territorial integrity of Belize embraced its pre-independence borders, "intact" and "invincible".

Today, back in the Headquarters of the Organization of American States, in the home that belongs to all of us of "La Gran Familia" of the Americas, Belize reaffirms its

unquestionable right to respect for its sovereignty and territorial integrity.

The peace-loving people of Belize have long endured the threats and menaces of Guatemala that have loomed large over the national psyche. Frustrated and weary, but proud and unbowed, our people call only for peaceful coexistence with our neighbours founded on mutual respect.

Our people will countenance no dismemberment of our State and completely reject these persistent and unfounded attempts to trample on our National Identity and Dignity. We are all Belizean: whether Mestizo, Creole, Garifuna, Maya, Mennonite, East Indian, Arab, Asian, European and African and we say with one voice, "LET US BE!"

Conclusions on the Matter of

Self-Determination and Territorial Integrity

Janine Cope-Felson

1. Ambassador Martinez's comprehensive account of the treatment of Belize's quest for self-determination in the United Nations lays the basis for drawing certain conclusions on the significance of the resolutions on the question of Belize, and of the admission of Belize as a Member State of the United Nations.

2. *a.* The United Nations is empowered by its Charter to monitor the progress towards self-determination, and finally decolonization of non-self-governing territories. By virtue of resolution 1514 "Declaration on the Granting of Independence to Colonial Territories and Peoples", members of the UN declared that "all peoples have the right to self-determination....", but added that this right should be exercised within the limits of existing colonial boundaries. Paragraph 6 states, "*any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the Purposes and Principles of the Charter of the United Nations.*" The principle of "self-determination within the limits of existing colonial boundaries" was the cornerstone of United Nations decolonization policy that developed in the 1960s and 1970s by which the world community sought to liberate peoples in dependent territories within a multilateral legal framework.

b. The General Assembly of the UN (as well as the Committee of 24 and the Fourth Committee) was the main internationally recognised forum to which dependent states like Belize resorted to fulfill their aspirations of self-determination and independence with territorial integrity. The apogee of this process was eventual recognition by and admission to the UN of newly independent states. It is within this context that the resolutions referred to by Ambassador Martinez must be understood.

3. It is plain that the multiple resolutions of the General Assembly on the question of Belize assume and affirm its territorial integrity, intact and inviolable. That is to say, it is the position of the international community that the territory of Belize encompasses "all" of the territory that was administered by the United Kingdom in Belize before Belize attained independence.¹ To reiterate emphatically what Ambassador Martínez has stated: "The fact that the Member States of the United Nations voted for the resolutions, having heard the positions of the two sides presented in some detail, can hardly be seen as other than recognition that the territorial integrity of Belize embraces its pre-independence borders, "intact" and "inviable"."

4. The resolution admitting Belize to membership in the United Nations, on its face, no more defines its territory than has any other resolution of the United Nations admitting any other Member. Admission of a State does not certify the borders of the admitted State, whether they are uncontested or contested. Of course, the premise of the resolution admitting Belize is that – contrary to the position of Guatemala – Belize is a State, admitted because it is peace-loving and accepts the obligations of the Charter and, in the judgment of the Organization, is "able and willing to carry out these obligations".² But, in this case, there is an exceptional added element of recognition of the borders of the State so admitted. The multiple resolutions of the United Nations, in referring to "all the territory" and to the "territorial integrity" of Belize within borders "inviable" and "intact", do appear to define or recognize those borders. The resolutions indicate that the General Assembly, in implementing its authority enunciated in Resolution 1514 (XV), has promoted the self-determination and independence of a colonial territory within the whole of the colonial borders of that territory.

5. It is a general principle of international law relating to the succession of states that a boundary having the status of an international frontier at the time of decolonization shall be

¹ As Resolutions 34/38 and 35/20 expressly specify.

² Article 4 of the Charter.

maintained. The ICJ reaffirmed this principle in the *Burkina Faso/Mali* judgement. On September 21, 1981, the people of Belize achieved Independence in accordance with the fundamental principle of the UN's decolonization efforts – self-determination within existing colonial boundaries. They succeeded the United Kingdom and thus became sovereign over the territory of Belize previously administered by the UK, the boundaries of which had hitherto been recognized as an international frontier by the General Assembly of the UN in its resolutions on the question of Belize and by the OAS in its endorsement of UN resolution 35/20. The international community in admitting Belize to membership of the United Nations thus affirmed the succession of this newly independent State with its pre-existing international frontiers.

Thank you.

[N.B. On the second day of the Hearing, Guatemala first replied to Belize's submission and Belize, in two statements, replied to Guatemala.]

May 22, 2001

Reply To Guatemala's Submission

H.E. Eamon Courtenay S.C.

Guatemala's presentation consisted, in the main, of a restatement of their original submission of the 30th March 2001 and their Reply of 15th May 2001. We have made comprehensive legal submissions in our written submission of the 31st April 2001 and in our oral presentation yesterday, and we will not repeat them.

I will confine my comments to new legal issues canvassed by Guatemala in its oral presentation yesterday.

In relation to the submission based on the *Chamizal* case, we simply say that that Arbitral Award did not decide that there was no concept of acquisitive prescription. On the contrary, it applied the principle and found, based on the factual matrix presented, that title was not made out by the USA. The facts in our case are manifestly different, and we submit that they do make out a title by acquisitive prescription.

In relation to their submissions that the elements needed to ground our defence of title on the basis of acquisitive prescription have not been satisfied, we do not reply to them serially. We confine our reply to saying that the facts now presented by Guatemala are entirely divorced from the facts as they were at the relevant time. In this connection we again commend to you the Report of Canciller Pedro de Aycinena. We need say no more.

