

*Ministry of Foreign Affairs
Guatemala, C.A.*

March 30th, 2001

Honorable Facilitators:

On February 7th of this year, the Governments of Belize and Guatemala agreed to the provisions set forth in the **"Agreement on procedure for addressing the merits of the territorial differendum and other procedural matters"**.

Item 1 of said provisions refers to **Written Presentations** and establishes that each of the parties shall submit to the Panel of Facilitators a presentation, explaining the basis of its territorial, maritime, and insular claims, or a refutation of the other party's claim, and shall include any facts, arguments, and documents that such party considers pertinent.

Based on the above mentioned provisions, my Government is hereby submitting, in due time, its written presentation explaining the merits of its territorial, maritime, and insular claim, to the effect that the Honorable Facilitators may be in position, at the end of the process, to propose conciliation formulae or recommendations as to the procedure to follow in order reach a definitive resolution of the territorial differendum submitted to your consideration.

Prior to the statement of a matter of such a transcendental importance, I believe this is the right time to emphasise that the firm belief of the parties with respect to the peremptory need of settling their territorial differendum, the demonstrated good faith of both parties, as well as the diligence and honesty shown by their behavior during the course of the conciliation process, in addition to, both, the wise and impartial advice from the Facilitators and the invaluable support from the Secretary General of the Organization of the American States, lead to achieving, first, and appropriate and sustained peace in the "Adjacency Zone" and, then the honorable and firm commitment of their Governments to find, through the peaceful and noble means of the conciliation, the solution needed and deserved by their peoples.

It is now the turn for the Facilitators, after carrying out such a commendable work with the purpose of building confidence between the parties, to proceed to study their statements and arguments, to clarify their discrepancies, to accurately identify issues in dispute and to propose those formulae, which, taking into consideration the reasons explained by each party, with equanimity, may reconcile their legitimate interests, adequately resolve their disagreements and resolve with justice their reasonable claims.

Honorable Facilitators
Sir Shridrath Ramphal
Doctor Paul Reichler
Doctor César Gaviria

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It is with full confidence in the aforesaid that I begin the exposition of my Government, which has as important points of reference the notes from Guatemala dated October 18th, 1999 and June 1st, 2000; and those of Belize dated June 6th, and 8th, 2000, as well as the reply from Guatemala to the aforesaid notes dated July 14th, 2000, which must be considered as an integral part of the exposition I am hereby presenting.

This presentation is divided into seven sections, referring to:

- I. Introduction
- II. Origin and Development of the Controversy between Great Britain-Guatemala, and later Belize-Guatemala's controversy
- III. Summary of the parties' position
 - a) Spanish sovereignty over the disputed territory
 - b) Guatemalan sovereignty over the disputed territory
- IV. Nature of the Controversy
 - a. In relation to the nature of the Anglo-Guatemalan Treaty of 1859
 - b. In relation to the Monuments and Border Demarcation
(Border Demarcation vrs Compliance with Clause 7th of the 1859 Treaty
Proposals of Great Britain and Proposals of Guatemala)
- V. Termination of the 1859 Treaty.
- VI. Maritime and Insular Claim
 - a. Insular Claim
 - b. Delimitation of Maritime areas
- VII. Conclusions

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I. INTRODUCTION:

1. Sylvanus Morley, in his monumental work titled *Recordings of El Peten*, states: "Formerly, the name of Peten was given to an area almost double than that of the present department. The eastern extension was reduced by a treaty between Spain and England in 1783, followed by a commission which regulated the limit with Belize in 1784, and finally, by a convention with the Government of the Republic of Guatemala in 1859".
2. Guatemala was forced in 1859 to sign a convention of territorial cession, miscalled a boundary convention, with a foreign Power that had repeatedly shown what she was capable of doing in the American Continent in order to perpetuate her hegemony and to attain her economic interests. Either Guatemala signed or she would be exposed to continue being the victim of usurpations by the greed of British subjects. The signed convention clearly shows the extra-continental interests of a colonizing Power, on the one side, and the fragility and weakness of an incipient State that just finished a war against colonialism, on the other side.
3. Two centuries of usurpation, in the territory, islands, cays and the territorial sea, as well as the ensuing impossibility to profit from the resources of the Exclusive Economic Zone and Continental Platform, has been the initial cost that the Guatemalan Nation has had to pay as a result of British colonial vestiges in the American Continent. The cost that the Republic of Guatemala keeps paying, unwarranted, is that of having stalled its natural social and economic development on account of being forced to live with its back turn away from a sea that legitimately belongs to her.
4. The geographical position of the Mayan Empire allowed it to have access to the Caribbean waters, from the Gulf of Mexico to the Gulf of Honduras, thereby allowing its development during so many centuries. This ability, is, without a doubt, what allowed their inhabitants to improve their commerce, trade, and communications, the access to the Caribbean waters being the common denominator of its economy.
5. The specific case of the Toledo District in the south of Belize, and that of Las Verapaces, in Guatemala, is that since immemorial times both composed one single territorial area inhabited by the Kekchí people until its severance by Great Britain. However, this circumstance has not, to date, been able, to erase the cultural, idiomatic, and religious ties that link the inhabitants of the current Departments of Alta Verapaz and El Peten, in Guatemala, with those of the Toledo District in Belize, indigenous people that continue to share today one same idiosyncrasy and cosmogonic identity.
6. On the other hand, it is evident that there exists a historical, economic, and social correlation between the coastal areas and the people that inhabit them; with the result that, in the case of El Peten, its present mediterranean geographical location has deprived it of a historical economic development not only due to the lack of an outlet to the sea towards its point closest to the coast, currently kept unlawfully by Belize but also due to the skewed result in the relationships of the surrounding inhabitants "It is due to the estrangement of Belize -says Morley- that the general development of El Peten has been greatly slowed down; the lack of an outlet to the sea

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along the two hundred and fifty kilometers of boundary between both, has hindered the exploitation of the wealth of its soil and subsoil."¹

7. As a matter of fact, coastal States make every effort to maintain a presence along the shorelines and coasts belonging to them, well aware of their influence on their development: The sea represents a geopolitical power granting limitless benefits, facilitates commerce and also communications, in this manner maximizing the opportunities for economic growth and development of the people. The interruption of these natural means of communication and of access to the sea, constrain economic, social and human development. That is why the territories of El Peten and Izabal, and even, of the rest of the Republic, have seen their prosperity limited, not only due to the existing lack of legal certainty as to their legitimate rights over the Caribbean Sea and the wealth it furnishes to its inhabitants, but also in a particular manner, due to the absence of a maritime port in the Atlantic properly communicated with rest of the territory and its capital city.

8. The situation originated by the British usurpation of the territory of Belize has been so harmful and damaging, that it is pathetic to acknowledge that Guatemala, with an area of almost 110,000 square kilometers and a population of more than 11 million people (ca. 1 million of inhabitants in 1860), only has 310 kilometers of shoreline, whereas Belize, having a territorial area of almost 23,000 square kilometers and a population close to one fourth of a million inhabitants (ca. 20,000 inhabitants in 1860), has a coastal line of more than 400 kilometers, without taking into consideration the islands which double that proportion. If this circumstance has hindered a sustained and orderly development of Guatemala, why should we condemn future generations to the unwanted limitations imposed by force and by the plunder of imperialism and a colonial past? Guatemala and Belize cannot continue to prolong an uncomfortable neighborhood on account of an unresolved dispute: There is no benefit in this for the Belizeans nor for the Guatemalans; much less for the peaceful and reciprocally useful co-existence of the nations.

