DECLARATION OF JUDGE PARRA-ARANGUREN

1. The Note of 19 March 1912 sent by the Minister for Foreign Affairs of Nicaragua to the Foreign Minister of Honduras recalls the failure of the Mixed Commission created by the 1894 Treaty to agree on one sector of the boundary line and states:

> "The disagreement having been thus defined, the entire portion of the frontier line was left undemarcated from the point on the Cordillera called Teotecacinte *to its endpoint on the Atlantic coast and to the boundary in the sea marking the end of the jurisdiction of the two States.* In respect of determining how to draw the disputed portion of the line, it was decided to carry out the provisions of Article III of the Treaty cited above." (*I.C.J. Pleadings, Arbitral Award Made by the King of Spain on 23 December 1906* (*Honduras* v. *Nicaragua*), Vol. I, p. 292; emphasis added.) *[Translation by the Registry.]*

2. Nicaragua's Note of 19 March 1912 challenged for the first time the validity and binding nature of the 1906 Arbitral Award, in particular the establishment of the mouth of the Coco River where it flows out in the sea close to Cape Gracias a Dios as the extreme common boundary point between Nicaragua and Honduras on the Atlantic coast. On this occasion, Nicaragua indicated several grounds for the nullity of the decision of the King of Spain, one of them being the following:

> "It is also a universal principle that awards which are inconsistent in themselves *(contradictorias)* are without value and inapplicable, and there is an evident inconsistency in this Award when *it deals with that section of the frontier line which should separate the jurisdiction of the two countries in the territorial sea*, in that, after having laid down that the direction of the frontier line is the thalweg or main watercourse of the principal arm of the Coco River, it then declares that the islets situated in that arm of the river belong to Honduras, thus leading to the impossible result of leaving Honduran territory enclaved within Nicaraguan waters, and thus also leaving without effect the line of the *thalweg* referred to — quite apart from the fact of deciding nothing as regards the direction of the frontier line which, according to international law, should show the territorial waters of each Republic as forming part of its respective territories." (*Ibid.*, p. 294, emphasis added.) *[Translation by the Registry.]*

3. Paragraph 39 of the Judgment refers to Nicaragua's Note of 19 March 1912. However, the Court only recalls that it "challenged the

validity and binding character of the Arbitral Award", not mentioning the statements quoted above, even though they demonstrate Nicaragua's opinion that the 1906 Arbitral Award had established "the frontier line which should separate the jurisdiction of the two countries in the territorial sea".

4. I agree with Nicaragua's Note of 1912 acknowledging that the 1906 Arbitral Award determined the sovereignty of the disputed mainland and insular territories, as well as the continental and insular territorial waters appertaining to Honduras and Nicaragua. However, I cannot share Nicaragua's allegation that the decision of the King of Spain was null and void because of its "omissions, contradictions and obscurities". Nicaragua presented this contention to the Court, but it was not upheld in its Judgment of 18 November 1960, which is *res judicata* (*Arbitral Award Made by the King of Spain on 23 December 1906* (*Honduras* v. *Nicaragua), Judgment, I.C.J. Reports 1960*, pp. 205-217).

5. For these reasons, I voted in favour of paragraph 321 (1) and against paragraph 321 (2), paragraph 321 (3) and paragraph 321 (4) of the Judgment.

(Signed) Gonzalo PARRA-ARANGUREN.