Guatemala has invited you to consider the effects of reintegration of southern Belize into Guatemala. That is

not a course open to you, as it necessarily presupposes a finding by you that Guatemala is entitled to more than half our country. In any event this is absolutely legally untenable. To consider that this course is remotely possible is to completely disregard the wishes and rights expressed by the peoples of this region. It would be positively inhuman to transfer half our country with all its settled population, with a distinct culture and identity, to Guatemala. The human rights and political implications of such 'Balkanization' are immense and horrific. Consequently, we specifically request that you expressly reject this idea.

Treaties

As you will recall, there were three pillars to our case based on Treaties: (i) the 1859 Treaty, (ii) the 1931 Exchange of Notes, (iii) The Libya v. Chad Principle, i.e. that settled borders have a legal life independent of the treaties that gave them birth. In their submissions yesterday, they concentrated on the 1859 Treaty. They failed to deal with our second and third points.

But I turn to the points they did make on the 1859 Treaty.

As to the allegation of coercion which featured so large in their written submissions, this seems to have faded and been virtually abandoned, rightly so. Prof. Villagran Kramer did refer loosely to Britain's reputation as a naval power and Guatemala's need to safeguard the rest of its territories. Mr. Fitzgerald has already commented on this type of vague allegation. Geopolitical pressures are one thing, the legal concept of coercion is something far more specific and serious. They no longer seriously suggest that it applies.

Guatemala argued that Britain subscribed to a compensatory clause in Article 7 and that non-compliance led to the declaration of termination in 1946. They asked

you to look at the substance of the matter and to treat Article 7 as a compensatory clause. We say that you do not look beyond the expressed words if they are clear. They are, and Article 7 is not expressed as compensatory in any way. In this case, however, even if the words had not been clear and recourse could have been had to the background history, that too does not support the claim that Article 7 was compensatory: see Aycinena.

The recognition of the frontiers was not as a matter of form or substance made dependent on the completion of the road. Therefore, as a matter of law, the joint failure to build the road cannot be a basis for voiding the whole treaty.

Guatemala submitted that non-compliance justified termination in 1946. We do not accept that there was any unilateral breach by Britain. I will not restate the full history.

But, article 7 cannot be regarded as so fundamental to the main purpose of the Treaty that its breach, which is not admitted, could justify termination. If one applies the test laid down in Article 60 of the Vienna Convention, the fulfillment of Article 7 was not "essential to the object and purpose of the Treaty." The primary purpose of the Treaty was the establishment of the border and this took effect immediately. The border could not thereafter be undone because of the joint failure to work out a way of implementing the vague and non-essential commitment "to use joint endeavours" appearing in Article 7.

Even if there were a breach of Article 7 the remedy would certainly not be the invalidation of the whole Treaty. There could be no question of undoing the border after so long. We detect signs in Guatemala's Reply that they recognize that the problems we now face began with the former colonial power and not with Belize, and an acceptance that Belize should not be made to pay the price. We welcome the recognition of the reality that what they

describe as a *restitutio in integrum* is really quite impractical even if there were any substance in their allegation of non-compliance. We ask them to continue along this road and to state clearly and publicly that they accept that the borders could not now be undone.

SIMULATION

Guatemala did not treat this issue fully. But we noted no further mention of simulation. For the reasons we gave yesterday we believe that they have rightly abandoned this claim.

1931 TREATY

They tried to subsume the 1931 Treaty in the argument on the 1859 Treaty. But it is an independent treaty and contains no equivalent of Article 7. We still wait to hear on what grounds recognized by the Vienna Convention they seek to justify termination of the 1931 Treaty.

Libya v. Chad

Guatemala has failed totally to respond to our submission that the *Libya v. Chad* Principle should apply. But again, we do detect a welcome recognition that the principle operates to make what they describe as *restitutio in integrum* impossible. Moreover, the undoing of the border, and transfer of territory after so long would plainly violate both the letter and spirit of the several UN Resolutions to which we referred yesterday.

We suggest that it would be helpful if the Facilitators were to clearly state that *restitutio in integrum* is simply impossible in the light of Article 60 of the Vienna Convention, the *Libya v. Chad* Principle, and the international community's recognition of Belize's right to self-determination with territorial integrity.

I wish to respond to two points made by the distinguished Foreign Minister in his address this morning. First, he stated that the 1931 Exchange of Notes was not a treaty. By way of reply I must point out that the Exchange of Notes was registered with the League of Nations as a treaty. If it were not a treaty they would not have registered it in the treaty series. Secondly, the Foreign Minister stated that the Vienna Convention had no retroactive effect and therefore could not apply to the 1859 and 1931 Treaties. He is correct in saying that it has no retroactive effect, however, it was declaratory of existing principles of customary international law. We therefore say that they principles are the same.

Closing Statement

H.E. Assad Shoman

Distinguished Secretary General and Facilitators:

Allow me first to clarify a point made by the distinguished Foreign Minister of Guatemala this morning, when he charged me with defaming the army of Guatemala. He quoted me as saying that the Guatemalan army was threatening Belize. I must make it quite clear to the entire delegation of Guatemala, but in particular to its military representatives here, that I did not say that, that I have not defamed the military, and have no intention to do so. Indeed, in all our submissions throughout this process we have had occasion to state that the military co-operation on both sides is proceeding smoothly, and that the militaries are fulfilling their commitments under the Confidence Building Measures we agreed to. What I did say yesterday, and that is the truth, is that we have a militarily much more powerful neighbour. This is a reality, and it does not in any way carry the suggestion that that military is in fact behaving towards us in a reprehensible manner.

As we engage in this process under the auspices of the OAS, we want to state very emphatically that we hold it in the highest esteem, not least because this is our Organization, nor can we forget that even before we became an independent State, and a decade before we became a member, the OAS passed that resolution in 1980 we referred to yesterday by consensus, declaring our right to independence and territorial integrity on all our territory.