9. This region has a very high priority in the security area due to its natural resources, both renewable and non-renewable, as well as due to the fact that this is the natural space where the maritime commerce and traffic occurs in the American Continent, and between this and the European one. We face an area with a multidimensional strategic value because, in addition to the wealth therein found and to the fact that it is the main passage for the sea lanes of communication, the security is threatened and seriously conditioned by illicit traffic of drugs, arms and illegal immigrants, from south to north and vice versa.

10. The people and Government of Guatemala ratify with this brief preamble their concern due to the fact that, in the territorial differendum with the neighboring State of Belize, there are underlying circumstances that reach beyond the strict adherence to the law appertaining the case and to the historical justice which both continue to demand. Circumstances of power and dominion, have created an environment of uncertainty and hindrance to the development of the Guatemalan people, who are suffering the damaging consequences of an arbitrary and cunning plunder which caused the mutilation of its territory and condemned Guatemala to an economic and social backwardness for more than two centuries, as well as flouting its right to territorial integrity and the ensuing progress

¹ Bis. page 38

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II. ORIGIN AND DEVELOPMENT OF THE DISPUTE²

11. With the purpose of allowing the Facilitators to know and examine the background of this dispute, Guatemala deems it necessary to point out that since the 19th Century, there exists a legal dispute, on the one side, between the Republic of Guatemala, as a succeeding State of the United Provinces of Central America which, in turn, as a new State after gaining independence, had succeeded the Kingdom of Spain, and, on the other side, the United Kingdom of Great Britain and Northern Ireland, of which Belize became the succeeding State after attaining the *status* of independent State on September 21st, 1981.

12. This legal controversy was originated with the signing of a bilateral Convention on April 30th, 1859, between Great Britain and Northern Ireland and the Republic of Guatemala, directly related to the territory known then as **Belize** or **British Honduras**, a territory which, with its **northern part** located between the rivers Hondo and Sibun and the then Captaincy-General of Goathemala, was occupied by Great Britain based on treaties concluded with the Kingdom of Spain in Paris, 1763; Versailles, 1783; London, 1786, and , finally, in Madrid, 1814, and then, its **southern part** comprised between the Sibun and Sarstoon Rivers and an imaginary line the Provinces of Verapaz and of El Peten of the State of Guatemala (later Republic of Guatemala), which had been occupied de facto by Great Britain; and in which Guatemala, notwithstanding its evident economic and military disadvantage before Great Britain, did not waive its rights but rather exercised territorial sovereignty until the date in which she was forced to sign, on April 30th, 1959, the above mentioned bilateral convention.³

13. It must be stated that throughout that period, the British Parliamentary Acts of 1817 and 1819 did not hold that the territory of Belize was within the territory and dominion of His Majesty, whereas, the State of Guatemala as a member of the Central American Confederation and later as an independent Republic, exercised acts of territorial sovereignty such as granting British subjects concessions for settlements and agricultural exploitations.⁴ I am enclosing herewith copies of the treaties concluded between the Kingdoms of Great Britain and Spain, of the Official Map of the Republic of Guatemala dated 1859 in which those areas appeared duly marked, and legislative texts related to the granting of concessions for agricultural exploitation.

14. It is necessary to add to the above said that, being independent since 1821, the United Provinces of Central America, and having succeeded the Kingdom of Spain in its territorial rights, the Government of Great Britain asked the Spanish Crown the cession to Great Britain of its rights over the territory of Belize, request which was denied by the Spanish Crown, which in turn made

² Brief bibliography: Guatemala Secretaría de Relaciones Exteriores, "*El Libro Blanco*", Guatemala, 1938; José Luis Mendoza, "*Inglaterra y sus Pactos sobre Belice*", Guatemala, 1942; Decree dated August 5, 1839. United Kingdom and Belize: Burdon, *Archives of British Honduras*, 1931, vol. I; "*The Diplomatic History of British Honduras*" 1961; A. Dobson, "*A History of Belize*", 1973. Independent Studies: Mario Rodríguez, "*Chatfield, Cónsul Británico en Centroamérica*", Tegucigalpa, Banco Central de Honduras, 1970; Wayne M. Clegern, "*New Light on the Belice Dispute*", *American Journal of International Law*, 1958, pp.285-297)

³ Op. Cit. "*Libro Blanco*" pp. 98 through 108; White Book pp. 101 through 109

⁴ British Parliamentary Actas and "Carta del territorio de Verapaz concedida por el Gobierno de Guatemala a los Directores de la Compañía Comercial y de Agricultura de la Costa Este de Centroamerica, 1834.

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Great Britain to expand de facto her "dominions" by occupying the Bay islands, which belong to the State of Honduras (today the Republic of Honduras), and the Grey Town Port and part of the Nicaraguan territory located along the Atlantic coast, known as "La Mosquitia". It was in the latter that, purporting to legitimate its presence, she even created an indigenous kingdom with which she concluded pretended treaties. I enclose herewith, a Spanish translation of the note dated April 5th, 1835 from the British Government to the Spanish Government and the negative reply from the Spanish Government.

15. Great Britain's active presence in the context of the then called Gulf of Honduras was in answer to an imperialistic strategy aimed to ensure the construction, in the Nicaraguan territory, of a sea line of communication between the Atlantic and Pacific Oceans, whereby she also made her presence noted in the Central American Pacific, militarily occupying the Island of the Tiger in the Gulf of Fonseca. It is within this historical and political context that the interests of the British Crown over Belize may be located.

16. The construction of this interoceanic canal also gained strategic importance for the Government of the United States of America, therefor its Minister to the Government of the United Provinces of Central America, John Stephens made valuable studies during the years 1840^s in order to ascertain the feasibility of that project.⁵

17. Around the year 1848, the historical *Gold Rush* towards California helped the Government of the United States to confirm the importance of that canal. Particularly, after Commodore Vanderbilt gave the North American adventurers assurances of maritime transportation to the Nicaraguan coasts in the Atlantic, then by river and land transportation traversing Nicaragua and, finally, from a port in Nicaragua again maritime transportation to California.

18. Central American entered, thus, into the geopolitical grounds of that time. The canal project created rivalry between the two powers who had already gone to war in 1812. The risk of a new confrontation lead them to accommodate their interests and to determine something that benefited the Central American countries: That neither one of them would ever occupy nor acquire territory in Central America. The wording used in the treaty signed on April 19th, 1850, known as the Clayton-Bulwer Treaty, was clear: "*Neither one of both States shall occupy, or fortify, or colonize, or assume any dominion over Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America,*" a treaty which, due to its historical and legal relevance in this dispute, is herewith enclosed along with the communications exchanged between the Governments of the United States and Great Britain on the occasion of its ratification and, years later, when the Dallas-Clarendon treaty was discussed.⁶

19. To the above mentioned must be added the Central American struggle which at that time took up against filibusters' incursions under the command of the North American William Walker, which left a deep mark on all the countries of the Isthmus.⁷

⁵ Stephens, John. *Incidents of Travel in Central America and Yucatan*.

⁶ Op. Cit. "*Libro Blanco*" pp. 43 through 51, "*White Book*" pp. 46 through 62; John Bassett Moor, "*Digest of International Law*", Vol. III, and Sir Arnold Mc Nair, "*The Law of Treaties*", London, 1961.

⁷ William Walker, "*La Guerra de Nicaragua*", Costa Rica, 1970.