That resolution, like the one passed without a dissenting vote in the United Nations which it affirmed, was firmly grounded on the principle of the self-determination of peoples. It is concern for people, for their human rights, for their inalienable right to freedom and justice that is the fundamental pillar on which the right of self-determination is based.

Belize is a country of many peoples. As you all know, Belize is a multi-ethnic, multi-cultural, multi-lingual society. Our

cultural policy is not one based on domination or forced assimilation, but on the celebration of difference. In Belize, the indigenous people, the Maya, along with the people who came from other continents, enjoy the same democratic rights and privileges as all Belizeans.

I mention this because we have noted a very disturbing trend in several Guatemalan statements in the course of this process. They suggest that somehow the indigenous people of Belize need protection from the Guatemalan State, and that if given the opportunity they would opt to become part of the State of Guatemala.

Out of consideration for the distinguished representatives of Guatemala here present, I will not present historical and contemporary facts about the treatment of the indigenous peoples in Guatemala, or about the record of respect for their human rights. I am sure, in any case, that the members of the Panel are sufficiently familiar with this. But as we all know, Guatemala is a country that is in transition towards a more democratic and more just society, and we need to work together to ensure that the horrors of the past never again return, and that we cooperate in our efforts to provide a better life for all our peoples.

That is why it is important that Guatemala cease its policy of suggesting that the Maya people of Belize hold different loyalties from those of other Belizeans. This attempt to divide our peoples cannot but be considered an unfriendly act. We do not, and will not, seek to interfere in the internal affairs of Guatemala, much less to divide its peoples along ethnic or other lines. Such a policy, we all know from sad examples of ethnic divisions in too many parts of our world, only leads to tragedy and grief. The fact is that the Maya people of Belize, in common with indigenous peoples in all countries that have suffered colonialism, from whatever colonial power, have endured oppression and exploitation. But in today's independent Belize, the Maya have the same rights as all other Belizeans, including the right to cultural expression, to respect for the way of life they choose, and to development.

I wish in this context to place on record the fact that the Maya Leaders of Southern Belize recently signed a ten-point agreement with the Government of Belize, copies of which I have made available, in which the Government recognises their right to communal land, to cultural expression, and, most importantly, to have a say in decisions affecting their lives. In January of this year, the Maya Leaders passed what they called the Millennium Declaration, firmly rejecting any overtures from the Guatemalan Government, declaring their loyalty to the State of Belize, and calling on Guatemala to desist from pressing its territorial claim to what, as Belizeans, is their territory.

Besides being a multi-cultural nation, Belize is also an integral part of the two sub-regions, of the Caribbean and Central America. We sometimes refer to ourselves as the Caribbean beat in the heart of Central America. Already Belize has served as a bridge between the two regions. We have facilitated the improved relations of Guatemala with CARICOM countries, in the same way that Guatemala has facilitated our increasingly closer relations with Central America. We both know that now, more than ever before, we small countries have to stick together in order to meet the challenges of globalisation and find ways to improve the lives of our people.

Let me now turn to the question of what it is the Facilitators might wish to consider by way of proposing ways to put an end to this differendum.

Let me begin by suggesting what should *not* be considered. Without in any way wishing to show any disrespect towards the submissions made by the distinguished delegation of Guatemala, I believe it should be clear after the submissions made both in writing and orally yesterday, that this is not a case suitable for judicial determination. If this were a case between individuals coming before a municipal court, the court would rule the matter to be frivolous and vexatious, and dismiss it as not representing a triable case. Let's face it, Guatemala has no case, and it would be criminal for our poor peoples to have to pay millions of dollars to have this case tried in the

International Court of Justice, and even more millions if tried by an arbitral tribunal, when the outcome can only be one.

Let us suggest instead that you start from the premise that although Guatemala does not have a legal case against Belize, it feels aggrieved by history, not against Belize, as the distinguished Professor Villagran Kramer said yesterday, but aggrieved nonetheless. And as my colleague Senator Courtenay has just intimated, Guatemala seems to be suggesting that *resstituto in integrum* is not a realistic prospect. Take those two factors into account: Guatemala cannot get territory, but it feels aggrieved, and it is not in Belize's interest to have an aggrieved neighbour, when we have to work together for the development of our peoples. The question then becomes: what can the Facilitators suggest by way of projects that will deal with Guatemala's sense of loss, without punishing Belize, but in fact benefiting both peoples in concrete and palpable ways?

I am sure that both Guatemala and Belize don't want to fight this out, neither in court nor on the ground, and that we would both welcome a solution that is just for both parties, one that gives us both better opportunities for development and a new dawn in our relations, enabling our peoples to work even more closely together for the greater good of all.

Thank you.

Exchange of Notes 1931

In 1931 an Exchange of Notes took place between Britain and Guatemala. In international law, this amounted to a treaty, and it was so registered with the League of Nations as a "Treaty pursuant to article 18 of the Covenant of the League of Nations". Guatemala never protested at its registration, nor has it ever stated that the Treaty is lapsed or otherwise invalid. The English note is dated 25 August 1931, and states:

"The boundary between British Honduras and the Republic of Guatemala was laid down in the convention between the Republic of Guatemala and Her Majesty the Queen of Great Britain and Ireland, signed at Guatemala on the 30 April, 1859, article 1 (paragraph 2) of which defines the line as 'beginning at the mouth of the River Sarstoon in the Bay of Honduras and proceeding up the mid-channel thereof to Gracias a Dios Falls; then turning to the right and continuing by a line drawn direct from Gracias a Dios Falls to Garbutt's Falls on the River Belize and from Garbutt's Falls due north until it strikes the Mexican frontier'."

"It was further stipulated by article 2 of the convention that 'Her Britannic Majesty and the Republic of Guatemala shall, within twelve months after the exchange of the ratifications of the present Convention, appoint each a Commissioner for the purpose of designating and marking out the boundary described in the preceding article. Such commissioners shall ascertain the latitude and longitude of Gracias a Dios Falls and of Garbutt's Falls, and shall cause the line of boundary between Garbutt's Falls and the Mexican territory to be opened and marked where necessary, as a protection against future trespass."

"In consequence joint commissioners were appointed in 1860 for this purpose, who marked in situ the position of the terminal points of the southern section of the boundary, namely, Garbutt's Falls and Gracias a Dios Falls. However, the full survey of the frontier was not completed at that time."

"The Governments of the United Kingdom and Guatemala are now desirous of completing the demarcation. As a first step towards this purpose, commissioners were reappointed, who met on the Sarstoon River on the 16 January, 1929, and who pro-

ceeded to inspect the terminal points of the southern section of the frontier. They inspected the concrete monument on the north bank of the Sarstoon river at Gracias á Dios, 900 yards up-stream from the mouth of the Chocón branch. On the 22 January, 1929, they inspected the piles of stones on either side of the Belize River at Garbutt's Falls, erected by the joint commissioners in 1861. They decided to accept these marks as indicating the exact position of the two terminal points. The marks were then replaced by new concrete monuments, erected under the supervision of the commissioners, the monument at Garbutt's Falls being placed on the southern side of the river, and the former pile of stones being demolished. The work, both on the Belize and the Sarstoon rivers, was duly recorded in a report signed by the said commissioners at the Sarstoon river on the 29 May, 1929, of which I have received an original signed copy.

"I have the honour to inform your Excellency that I am authorised by His Majesty's Government in the United Kingdom to confirm, on their behalf and in accordance with article 3, paragraph 3, of the convention, this report as set forth in the accompanying copy, duly certified by me, to accept the concrete monuments erected by the said commissioners as correctly marking the terminal points aforesaid, and to state that they would be glad to receive a similar assurance on the part of the Government of Guatemala.

"The present note and your Excellency's reply will constitute the agreement between the Governments of the United Kingdom and Guatemala in the matter.

"I avail, &c.

H. A. GRANT WATSON"

The report of the commissioners referred to in the fourth paragraph of the Note was appended to it as an enclosure, and read as follows:

"We, the commissioners appointed by the Governments of Guatemala and British Honduras to establish the permanent boundary marks at Garbutt's Falls, Belize River and at Gracias á Dios Falls, Sarstoon River, met at Fallavon, Belize River, on the 7th day of May, 1929. On the 8th we proceeded to demolish the pile of stones erected at Garbutt's Falls by the commissioners of 1861, and to erect in its place a concrete monument bearing on its top two copper plates marked "Guatemala" and "British Hon-

duras" respectively. We completed this work on the 10th. From the 11th to the 15th we were engaged upon other work for our respective Governments, and on the 16th we left for Belize, where we arrived on the night of the 20th. Having made necessary preparations, we left Belize for Sarstoon River on the 24th and arrived at Gracias á Dios Falls on the 26th. There we erected a monument similar to that at Garbutt's Falls, which we finished on the 29th. We then proceeded down the river to Sarstoon Bar, where we separated.

"Signed at Sarstoon River Bar this 29th day of May, 1929.

Fernando Cruz,
Commissioner for the Government of Guatemala

Fred W. Brunton,
Commissioner for the Government of British Honduras."

The Guatemalan answer was dated the next day, 26 August 1931 and reads as follows:

"I have the honour to acknowledge receipt of your note of the 25th instant.

"The Government of Guatemala agree to accept the concrete monuments erected at Garbutt's Falls and the Rapids of Gracias á Dios which were set up by the commissioners of both Governments, Engineers Fernando Cruz and Frederick W. Brunton, on the 8 and the 26 May 1929, on the frontier between Guatemala and British Honduras according to the report drawn up at the Sarstoon River Bar by both delegates on the 29th day of the same month. A copy of the report duly certified is enclosed herewith.

"These monuments, thus determined, form part of the boundary line between British Honduras and the Republic of Guatemala.

"I avail, etc.

A. SKINNER KLÉE"

The Guatemalan answer also appended the report of the commissioners.

The Guatemalan reply also carried the following attestation:

"The undersigned Sub-Secretary of Foreign Affairs certifies: that he has seen the report, which states:

(There then follows the text of the report of the Commissioners.)

And in order to annex it as an enclosure to note No. 11443 of this date I draw up, seal and sign the present certificate, compared with its original, in the City of Guatemala, on the twenty-sixth day of the month of August, nineteen hundred and thirty-one.

(Seal.) J. Ed. Girón."

In addition, in the official British version of the Exchange of Notes, also published in 1932 (Treaty Series No. 9 (1932), Cmd. 4050) the whole text of the 1859 Convention was included as an Appendix. It was also included in the League of Nations version.

The Aycinena Letter, 1860

Below is an unofficial translation of a letter sent by Pedro de Aycinena, Minister of Foreign Affairs of Guatemala, to the Guatemalan Chamber of Deputies in relation to the Anglo Guatemalan Treaty of 1859.

Ministry of Foreign Affairs

January 4, 1860

Honorable Secretaries of the Chamber of Representatives

Gentlemen:

I am honored to submit to you, so that you may inform the Chamber [of Representatives], on the Convention signed last April 30 in this City, with the objective of determining the limits between the Republic and the Settlement of Belize. This Convention was ratified by both parties and those ratifications were exchanged in this City as well.