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20. For Great Britain, who saw herself being forced to withdraw from the territories occupied de facto, it was of vital importance to retain those offering her the opportunity of maintaining her presence in the Central American region and consequently, on the occasion of the ratification of the Clayton-Bulwer Treaty, she tried to introduce a reservation pursuant to which both areas of the territory of Belize, not only the one over which she exercised usufructuary rights according to the treaties concluded with Spain, but also the area located to the south which she had usurped, would be excluded from the restriction or prohibition therein contained. The matter would be settled in 1856, according to Great Britain, at the time of effecting a new treaty between both countries, the Dallas-Clarendon, a treaty which never came into legal life since it was not ratified.⁸

21. For Guatemala, who was closely following the British strategy with apprehension, the conclusion in 1856 of the Dallas-Clarendon Treaty was a hard blow. . And even though Guatemala found out long after that it never came into legal life, Guatemala knew very well that Great Britain would continue expanding her de facto occupation, thus endangering another important part of the rest of its territory. In order to impede it and to safeguard the rest of its territory and the existence of an stable boundary, Guatemala proposed to Great Britain the cession of the occupied territory. Great Britain, having in mind the then current legal situation emerging from the Clayton-Bulwer treaty and the prohibition of acquiring any territory in Central America therein established, did not reply.⁹

22. Two years later, in April, 1859, Great Britain proposed to Guatemala the signing of a new treaty fully ignoring the Treaty of Amity, Commerce and Navigation concluded with Guatemala on June 25th, 1847 and in abeyance of the Declaration of July 8th, 1847, therefore, Guatemala made formal and specific reservation of her rights over the territory then known as Belize.¹⁰

23. The British proposal was clear and concrete: A treaty delimitating the territories should be signed, stating what, according to Great Britain, belonged to her, and what would be left to Guatemala. No territorial cession should be mentioned due to the prohibition established in the Clayton-Bulwer Treaty, which continued in force. I am enclosing herewith the Guatemalan Declaration of July 8th, 1847 to the Treaty of Amity, Commerce and Navigation, and the instructions from the Government of her British Majesty to the negotiator, Mr. Lennox Wyke.

24. Faced with the reluctance of Guatemala, Great Britain proposed the joint endeavor to build a land route between the Atlantic Ocean and the capital of the Republic of Guatemala. The pressure on Guatemala was strong and within a period of a month, as wished by Great Britain, the text proposed by the British negotiator, Mr. Lennox Wyke was accepted *word by word*, and after the signing of the Treaty on April 30th, 1859, it was ratified in a matter of hours. What Great

⁸ British documentation. "Correspondence with the United States respecting Central America", 1865; Manning, "Diplomatic Correspondence", Vol. VII.: "Further Correspondence respecting the Clayton Bulwer Treaty and the Projected Panama Canal", 1884.

⁹ Copy of the draft treaty of territorial cession proposed by Guatemala in 1857 in the Libro Blanco pp. 78 through 84, White Book 79-85.

¹⁰ Mendoza, José Luis. "Britain and her treatis on Belize" pp. 91-96. "Pacto con Países Europeos y Asiáticos" M.R.E. Vol. III. 1994.

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Britain had not accomplished in 1835, she did in 1859, feigning the nature of the act. The text of the Boundary Convention concluded in 1859 is enclosed hereto as an annex.¹¹

25. Through this simulation, the Republic of Guatemala ceded territorial sovereignty on land, without any stipulation with respect to islands and cays situated in front of the territory, except with regards to St. George's Cay or Casina Cay; Guatemala had to accept, however, the establishing of limits in land, that is to say, both on the area occupied by Great Britain under usufruct granted by Spain, as well as on the area south of the above which was progressively occupied de facto by Great Britain after the independence of the United Provinces of Central America in 1821. At the same time, it was also instituted in Clause VII that both countries undertook to jointly construct the land route hereinabove referred to.

26. In view that Great Britain was delaying fulfillment of its obligation to construct the land road communication, both countries agreed in 1863, in a new treaty, to replace Great Britain's obligation for the payment of fifty thousand sterling pounds.

27. With the excuse that the 1863 treaty had not been ratified by Guatemala within the accorded time, Great Britain declared that she was entirely released from every obligation.¹²

28. The non-performance of Clause VII of the 1859 Convention lead Guatemala to propose an arbitration, which was turned down Great Britain, and to protest in the strongest terms before the Government of Great Britain, in 1884, for the occupation of her territory. Since that time the controversy exists between Guatemala and Great Britain. This controversy could have been resolved before and after the Second World War by the International Court of Justice, if Great Britain would have accepted the formulae proposed by Guatemala.

29. The protraction of the controversy during the course of time gave place to an important compromise during the decade of the 60's in the 20th Century, when Great Britain and Guatemala accepted the mediation of the Government of the United States. The mediator appointed, Mr. Bethuel Matthew Webster, proposed an interesting solution which, regretfully, was adversed by the political leaders of Belize. For that reason, the mediation ended without any agreement between the United Kingdom and Guatemala.¹³

30. After the mediation of the Government of the United States, the General Assembly of the United Nations resolved, in 1974, in favor of the right of the Belizean people to their independence from Great Britain. Belize proclaimed her independence in 1981. Guatemala opposed the independence based on the fact that the existing territorial differendum between Great Britain and Guatemala had not yet been resolved.

¹¹ Guatemala: "Libro Blanco", Secretaría de Relaciones Exteriores, 1938. 2 Vols. For an analysis of the position of Great Britain, see D.A.G. Waddell, 'University of Edimburg -Developments in the Belize question- 1940-1960. American Journal of International Law, Vol. 55,1961. For Guatemala's, Libro Blanco and Mendoza, supra No. 2. And for Belize's, National Advisory Commission on Relations with Guatemala. "The Guatemalan Claim, origins, negotiations, solution" Belize, 1993.

¹² "Libro Blanco" pp. 219 through 243; "White Book" p. 226 through 253.

¹³ Herrarte, Alberto "El caso de Belice y la mediación de Estados Unidos", Guatemala, 1980.

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31. It should be noted that the territorial differendum was then and is today, compatible with the terms of the UNO's Resolution No. 1514 (XV).¹⁴

32. The submission of the statement of this controversy does not imply, in any way, disputing the right to self-determination of the people of Belize, nor trying to deprive State of Belize from its entire territory. As a free and independent State, Belize must have a territory of its own. Nevertheless, this does not prevent Guatemala which questions previous treaties directly related to the new State, to exercise its rights over part of said territory .

33. Belize, as a succeeding State of the United Kingdom, also inherited, so to say, the controversy which at the moment of attaining its independence existed between Guatemala and the United Kingdom. Therefore, having unilaterally declared its Political Constitution that Belize's territorial limits with Guatemala were and are those prescribed by the 1859 Convention, she accepted said convention; a convention that Guatemala considers lacking force. Attached herewith is the corresponding chapter of the Constitution of the State of Belize.

34. After multiple and regretful incidents, the parties agreed to submit the territorial differendum to the consideration of two Facilitators, one appointed by each party, under the auspices of the Organization of American States, whose Secretary-General -among other functions- acts as a Witness of Honor. This is the most recent phase of a long, arduous, complicated, and difficult historical process, and for the Government of Guatemala it represents the promissory possibility of finding a just, prompt, and effective manner of settling the territorial differendum.