Since this is an important matter, I am ordered to inform extensively to the Chamber on the course of the negotiation which preceded the definitive agreement of this pact, and to present for examination all of the documents and correspondence which have been exchanged on the matter.

The advantages of establishing the hitherto undefined boundaries of the Republic on our Atlantic Coast have been acknowledged in several periods throughout our history, all the more so in the face of relentless encroachment by the population of Belize. We, in turn, have been prevented from gaining possession of uninhabited and deserted territories, over which we considered ourselves as Spain's successors, although we did not have the title of actual possession, nor had we been able to take or exercise any act of sovereignty.

Since the time of the Federal Government (1823 - 39), steps had been taken with the goal of fixing those limits but all were

fruitless and yielded no results. Ignoring our claims to the territories contiguous to the English settlement, which had been abandoned by Spain and not occupied by us, these areas continued to be occupied and exploited, before and after independence, beyond the limits established in the treaties with Spain. The English Government, considering this actual occupation as giving them legitimate title, defined the extent of the settlement as the river Sarstoon, according to a declaration made by the Minister of the Colonies, Sir George Grey in 1836, within the framework of a project for the creation of a Colony in Boca Nueva. We, in turn, after a few claims and protests, tacitly maintained the status quo without pursuing new initiatives which apparently were futile. This Government, after some order and regularity had been established in the Administration, looked at this state of affairs and hastened, to the extent possible, to make some demonstration of our dominion in the margins on the right side of the Sarstoon, by granting the use of these lands to those who had asked for them, thus exercising a right that would be denied to us as long as we did not make it practical and effective.

Such was the situation in 1856 when the filibusters invaded Nicaragua, revealing the dangers we faced and the need to conduct our foreign relations with greater care and foresight; it focused anew the Government's attention on the question of Belize, presenting it for consideration under a realistic perspective. For anyone who followed the unfolding of these events, the harrowing Nicaraguan conflict was but one of many incidents known as "Central American issues", i.e. the dispute between two international powers regarding issues that are at the core of our existence as independent States.

One of the reasons of the dispute was the Settlement of Belize, the nature and extension of which everyone purportedly wished to establish and define. When the April 1850 Treaty between England and the United States was finalised, it was agreed that the Settlement would not extend beyond its then current boundaries; that is, England's possession was recognised as legitimate title, however, the guiding principles and spirit of

that Treaty obliged England not to expand the Settlement by occupying new territories.

One of the measures adopted by the Government to deal with the danger faced by the entire country in 1856, and the one believed to be most efficient, was the promotion of an agreement between the Republic and Great Britain, thereby eliminating all obstacles on the pending matter of the limits of Belize. This measure also had the objective of overcoming the causes of dispute which were affecting the States (Guatemala and Great Britain) terribly, and had the further aim of focusing attention on this country (Great Britain), while adopting a frank and open policy, similar to the one we had advised Nicaragua to take, instead of following a discredited and rejected system of seeking solutions to difficult issues through speeches, useless lament, and futile and endless discussion.

In view of this, as is customary in all acts of the Administration, the Government decided to depart from the timid and useless mode adopted in earlier times, which brought us so much discredit and produced such disastrous results. It initiated a negotiation on 1 August, 1856, proposing to the English Government a definitive boundary agreement, combined with provisions that would protect our coast from invasions such as the one we were repelling in Nicaragua.

I will have the honour of placing at the disposition of the Commission which examines this matter, the documents and correspondence in which the course of this long and difficult negotiation can be seen. The Chamber will find in them frank and clear proof that nothing has been omitted which demonstrates the rights which we may consider as ours. Likewise, nothing has been omitted in seeking diverse and practical combinations which safeguard as much as possible the immediate interests of our country, and which would yield the desired results in a matter which did not depend solely on us, and whose consequences should be transcendental, dependent on the manner in which it is concluded.

The different proposals and combinations which were presented by us could not be accepted in London; and although the discussion of this negotiation was friendly and honest for both parties, in the end, it was suspended without any agreement. Invariably, England sustained the importance of actual possession, calling for the recognition of the status quo for the determination of limits, as a final act which would put to an end all subsequent occupation. The Government [of Guatemala] was persuaded after these instances and efforts, that in reality, there was no other practical solution for an issue whose settlement was considered necessary to bring our relationship with England to a natural and satisfactory state. The Government was further persuaded that our refusal impeded the settlement of other interests and difficulties, and that we should not embroil ourselves in them and be affected by the consequences. Nonetheless, the negotiation remained pending with the expectation of finding a combination acceptable to both parts.

Meanwhile, new developments facilitated its settlement. The security assurances we requested against filibuster interests and which they could not offer due to an isolated stipulation with Guatemala, was obtained by a just and moral act of the maritime nations. France, England and the United States have openly condemned the acts of piracy carried out in Nicaragua and directed that their naval forces not allow it to reoccur. New endeavors that are still being launched have been frustrated and impeded by the Naval authorities of the United States, as well as those of the other two powers which sail our coast.

The Governments of the United States and Great Britain reached an agreement on the issues regarding the Settlement of Belize. Discussions in the United States Senate publicly disclosed the treaty concluded in October 1856 between the two powers. By this treaty, they mutually and definitively agreed on the meaning of the 1850 Treaty in relation to Belize. That is, English possession was expressly recognised, declaring that the British Settlement had not and is not included in said treaty; and with respect to the extension of territory,

the limits were fixed as to the North, the Mexican province of Yucatan and as to the south, the Sarstoon River. The treaty further provided that the western boundary, as it existed on 19 April 1850, be fixed with Guatemala within two years if possible and at no time thereafter extend beyond.

Under these circumstances, quite different than those under which the negotiations had started in London, the representative of Her Britannic Majesty in this Republic, moved for its continuation in frank and clear terms, asking for our cooperation to complete a final agreement on the pending issues.