III. SUMMARY OF THE PARTIES' POSITION

35 The discussion between the parties essentially deals with the area comprised between the *Sibun and Sarstoon* rivers; an area which, until 1821, belonged to Spain and which was not included in the conventions concluded between Spain and Great Britain. As a consequence, Guatemala sustains that, under the provisions of the International Law for the succession of States, the area between the Sibun and Sarstoon rivers belongs, since its independence in 1821, to the United Provinces of Central America as a successor State of Spain, and after the dissolution of the latter, to the Republic of Guatemala, as the successor of the Central American Confederation.

36. The State of Belize argues in its note dated June 8th, 2000, that the British title to the territory was perfected through the process of acquisitive prescription, which is a recognized means in International Law for acquiring title to territory. According to Belize, long before 1821, British settlers had gradually extended their settlements south of the Sibun river towards the Sarstoon. and, to the extent that the British settlers went beyond the Anglo-Spanish Treaty limits, their actions affected Spain, not Guatemala, because in International Law the rebellions against Spain were operative only in the areas under control of the new States. Belize likewise states that Spain's reaction to the British expansion was one of acquiescence and, undoubtedly, by 1839, when the Guatemalan State was born, British presence had crystallized into valid title.

¹⁴ Sylvestre, Janine *"The Anglo-Guatemalan Territorial Issue; The Cost of Conflict"*, 1995

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37. Belize also expresses that the title to its territory is not founded on treaties between Great Britain and Spain but rather on effective occupation and prescriptive title; that there is absolutely no distinction between the area up to, and the area south of, the Sibun river, and that its borders with Guatemala were convened by the 1859 Treaty and subsequently demarcated, and include all the islands adjacent to the coast as clearly implied in Article 1 of the said Treaty ("*all the territory to the north and east of the line boundary above described, belongs to her Britannic Majesty.*").¹⁵

38. Guatemala objects to those arguments based on the following elements and facts:

a) Spanish sovereignty over the disputed territory:

The Spanish sovereignty over the disputed territory is proven, inter alia, by the following facts:

a.1. At the time the 1783 and 1786 Anglo-Spanish Treaties were concluded, Spain exercised full sovereignty over the entire territory known today as Belize. So much so that Spain expressly reserved her right to inspect the possessions temporarily granted and further prohibited that within their indelible limits, constructions or fortifications not indispensable for the purposes of the concessions be made by the British subjects

a.2. Within the territory under dispute there always were permanent indigenous settlers, who were subjects of the Spanish Crown. There is, even, a historical record that the Spanish Crown granted Spanish nationality to the settlers of what once was the Province of Verapaz.

a.3. In 1817 and 1819, the British Parliament expressly declared that the "Settlement of Belize" was not within the territory and dominion of the British Crown.

a.4. In 1835 Great Britain officially requested from Spain the cession of the territory, including the area under dispute, a petition refused by the Spanish Crown.

39. The first element argued by Belize: The abandonment of the territory by Spain, which not only did not occur but rather, if it had occurred it would not have either produced the effect of turning the territory of Belize into *res nullius* and that, consequently, it may have been occupied by Great Britain without any opposition from the Central American Confederation and, later, by the Republic of Guatemala.

40. Nor the so-called abandonment by Spain nor the British occupation could generate any title whatsoever in favor of Great Britain because, in the first instance, the territory was not *res nullius* and by succession, it belonged to the Central American Confederation. In the second instance, because Guatemala and in any case Great Britain, knew very well that the de facto occupation would not generate title in her favor. That is why Great Britain requested in 1835 that Spain cede

¹⁵ Note dated June 8th, 2000, addressed by the Prime Minister of Belize to the Minister of Foreign Affairs of Guatemala.

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to her all of the present territory of Belize, including the area presently disputed between Guatemala and Belize.

41. As the Facilitators may ascertain, Great Britain admitted, in a specific manner, that said territory was not, at that time, *res nullius*, and that, indeed, she had no title. That is proven, in fact, by the measures taken by Great Britain in 1835 before the Spanish Crown, so that Spain may cede her territorial rights. Both from the text of the note from Great Britain to the Spanish Crown and from the opinion from the Council of State of Spain, it is evident that Great Britain did not consider herself, between 1821 and 1859, sovereign in the territory now under dispute.

42. The above is clearly confirmed by 1817 and 1819 Acts of Parliament that precisely point out that the area of Belize between the Hondo and Sibun rivers was not within the territory and dominion of his Majesty but merely referred to it as "*a settlement for certain purposes, in the possession and under the protection of his majesty*". In sum, if indeed Spain had abandoned the territory and if Great Britain had title to the same, Great Britain would not have asked Spain to cede that territory.

43. Great Britain also confirmed her lack of title in 1859: In the text of the instructions given to its envoy before the Government of Guatemala on February 16th, 1859, and in the communications exchanged between the British envoy, Mr. Wyke and the Foreign Office on March 30th and April 30th, 1859.

44. Finally, the opinion rendered by the legal counsel of the Foreign Office regarding the note that the Minister of Guatemala sent to the Government of her Britannic Majesty on April 5th, 1884, confirms Great Britain's lack of title before the Treaty.¹⁶

45. As the Honorable Facilitators may judge, the evidence prior and after the 1859 Treaty is overwhelming. All herein stated may be found in Archives of the Foreign Office of Great Britain, in those of Spain, in the "*Libro Blanco*" of Guatemala, and in scientific publications, inter alia, Professor Clegern's, who published the results of his research on the British Archives in the American Journal of International Law.¹⁷

b) Guatemalan sovereignty over the disputed territory:

In addition to Great Britain's admission of her lack of title over the territory of Belize, not only the Central American Confederation but also, later, Guatemala exercised, between 1821 and 1859, acts of domain over said territory. Acts which only the title holder of the territorial sovereignty could have exercised, such as:

b.1. The Political Constitution of State of Guatemala enacted on October 11th, 1825, established that the peoples of Guatemala assembled in one sole body comprised then, the

¹⁶ Foreign Office documents also quoted by Clegern in his study cited.

¹⁷ Clegern, Wayne. "New Light on the Belize Dispute". The American Journal of International Law. Vol. 52, number 2, 1958

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District of Verapaz (later Province of Verapaz), neighboring with the Establishment of Belize, its border being the Sibun river.

b.2. The armed cruiser sent in 1827 to patrol the coast of the territory of the State of Guatemala, including the maritime area of the Province of Verapaz between the Sarstoon and Sibun rivers.

b.3. The concession of land granted with the purpose of exploitation and colonization in the Province of Verapaz between the the Sarstoon and Sibun rivers to the "Eastern Coast of Central America Commercial and Agricultural Co." on August 6th, 1834 is approved by the Legislative Assembly of the State of Guatemala on August 14th of that year, Decree and Official Map of the Province of Verapaz, published in London by Whittaker and Co., Ave Maria Lane, in 1839, for the knowledge of British subjects.¹⁸

b.4. The territorial division of the State of Guatemala in seven departments and two Districts: Izabal and Peten. The latter comprised the coasts located between the Sibun and Sarstoon rivers. This territorial division was enacted on September 12th, 1839, by the Assembly of the State of Guatemala.

b.5. The note dated July 8th, 1847, addressed by the Government of Guatemala to the British Consul and his reply dated July 19th, 1847, attached to the Treaty of Commerce signed in 1847.¹⁹

b.6. Decree No. 49 dated December 28th, 1850, in which the President of the Republic fixes a term for the beneficiaries of concessions, including those granted in the area between the Sibun and Tinto rivers, to register said concessions. This Decree was published in the Official Gazette of Guatemala on January 10th, 1851, and did not cause any protest from Great Britain.

b.7. The offer of cession to Great Britain of the disputed territory by Guatemala. Note and draft of the 1857 treaty.²⁰

b.8. Copy of the 1859 official map of the Republic of Guatemala is attached as an annex to this document.

46. As the honorable Facilitators are able to ascertain, the State of Guatemala as a member State of the Central American Confederation, first, and later the Republic of Guatemala as successor of the Confederation, exercised jurisdiction between 1821 and 1859, over the area now under dispute with Belize. They will also be able to appreciate that Great Britain did not considered said territory as her own. And they may also take cognizance that de facto occupation by Great Britain was not, pursuant to the applicable law (including the *uti possidetis juris*

¹⁸ Bilingual text enclosed.

¹⁹ Op.Cit. "Libro Blanco" pp. 65-66. "White Book" 66-67.

²⁰ Op.Cit. "Libro Blanco" pp. 73-84. "White Book" 72-85.

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principle, applicable in this case according to the findings of the International Court of Justice) a legitimate occupation but rather an **usurpation of territory**.

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

48. The facts hereinabove briefly summarized show, in an unquestionable manner, that the territory was no *terra nullius*: since it was not abandoned by Spain nor Guatemala and, in addition, it had been inhabited permanently by Spanish subjects and Guatemalan citizens. Therefore, the British occupation was illegal from every point of and, for the same reason, it cannot be a valid means for territorial acquisition by prescription.

49. Belize also alleges that Spain did not transfer the disputed territory to Guatemala by succession.

50. The discussion between Guatemala and Belize revolves around two points: (1) The exercise of jurisdiction by the title holders of the territorial sovereignty during the years from 1821 through 1859 to wit, the Central American Confederation, in the first instance, and later, by the Republic of Guatemala; and (2) the legal effects that the independence of the United Provinces of Central America entail and the de facto occupation of that same area by Great Britain from 1821 through 1859.

51. Great Britain and Belize shade their legal position with the affirmation that the independence of the United Provinces of Central America attained in 1821 and until 1839, with the dissolution of said Confederation, and then from the moment that Guatemala succeeded the Confederation until 1859, Spain abandoned the territory without having transferred or assigned any title or right over said territory to the Central American Confederation and neither the latter to Guatemala. Therefore, the allegation continues, by virtue of that *derelictio* and its progressive de facto occupation, Great Britain acquired by **prescription** the territory presently under dispute.

52. According to Great Britain and Belize, when the independence of an American country is attained, in this case Central America's, and with the abandonment by the colonial Powers in the 19th century of their possessions without expressly transferring territorial rights to the States that emerged as independent States, those territories became *res nullius* and, therefore, capable of occupation. Thus, the occupying Power, by virtue of the abandonment of the territory and its subsequent occupation, acquired title over the territory by prescription and had the power to delimitate it through the conclusion of treaty with the neighboring States.

53. According to Belize, the progressive de facto occupation by Great Britain in the absence of another State's (Central America or Guatemala) exercise of, in and within that territory, acts of

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dominion or jurisdiction, were enough grounds for the prescription to be operative in favor of Great Britain. Once the prescription was operative, Great Britain acquired title over the territory.²¹

54. The Belizean thesis, although clever, lacks foundation in International Law. Indeed, neither Great Britain nor Belize may quote examples of cases in which, in accordance with the International Law, the States that had recently acquired independence had no right to succeed the colonial Power in the territory corresponding to them. Neither Great Britain with regard to the present United States; nor Spain in Mexico, Central America and South America; nor France in the Caribbean, transferred through a specific deed to the countries that acquired independence, the territories that they had acquired in the American Continent by discovery, conquest or colonization.

55. The colonial power did not voluntarily abandon the territories they had conquered and colonized in North America, Central America, South America nor in the Caribbean. They were expelled. Consequently, the American countries continued, as successors, being sovereign over all the territories that, according to the administrative colonial model, pertained to them.

56. The *uti possidetis juris* principle has been applied as a General Principle of Law by the International Court of Justice in the cases of Guinea Bissau vs Senegal and El Salvador vs. Honduras and by an arbitral Tribunal in 1998 in the case of Eritrea vs Yemen. The concept of *uti possidetis* as a principle of American International Law has been abandoned to turn into a principle of the general International Law. This principle prevents and has prevented during the 19th and 20th Centuries, that a particular territory that had been under colonial domination becomes *res nullius*.²²

57. There are no grounds for asserting the thesis that in order to attain their independence, States need to obtain the prior consent from the colonizing Power and the cession of the respective territory. The relationships between the former metropolis and the former colonies were not friendly nor cordial in America during the 19th century. In the case of the United States there was, in 1812, a war between Great Britain and the thirteen former colonies of her British Majesty; a hostile environment was recorded in Mexico; and, in the case of Guatemala, it was necessary that forty years elapsed before Guatemala abandoned the measures adopted after the independence against Spanish subjects and for Spain to recognize the Republic of Guatemala.

58. The proposition of abandonment or *derelictio* and the subsequent occupation of the territory by Great Britain opposes confronts then the exercise of territorial sovereignty and jurisdiction by Spain's succeeding States. That is to say, to the legal acts which in the exercise of territorial sovereignty were adopted and executed in relation to the territory to which am referring, the Federal Republic of Central America and Guatemala, subsequently.

59. To the foregoing it is important to add that the Belize arguments is also weakened with the mere consideration that when Spain recognized the independence of the Central American Provinces, she clearly stated in the May 29, 1863 Treaty, that:

²¹ Belize's note to the Government of Guatemala dated June 8th, 2000, pp. 5-6

²² International Court of Justice Reports, 1986 and 1992

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"His Catholic Majesty recognizes the Republic of Guatemala as a free, sovereign, and independent Nation composed by all the Provinces mentioned in its Constitution in force and of the other territories which lawfully belong to her or may belong to her in the future; and using the powers appertaining to Him in accordance with the Decree of the General Courts of the Kingdom dated December 4, 1836, renounces in every way and forever, on His behalf and on behalf of His successors, the sovereignty, rights, and actions appertaining to Him over the territory of the said Republic".

60. It is important and pertinent to emphasize here that Article 5 of the Constitution of the Federal Republic of Central America, enacted on November 22, 1824, provided that: *"The territory of the Republic is the same as previously comprised by the former Kingdom of Guatemala, with the exception, for the moment, of the Province of Chiapas."*

61. As it may be established from the above captioned paragraph, the sovereignty over said territory was transferred from Spain to the Central American Confederation, and then to Guatemala, without solution of continuity, that is to say, without any interruption. Therefore, the Belizean claim that the expansion by British subjects from the Sibun River to the Sarstoon River had crystallized into valid prescription is absurd. On the contrary, it was but a mere usurpation of alien territory.

62. In conclusion, Great Britain never had sovereignty title since she never had a legitimate possession. Consequently, Great Britain could have never transferred to Belize what she never had lawfully.

IV. NATURE OF THE CONTROVERSY

63. Belize affirms that the territory under dispute was delimited by Great Britain and Guatemala through the conclusion of the Treaty signed on April 30th, 1859; that the boundary limits were indicated by the fixing of monuments acknowledged by Guatemala and that, hence, the dispute deals strictly with a border demarcation.

64. On the other hand, Guatemala affirms the following:

a). In relation to the Nature of the Treaty

That the "Boundary Treaty" signed between Guatemala and Great Britain on April 30th, 1859 is, essentially, a treaty of territorial cession, as proven by the following reasons:

a.1. At the time of its signing, the territory subject of the reclamation appeared in the official maps as the "Belize Establishment" and it was designated in British documents as an "Establishment for certain purposes". It did not composed British territory but rather Spanish territory in transitory possession of Great Britain by virtue of the Anglo-Spanish Treaties of 1783 and 1786.