The Government then considered this negotiation with the proper attention, and examined all of its aspects as the Chamber expressed to His Excellency, the President, that it trusted had been done.

In the first place, it accepted its importance, given its connection with the serious issues and difficulties which had transpired between the two great powers, and for the settlement of which our cooperation was sought; and likewise, the immediate and very important interest that these two countries have to find disagreement, which had more than once endangered the peace, well being and even very independence (of Guatemala).

On examining this situation, we could not fail to recognise that the right we had constantly alleged of being presumptive heirs of Spain's sovereignty, was considerably weakened due to our lack of means to take possession of these territories that had been deserted and abandoned by Spain herself and subsequently by us. Furthermore, such a right, in the face of actual possession and practical exercise of sovereignty, regardless of the means by which they were acquired, could lead to a prolonged discussion and although supported with some foundation by us, did not offer any reasonable hope for success.

It was recognised that we could not argue against the sovereignty already being exercised with full Spanish acquiescence in 1821 when we became independent, and that, in the case at hand, the issue would be reduced to territorial occupation occurring after that date only.

In this regard, setting aside the theoretical points of law that could assist us, we were faced with the practical difficulty of modifying the existing boundaries. Even if we were to prove the point - presumably true despite Britain's contention to the contrary - that the limits were extended as far as the Sarstoon River after Independence, the truth was that since we had never taken possession of these territories, nor had we recognised them, nor maintained agents to represent us in them, it would render it impossible for us to determine or fix which part was occupied during Spanish rule and which part was occupied thereafter. This loomed as an insurmountable obstacle against materialising our claim.

After collecting all practicable information with the utmost care and diligence - despite the old archives of the General Captaincy (the only possible source) no longer being extant - examining maps from several historical periods and completing a highly punctilious study, we concluded that the boundary dispute would be reduced to an area of 40-60 miles of uninhabited territory, which in all honesty did not warrant foregoing far more important and lofty objectives in our foreign policy.

From a practical standpoint, the issue was equally clear. A British Settlement and a foreign population existed in our vicinity. Even conceding the possibility that the English Government would relinquish its acquired possession and domain, the population would remain independent from us because we would be incapable of governing and dominating them since we are cut off from that population by uninhabited territories and the sea, and we lack the means to communicate with them. It follows that such a *de facto* independent population could shortly become independent *de jure*, and instead of acquiring the extension of land we sought, we could

well find ourselves facing a hostile neighbour, unchecked by any law or rule whatsoever. We would exchange our coexistence with a large and powerful nation - hence accountable for its own actions unto the world as a whole - for an assortment of irresponsible adventurers and pirates who would lord themselves over the Gulf of Honduras, i.e. the lifeline of our Republic.

These and other considerations surrounding the issue, taken together and seen from all perspectives, were given to the President for his consideration. He took the decision required by the case, and recognizing the existing facts, instructed that all fruitless discussions be ended, given that they were of no substantive importance and did not merit continuing.

On [the President's] orders we began negotiations and, following our recognition of the current boundaries of the British Settlement as the basis for said negotiations, we proposed - after acknowledging its legal existence - opening an accessible road to this Capital in order to encourage travel and trade with said Settlement by way of our Atlantic Coast. This proviso was accepted by the Plenipotentiary of Great Britain and included in the treaty approved by the President. Upon examination and approval by the State Council, it was also ratified by H.E.

Presented to the Government of the Queen, it gained complete approval and was duly ratified by Her Majesty. At the exchange of ratifications, the British representative had orders to express the most benevolent and gracious regards of his Government, and to assure the President of the great appreciation for the frank and friendly manner in which he had treated this negotiation and that England would execute the stipulation of Article VII, about which we were invited to make suggestions as we saw fit.

Subsequently, H.E. received a more outstanding demonstration of consideration towards the country and towards him by Her Majesty, all of which the Chamber will

find within the documents which I will have the honor to present for your examination.

As to the road to be opened under this Convention, which the President considers immensely beneficial for our agriculture and trade, it is understood that the road will be built with the joint efforts of both parties. Britain is to supply engineers and funds, and the Republic is to supply materials and labour. On-site surveys are likely to commence this month on the part of engineers who will be sent by the British Government. Upon completion of this work, the necessary arrangements will be made to implement our agreements. The President, who believes these works to be highly beneficial - particularly for our Departments along the Atlantic Coast - suggests that we take to this task with utmost dispatch, and the relevant orders have been issued to the authorities of the Coast and of the Department of Chiquimula.

The President has no doubt that the decisions he has made in this negotiation, and the extensive and elevated view of his policy, will be duly appreciated and supported by the consent of the Chamber. In this issue, just like in other issues of the Government, your action should be as expeditious as good public service requires and should not be limited to a narrow path with no way out. He understands perfectly the force of the beliefs against which he has had to fight so many times to take the country out of a depression to which it had been reduced to by inexperienced actions, especially in the manner of conducting its foreign relations. His Excellency believes that Government is the center of conflict and has the duty to eliminate them and to save the Republic each time it is threatened, whether from within or from without, with foresight and vigilance. It could not demand from those who accept the duty of the difficult and delicate, albeit honorable responsibility of assisting in the government, that they sacrifice the success of the more important actions to impressions derived from theory without examination, thereby abandoning the only certain path of practical applications in conducting business.

With regard to the zeal which the Government should possess for the real and positive interest of Guatemala and the integrity of its territory, His Excellency, who has received from the entire country the title of Defender and Restorer of the Republic, can indulge a dispute to this illustrious title, from those displaying an exaggerated zeal without purpose.

I remain, your faithful servant,

Signed
Dated

UN Resolution on Belize - 1980

35/20, Question of Belize

The General Assembly,

Having considered the question of Belize,

Having examined the relevant chapters of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,⁶

Recalling its resolutions 3432 (XXX) of 8 December 1975, 31/50 of 1 December 1976, 32/32 of 28 November 1977, 33/36 of 13 December 1978 and 34/38 of 21 November 1979,

Having heard the statements of the representatives of the United Kingdom of Great Britain and Northern Ireland⁷ and Guatemala,⁸

Having also heard the statement of the representative of Belize,⁹

Recalling that the Sixth Conference of Heads of State or Government of Non-Aligned Countries, held at Havana from 3 to 9 September 1979, reiterated its unconditional support for the Belizean people's inalienable right to self-determination, independence and territorial integrity and condemned all pressure or threats to prevent the full exercise of that right,¹⁰

Reaffirming the principles established in the Declaration on the Granting of Independence to Colonial Countries and Peoples, set out in its resolution 1514 (XV) of 14 December 1960, in particular that all peoples have the right to self-determination, by virtue of which right they freely determine their political status and freely pursue their economic, social and cultural development,

Welcoming the fact that, in accordance with General Assembly resolution 34/38, negotiations have recently taken place between the Government of Guatemala and the Government of the United Kingdom in close consultation with the Government of Belize and that the respective positions of both sides were clarified with a view to continuing the process of negotiations,

Noting with regret, however, that despite their efforts and good faith it has not yet proved possible for the parties concerned to agree upon a settlement of their differences,

Convinced that the differences that exist between the United Kingdom and Guatemala do not in any way derogate from the inalienable right of the people of Belize to self-determination, independence and territorial integrity and that the continuing inability of the parties to resolve such differences should no longer delay the early and secure exercise of that right,

Recognizing the special responsibility of the United Kingdom, as the administering Power, to take immediate steps to enable the people of Belize to exercise freely and without fear their right to the secure and full independence of all their territory.

1. *Reaffirms* the inalienable right of the people of Belize to self-determination, independence and territorial integrity, and urges all States to render all practical assistance necessary for the secure and early exercise of that right;

2. *Declares* that Belize should become an independent State before the conclusion of the thirty-sixth session of the General Assembly;

⁶ Official Documents of the General Assembly, Thirty-fifth Session, Supplement No. 23 (A/35/23/Rev. 1), chaps. IV and XXV.

⁷ *Ibid.*, Thirty-fifth Session, Fourth Committee, 11th meeting, paras. 40-44, and 19th meeting, paras. 16-19.

⁸ *Ibid.*, 17th meeting, paras. 32-38, and 23rd meeting, paras. 4-8.

⁹ *Ibid.*, 19th meeting, paras. 93-99.

¹⁰ See A/34/542, annex, sect. I, para. 165

3. ***Calls upon*** the United Kingdom of Great Britain and Northern Ireland to convene a constitutional conference to prepare for the independence of Belize;

4. ***Calls upon*** the parties concerned to respect the principle that the threat or use of force should not be applied to prevent the people of Belize from exercising their inalienable right to self-determination, independence and territorial integrity;

5. ***Urges*** the Government of the United Kingdom, acting in close consultation with the Government of Belize and the Government of Guatemala to continue their efforts to reach agreement without prejudice to the exercise by the people of Belize of their inalienable rights and in furtherance of the peace and stability of the region and, in this connexion, to consult as appropriate with other specially interested States in the region;

6. ***Calls upon*** the Government of the United Kingdom, as the responsible administering Power, to continue to ensure the security and territorial integrity of Belize;

7. ***Requests*** the relevant organs of the United Nations to take such actions as may be appropriate and as may be requested by the administering Power and the Government of Belize in order to facilitate the attainment of independence by Belize and to guarantee its security and territorial integrity thereafter;

8. ***Welcomes*** the declared intention of the Government of Belize to apply for membership in the United Nations upon attainment of independence,¹ in accordance with Article 4 of the Charter of the United Nations;

9. ***Calls upon*** Guatemala and independent Belize to work out arrangements for post-independence co-operation on matters of mutual concern;

10. ***Requests*** the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples to remain

seized of the question and to assist the people of Belize in the early exercise of their inalienable rights.

57th Plenary Meeting
11 November 1980

OAS Resolution on Belize - 1980

AG/RES. 501 (X-0/80)

BELIZE

(Resolution adopted at the sixth plenary session, held on November 27, 1980)

The General Assembly

Having examined AG/doc. 1260/80 on the status of the nonautonomous territories in the American hemisphere and other territories in the Americas having ties with countries outside the hemisphere, and in particular Section b (i) relating to the status of Belize;

Recalling the principles established in the Declaration of La Paz, as contained in AG/RES. 429 (X-0/79) and in particular paragraph 4, in which the General Assembly expresses "... its satisfaction with the progress the nations of this hemisphere have made in achieving independence, and reaffirms its determination to aid in the continuing process of decolonization of the region so as not to defer the exercise of the legitimate right of peoples to forge their own destiny"; and

Noting that at its XXXV Session the United Nations General Assembly adopted, without one dissenting vote, Resolution 35/20 on November 11, 1980, in which it reaffirmed the inalienable right of the people of Belize to self-determination, independence, and territorial integrity, and declared that Belize should become an independent state before the conclusion of the XXXVI Session of the United Nations General Assembly; and

Bearing in mind that Article 1 of the Charter of the Organization of American States provides that the Organization is a regional agency of the United Nations,

RESOLVES:

1. To endorse United Nations General Assembly Resolution 35/20 of November 11, 1980, on the question of Belize.
2. To offer its cooperation, in keeping with the principles of self-determination, to facilitate the constitutional evolution of Belize as a sovereign, independent state of the Americas, in accordance with United Nations General Assembly Resolution 35/20 of November 11, 1980, and thereafter to assist the independent state of Belize to develop harmonious and friendly relations with its neighbors and other states in the hemisphere.