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a.2. In 1857 the Government of Guatemala offered Great Britain the cession of the territory object of the ongoing territorial differendum in exchange for a due compensation. One should note that the Guatemalan proposal deals specifically and clearly with a **territorial cession**, not with securing border delimitation. Great Britain neither objected nor rejected the proposal.

a.3. The instructions by the British Prime Minister to Ambassador Lennox Wyke, entrusted to negotiate the treaty with the Government of Guatemala, insisted him that *"it will be necessary that you should be exceedingly careful not accept any part of the proposed Boundary as a cession from the Republic of Guatemala, or to accept, as it were, a Title to any part of the British occupation from the Republic. It has been contended by the Government of the United States that the tract of territory between the Rivers Sibun and Sarstoon forms part of Central America, as having been included in the ancient Kingdom of Guatemala; and that as it is stipulated by the Treaty between Great Britain and the United States of April 19, 1850, commonly called the Bulwer-Clayton Treaty, that neither party shall occupy, fortify, colonize or assume or exercise dominion over any part of Central America, Great Britain is by that Treaty bound to withdraw from the district in question, without reference to her title to it, whether good or bad."*

a.4. British representative Lennox Wyke, having received his instructions by dispatch, answers his Prime Minister: *"I will be careful according to your Lordship's instructions not to accept, in negotiating this convention any part of the proposed boundary as a cession from the Republic of Guatemala, or to accept as it were, a Title to any part of the British occupation, from this Republic, but therein will consist the great difficulty that I shall have to overcome, as they are perfectly well aware of the encroachments which have been gradually made on their territory by the woodcutters and Settlers of Belize, and this Government will I know claim compensation it required to cede territory so encroached upon before they acknowledge our right to the limits of the Settlement, as now existing, and as desired by Her Majesty's Government to be recognized by that of this Republic."*

b) In relation to Monuments and The Unfinished Border Demarcation

b.1 Initial compliance with the Treaty and Great Britain's first unfastening from its commitment

Initially, Great Britain and Guatemala made their best efforts to comply with the provisions of the treaty, in particular with the border demarcation and the drawing of a land route

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between the Atlantic and Guatemala. Commissioners from both countries began to outline the border and erected reference monuments, but did not finish the demarcation due to the withdrawal of the British Commissioner. British Engineers drew up the costs of the route work, which were to be shared by both States.

The particular circumstance of Clause VII was that the commitment jointly accepted by the parties was later deemed onerous by Great Britain, whereby shortly afterwards she proposed its amendment. Such amendment, agreed upon in another treaty in 1863, did not materialize and as a result of the British refusal to fulfill her obligation, it has weighed heavily on Guatemala all along these years. What the Facilitators have to notice is Great Britain's appeal that since Guatemala did not ratify said convention in due time, Great Britain was free from any obligation.²³

**b.2 Border Demarcation vrs Compliance with Clause VII of the 1859 Treaty --
Proposals between the parties**

Since the 19th Century and during the lapse of the first quinquennia of the 20th century, Guatemala insisted that Great Britain performed the 1859 signed treaty, specifically the duty imposed by Article VII of the Treaty. For its part, Great Britain insisted without undertaking to fulfill her obligations, that Guatemala accept the border demarcation.

The exchanged of correspondence amongst Guatemala and Great Britain in the period comprised between 1933 and 1935 evinces with clarity the parties' positions: Great Britain insisting in the border demarcation and evading the performance of the obligation it contracted, and Guatemala conditioning the demarcation to the performance of Great Britain's commitment.

The truth of the matter is that there was no agreement between the parties for border demarcation. That is why in note of November 17th, 1934, in response to the communication from Great Britain relative to the fact that it would conclude the unilateral

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demarcation she undertook and in which it further request that a Guatemalan engineer present, Guatemala replied:

"The presence of engineer Alvarez during the clearing of the last one hundred yards of boundary line does not imply acceptance nor acknowledgment de facto, he was merely an observer, as I had the opportunity to express to Your Excellency and I believe that as a result of the background explained above, the documents prepared by the British engineers must not be submitted for signature of the Guatemalan Engineers, while the fundamental question contained in article VII of the 1859 convention remains without resolution."²⁴

b.3 Proposals of Great Britain and Counter Proposals of Guatemala

Great Britain exacted a change in the established conditions in the treaty due to the construction of a rail road from the Atlantic to the Capital of Guatemala by the end of the 19th Century and beginning of the 20th Century. In other words, Great Britain invoked the clause *rebus sic stantibus*, and on November 13th, 1934 proposed to amend the obligation set forth in Clause VII, substituting the road from the Atlantic to the Capital of Guatemala for the construction of a road from the Atlantic coast of Belize to the border with Guatemala, and the construction by Guatemala from that point to Flores, Peten, a proposal refused by Guatemala in 1935.²⁵

Later, on September 16th, 1936, Guatemala proposed to Great Britain two different types of settlement: Payment by Guatemala to Great Britain of 400 thousand pounds in compensation for Great Britain returning the territory to Guatemala, or payment by Great Britain to Guatemala of that same amount granting her, furthermore, a strip of land identified in Memorandum 1 dated September 16th, 1936. And in a second memorandum of that same date, Guatemala would approve the demarcation of the territory made unilaterally by Great Britain and Great Britain would pay Guatemala the 50 thousand pounds plus

²³ Op. Cit. Libro Blanco pp. 224-241, White Book pp. 229-253

²⁴ Op. Cit. Libro Blanco pp. 401-406, White Book pp. 418-423

²⁵ Op. Cit. Libro Blanco pp. 398-399, White Book pp. 415-416, 418-423

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interests at 4% annually from April 30th, 1859. And in addition, a strip of land that would allow Peten an outlet to the sea.²⁶ Oddly, Great Britain rejected the alternative proposals of Guatemala.

Before the resulting situation, in which Guatemala rejected the unilateral demarcation of the border made by Great Britain and at the same time Great Britain rejected the settlement proposals of Guatemala, the parties clearly set forth their positions, which I beg the Facilitators to keep in mind.

On March 3rd, 1938, Great Britain stated:

*"In these circumstances His Majesty's Government consider that it would serve no useful purpose to pursue the matter further and that they have, therefor, no option but to treat the present boundary of British Honduras, which they have every reason to regard as being entirely in accordance with the provisions of the Anglo-Guatemalan Convention of 1859, as, constituting the correct boundary. They must, moreover, disclaim all responsibility for incidents which may arise from any failure by the Guatemalan Government to observe the boundary."*²⁷

Guatemala's reply was as follows:

*"The Government of Guatemala believes itself firmly assisted in this matter by the Law of Nations, and in face of the declaration that His Majesty's Government-deeming it useless to consider the Guatemalan viewpoint decides to set aside the obligations solemnly contracted in a perfect international pact, the Government of Guatemala renews its demand for integral compliance with the Convention of 1859, maintains the reservation of its rights, and rejects responsibilities for the consequences of non-compliance with a treaty, respect for which has been continuously solicited precisely by the Government of Guatemala."*²⁸

V. TERMINATION OF THE 1859 TREATY.

65. During a long period of time, Guatemala made her best efforts to ensure the full compliance with the 1859 Treaty. The correspondence exchanged between both Governments clearly shows that what was important for Great Britain was the demarcation of the boundary, avoiding, therefore the performance of the obligation contained in Clause VII of the Treaty and avoiding also to consider and discuss the alternate proposals submitted by Guatemala. On the other hand for Guatemala the demarcation of the border and compliance with Clause VII, was an

²⁶ Op. Cit. Libro Blanco pp. 408-410, White Book pp. 425-427

²⁷ Op. Cit. Libro Blanco pp. 414-415, White Book pp. 431-432

²⁸ Op. Cit. Libro Blanco pp. 415-417, White Book pp. 432-433

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indivisible issue. The demarcation of the border was not and never was independent from the obligation contained in said Clause VII.