Anglo-Guatemala Treaty - 1859

CONVENTION between Great Britain and Guatemala, relative to the Boundary of British Honduras:

Signed at Guatemala, April 30, 1859.

(Ratifications exchanged at Guatemala, September 12, 1859)

WHEREAS the boundary between Her Britannic Majesty's settlement and possessions in the Bay of Honduras, and the territories of the Republic of Guatemala, has not yet been ascertained and marked out; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the Republic of Guatemala, being desirous, with a view to improve and perpetuate the friendly relations which happily subsist between the two countries, to define the boundary aforesaid, have resolved to conclude a Convention for that purpose, and have named as their Plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Charles Lennox Wyke, Esquire, Her Britannic Majesty's Charge d'Affaires to the Republic of Guatemala;

And his Excellency the President of the Republic of Guatemala, Don Pedro de Aycinena, Councillor of State, and Minister for Foreign Affairs:

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:

Art. I. It is agreed between Her Britannic Majesty and the Republic of Guatemala, that the boundary between the Republic and the British Settlement and Possession in the Bay of Honduras, as they existed previous to and on the 1st day of January, 1850, and have continued to exist up to the present time, was and is as follows:

Beginning at the mouth of the River Sarstoon in the Bay of Honduras, and proceeding up the mid-channel thereof

to Gracias a Dios Falls, then turning to the right and continuing by a line drawn direct from Gracias a Dios Falls to Garbutt's Falls on the River Belize, and from Garbutt's Falls due north until it strikes the Mexican frontier.

It is agreed and declared between the High Contracting Parties that all the territory to the north and east of the line of boundary above described, belongs to Her Britannic Majesty; and that all the territory to the south and west of the same belongs to the Republic of Guatemala.

Her Britannic Majesty and the Republic of Guatemala shall within 12 months after the exchange of the ratifications of the present Convention, appoint each a Commissioner for the purpose of designating and marking out the boundary described in the preceding Article. Such Commissioners shall ascertain the latitude and longitude of Gracias a Dios Falls, and of Garbutt's Falls, and shall cause the line of boundary between Garbutt's Falls and the Mexican territory to be opened and marked where necessary, as a protection against future trespass.

The Commission mentioned in the preceding Article shall meet at such place or places as shall hereafter be fixed, at the earliest convenient period after they shall have been respectively named; and shall before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, without fear, favour or affection to their own country, upon all the matters referred to them for their decision; and such declaration shall be entered on the record of their proceedings.

The Commissioners shall then and before proceeding to any other business, name some third person to act as arbitrator or umpire in any case or cases in which

they may themselves differ in opinion. If they should not be able to agree upon the choice of such a third person, they shall each name a person; and in each and every case in which the Commissioners may differ in opinion as to the decision which they ought to give, it shall be determined by lot which of the two persons so named shall be the arbitrator or umpire in that particular case. The person or persons so to be chosen shall before proceeding to act, make and subscribe a solemn declaration, in a form similar to that which shall already have been made and subscribed by the Commissioners, which declaration shall also be entered on the record of the proceedings. In the event of the death, absence or incapacity of either of such Commissioners, or of either of such arbitrators or umpires, or of his omitting, or declining, or ceasing to act, another person shall be named, in the same manner, to act in his place or stead, and shall make and subscribe such declaration as aforesaid.

Her Britannic Majesty and the Republic of Guatemala shall engage to consider the decision of the two Commissioners conjointly, or of the arbitrator or umpire, as the case may be, as final and conclusive on the matters to be respectively referred to their decision, and forthwith to give full effect to the same.

IV. The Commissioners hereinbefore mentioned shall make to each of the respective Governments a joint report or declaration, under their hands and seals, accompanied with a map or maps in quadruplicate (two for each Government), certified by them to be true maps of the boundary defined in the present Treaty, and traversed and examined by them.

V. The Commissioners and the arbitrator or umpire shall keep accurate records and correct minutes or notes of all their proceedings, with the dates thereof, and shall appoint and employ such surveyors, clerk or clerks, or other persons as they shall find necessary to assist them

in the transaction of the business which may come before them.

VI. The salaries of the Commissioners shall be paid by their respective Governments. The contingent expenses of the Commission, including the salary of the arbitrator or umpire, and of the surveyors and clerks, shall be defrayed in equal moieties by the two Governments.

VII. It is further agreed that the channels in the water-line of boundary described in Article 1 of the present Convention, shall be equally free and open to the vessels and boats of both Parties; and that any islands which may be found therein shall belong to that party on whose side of the main navigable channel they are situated.

VIII. With the object of practically carrying out the views set forth in the preamble of the present Convention, for improving and perpetuating the friendly relations which at present so happily exist between the two High Contracting Parties, they mutually agree conjointly to use their best efforts, by taking adequate means for establishing the easiest communication (either by means of a cart-road, or employing the rivers, or both united, according to the opinion of the surveying engineers), between the fittest place on the Atlantic coast, near the settlement of Belize, and the capital of Guatemala; whereby the commerce of England on the one hand, and the material prosperity of the Republic on the other, cannot fail to be sensibly increased, at the same time that the limits of the two countries being now clearly defined, all further encroachments by either party on the territory of the other will be effectually checked and prevented in the future.

IX. The present Convention shall be ratified, and the ratifications shall be exchanged at London or Guatemala as soon as possible within the space of 6 months.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Guatemala, the 30th day of April, in the year 1859.

(US) CHARLES LENNOX
(USO P. DE AYCINENA.