66. Before Guatemala decided to dispute both formally and directly the validity of the 1859 convention, she made a last effort to find with Great Britain an agreement which could allow the resolution of the impasse in which they found themselves. In addition, Guatemala informed the Government of Great Britain in advance of some of the legal steps Guatemala could take for the protection of its interests in view of the British non performance. These acts clearly show the good faith with which Guatemala was acting and still does, as well as something more: what in practice is known as the "*clean hands*" doctrine.

67. The facts and the measures expounded by Guatemala reveal that Guatemala ceded territory between the Sibun and Sarstoon rivers in favor of Great Britain in exchange for a compensation. Guatemala may raise before an International Court the invalidity of the Treaty, either on the grounds of non compliance by Great Britain with regard to the obligation to pay the agreed compensation; or, alternatively, the nullity of the Treaty on account of a substantial violation of International Law, due to the simulation incurred by not mentioning the territorial cession.

68. Since it is not the role of the Facilitators to issue a decision regarding the validity of the Treaty, given that this is the competence of an international court pursuant to the Law of the Treaties, Guatemala respectfully requests the Facilitators to take into account the facts that confirm the cession of the territory.

VI. MARITIME AND INSULAR CLAIM

a. Insular Claim

69. Neither the islands nor the islets or cays were considered to form part of the usufruct that Spain granted Great Britain. Quite to the contrary, as will be expounded later, all the insular territory located in front of the northern and southern Belize was specifically excluded from the Spanish grants. Hence, they cannot be held as part of Belize but instead as usurped territory, firstly by Great Britain and then by Belize after its independence.

70. Indeed, by the treaty of 1783 which granted for the first time the usufruct to England, a district comprised between the indelible limits of the Hondo and Belize rivers was established, so that British subjects may cut, load and transport logwood. Said treaty literally reads:

"The English inhabitants, who shall settle there for the cutting of logwood, shall be permitted to enjoy a free Fishery for their subsistence, on the Coasts of the District above agreed on, or of the islands situated opposite thereto, without being in any wise disturbed on that account; provided they do not establish themselves in any manner on the said Islands."

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71. By the Treaty of 1786, the limits of the territory granted in usufruct were enlarged in the area comprised between the Sibun and Belize rivers, being stated that all the limitations specified in the Treaty of 1783 were in force *"to preserve in its entirety the ownership of the sovereignty of Spain over that country."* It was also stated that the British would be allowed to transport and carry logwood to the sea, *"without ever exceeding the limits prescribed by the foregoing granted stipulations and without thereby taking an opportunity of ascending the said rivers beyond their bounds, into the countries belonging to Spain"*. That is to say, the usufruct of islands and cays were not included in the concessions, save the exception contained immediately following thereafter, which reads:

"The English shall be permitted to occupy the small island known by the names of Casina, St. George's Key, or Cayo Casina, in consideration of the circumstance of that part of the coasts opposite to the said island being looked upon as subject to dangerous disorders"

72. But since this had to be done in good faith and for the purposes already stated, it was enjoined from building any fortification or defense construction as a condition *sine qua non* for the Treaty to be in force..

73. It is clear then, that the islands and islets facing of the coasts of Belize were not a part of the usufruct grants, not only those comprised within the latitude of the Hondo river to the Sibun river but also those located in the latitude of Sibun and Sarstoon rivers. The "real Belize" remained comprised between the Hondo and Sibun rivers down to their respective mouths, without including in whatever way the islands, which were the object of a specific prohibition, with the exception of Cayo Casina or St. George's Cay, which received special consideration due to health reasons.

74. In regard to insular territory, Great Britain cannot argue prescription by indefinite possession because any possession that it may have would be in violation of the grant Treaties and prescription could not perfect itself on account of said possession. This circumstance persists after the independence of Central America and after the make up of the Republic of Guatemala pursuant to the right of succession that Spain admitted when it recognized the Republic of Guatemala as an independent Country.

75. On the other hand, Belize's Constitution dated September 20th, 1981, States in its Chapter I:

CHAPTER I

The State And The Constitution

1.-- (1) *Belize shall be a sovereign democratic State of Central America in the Caribbean region.* The State

(2) *Belize comprises the land and sea areas defined in Schedule 1 to this Constitution, wich immediately before Independence Day constituted the colony of Belize.*

2. *This Constitution is the supreme law of Belize and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void.*

Constitu-
tion is
supreme
law.

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The annexed Schedule No. 1, forming part of said Constitution, reads as follows:

"Section 1

SCHEDULE 1 TO THE CONSTITUTION

Definition of Belize

1. The Territory of Belize comprises the mainland of Belize and all its associated islands and cays within the area bounded by the frontiers with Guatemala and Mexico and the outer limit of the territorial sea of Belize described as follows:--

(a) the frontier with Guatemala is the line prescribed by the Treaty between the United Kingdom and Guatemala signed on 30 April 1859;

(b) the frontier with Mexico is the line prescribed by the Treaty between the United Kingdom and Mexico signed on 8 July 1893;

(c) the outer limit of the territorial sea of Belize is the limit provided by law measured from such baselines as may have been prescribed before Independence Day by law or otherwise, or as may so prescribed thereafter, and also includes the Turneffe Islands, the Cays of Lighthouse Reef and Glover Reef, together with all associated islets and reefs, and their adjacent waters as far as the outer limit of the territorial sea appertaining to them.

2. The area referred to in paragraph 1 of this Schedule includes, but is not limited to Ambergris Cay, Cay Corker, Cay Chapel, Long Cay, Frenchman's Cay, St George's Cay, Sergeant's Cay, Goff's Cay, English Cay, Rendezvous Cay, Bluefield Range of Cays, Southern Long Cay, Columbus Cay, Fly Range of Cays, Tobacco Range of Cays, Southern Water Cay, Carrie Bow Cay, Gladden Cay, Silk Cays, Pompion Cay, Ranguana Range of Cays, Sapodilla Range of Cays, Snake Cays, all islands and cays associated with the above mentioned cays, and all other cays lying within and along the Barrier Reef."

76. Oddly enough, in the aforementioned Schedule appears no mention of the 1859 Treaty nor it is also mentioned title whatsoever that legitimates its dominion over said islands, whereby such inclusion is merely an unilateral declaration.

77. The 1859 Treaty does not comprise islands or islets situated in front of Belize. In the first place, as previously stated, they are not mentioned in the Treaty's language. To state that the territory comprised to the North and East of the limits fixed in the Treaty belong to Great Britain does not entail that the islands and islets follow such destiny because with said statement the dominion of the new State could not have extended indefinitely to the East, affecting then even the Colombian and Nicaraguan islands located to the East of Belize.

78. It cannot be considered that the insular territory was "abandoned" by Spain and it was acquired by Great Britain on account of *derelictio* because Great Britain acknowledged the Spanish sovereignty over said territory in the usufruct grants, which contain the specific prohibition to occupy the islands and islets. Spain's rejection in 1835 of Great Britain's request to give her cession over the Belize territory, constitutes another evidence of the acknowledgement of Spains' sovereignty given that neither the territory nor the islands were *terra nullius*.

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79. Aside from St. George's Cay or Casina Cay and its immediate neighbours, Great Britain never occupied any other insular space. The principle of *uti possidetis juris*, as upheld by the International Court of Justice in the case of the insular and maritime delimitation between Honduras and El Salvador, prevents Great Britain to invoke in its favor the acquisitive prescription arising from the de facto occupation and the pretended abandonment on the part of Spain. In said case, the International Court of Justice declared that the applicable principle of International Law was the *uti possidetis juris* and that, therefore, the islands had belonged to Spain and did not constitute *terra nullius*. On this basis, it is clear that the same principles that are applicable to *terra firma* are applicable to the islands, wherefrom it results that the *uti possidetis juris* must be observed and no occupation can be legitimate when it is confronted with this principle.

80. On the other hand, by means of military force, Great Britain prevented Guatemala, firstly on her behalf and then in protection of Belizean interests, from exercising effective possession of the islands and cays contiguous to Belize. It is documented that the Guatemalan vessels that ordinarily patrolled the islands up to Sanbore and Northern Cay until as late as the decade between 1970 and 1980, endured hostile acts of the British air force and fleet, whose might Guatemala has never had nor has the intention or possibility to defy.

81. The occupation of said islands and islets on the part of Great Britain and then on the part of Belize, has been on the basis of force and not on the basis of law. This prevented the Guatemalan people from inhabiting and exploiting said islands and aquatic areas, as it is their natural right to do so..

82. Guatemala raised its insular claim by note sent by its Foreign Affairs Minister to the Secretary General of the United Nations on March 4th, 1994, and reiterated it by means of Decree number 56-96 of the Congress of the Republic dated June 26th, 1996, when approving the U.N. Convention on the Law of the Sea adopted in Montego Bay in 1982 for effecting its ratification, whose article 2nd. states:

"In light of the terms of the Decree approving said Convention enacted by the Congress of the Republic, declares: a) That the approval of the same by the Congress of the Republic and its ratification by the Government of the Republic and its ratification by the Government of the Republic of Guatemala shall not affect in whatever manner the rights that Guatemala has over the territory of Belize, including islands, cays and islets, nor her historical rights over Amatique Bay; and, b) Hence, the territorial sea and maritime zones may not be fixed until the existing territorial differendum is resolved."

83. This ratification Decree was duly published in the Official Gazette and deposited at the United Nations Headquarters.

84. Belize objected to Guatemala's declaration by means of a note addressed to the Secretary General of the United Nations on September 11th, 1997. It argued that article 309 of the Law of the Sea Convention prohibits and does not admit reservations nor exceptions to the Convention and that article 310 states that all declarations made by a State shall not exclude nor modify the legal effect of the Convention's provisions. It also indicated that the presumed "rights" over the territory are outside the scope of said Convention. Belize was very conscientious in not

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mentioning specifically the islands because their possession is based solely on the use of force and armed threat.

85. Guatemala's insular claim regarding the insular territory must be examined in the light of the elements that both parties have submitted. When this claim is confronted with the Belizean position, it shall be concluded that the nullity and voidance of the 1859 Convention also allows Guatemala to claim the restitution of the islands, cays and islets that for the purpose of its reclamation has already identified.

b. Delimitation of Maritime Areas

86. The delimitation of the maritime areas of Belize and Guatemala depends on the definite settlement of the territorial dispute that exists between both countries, given that Guatemala affirms that the Sibun River constitutes the Northern limit between Guatemala and Belize and the projection of a line beginning at the mouth of mentioned river in the Caribbean be the maritime limit to the North. In this area are comprised the islands, cays and islets, continental shelf and exclusive economic zone.

87. Guatemala is unable to promote the delimitation of its maritime areas with Honduras while the issues appertaining to islands, cays and islets in the Caribbean sea are not settled, and the possible width and direction of Guatemala's continental shelf and that of its exclusive economic zone, are fixed.

88. In any event, Guatemala submits that the Facilitators analyze and propose to Belize and Guatemala formulae to resolve the problems arising out of the delimitation of their respective maritime areas, taking into account that, pursuant to International Law, every coastal State exercises sovereign rights over its inland waters.

89. To this end, the Government of Guatemala considers very important that the Facilitators bear in mind the economic and geographical elements that exist between Belize and Guatemala which in some instances condition, and in other instances directly influence, the delimitation of their respective maritime areas. Although the delimitation of the maritime areas of both countries offers its own characteristics the case is not unique.

90. It will be necessary to take due notice that to the North of Guatemala's coastline in the Caribbean lies Belize and to the East lies Honduras. Thus, the geographic location of Guatemala, situated between Belize and Honduras, results in Belize's coastline not being contiguous with that of Honduras and vice versa. Therefore, the coastline of Guatemala separates the maritime areas of Belize from those of Honduras. For this reason the maritime areas of Belize shall not intervene with those of Honduras, so that Belize and Honduras are enjoined from cloistering Guatemala and, at the same time, that neither Belize nor Honduras may deprive it from its continental shelf and its exclusive economic zone.

91. Pursuant to the U.N. Convention on the Law of the Sea of 1982, the Facilitators shall bear in mind that no coastal State shall deprive another coastal State or States the maritime areas and the marine resources that belong to it in accordance with International law.

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92. To this effect, said Convention prescribes that adjacent states or that are facing each other, shall observe the rules and principles institutes therein, *inter alia*: the proportionality of the coastlines and, above all, equity so that neither of the states deprive another or others of the rights instituted in its favor by conventional and customary International Law. Guatemala bears in mind the foregoing because it considers that Belize's insistence to apply the adjacency line to delimitate its maritime areas with Guatemala, presents and equitable solution.

93. It is also useful to add that the provisional delimitation effected unilaterally by Belize in its "*Maritime Act of 1992*" establishes that the waters between its coastline and the islands, cays and islets to the East of her coastline constitute inland waters and that, the water as of the islands, cays and islets located to the East of her coastline, constitute Belizean territorial waters up to an extension of 12 nautical miles. In the same manner, Belize holds that in light of the pending definite delimitation, her territorial sea that adjoins to the South with the territorial sea of Guatemala, shall continue to be of 3 nautical miles in its breadth but subject to review, whereby it reserved the right to amend said extension

94. For its part, Guatemala also made a formal and explicit reservation over all that affects or may affect it by means of note dated March 4th 1994 sent to the Secretary General of the United Nations and in Decree number 56-96 of Congress of the Republic that approved the 1982 Montego Bay Convention.

VII. CONCLUSIONS

95. The foregoing facts and arguments make and enable the State of Guatemala to demand from Belize territorial rights, in *terra firme*, islands as well as in the sea and airspace. Consequently, Guatemala pursues through the conciliation venue, to resolve the territorial dispute, delimitate the respective territories and establish, if possible by joint agreement with Belize, its land, maritime and air borders in a stable and lasting manner.

96. If, unfortunately, conciliation is not attained, the Government of the Republic of Guatemala trusts that, taking cognizance of the principal enshrined in the charter of the Organization of American States, whereby conflicts among member States shall not remind unsolved, the Facilitators in a reasoned, precise and impartial way shall propose to the parties the legal venue they deem more suitable to resolve without delay their territorial differendum.