INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING THE ARBITRAL AWARD MADE BY THE KING OF SPAIN ON 23 DECEMBER 1906

(HONDURAS *v.* NICARAGUA)

JUDGMENT OF 18 NOVEMBER 1960

1960

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DE LA SENTENCE ARBITRALE RENDUE PAR LE ROI D'ESPAGNE LE 23 DÉCEMBRE 1906

(HONDURAS c. NICARAGUA)

ARRÊT DU 18 NOVEMBRE 1960

This Judgment should be cited as follows:

"Case concerning the Arbitral Award made by the King of Spain on 23 December 1906, Judgment of 18 November 1960: I.C.J. Reports 1960, p. 192."

Le présent arrêt doit être cité comme suit:

« Affaire de la sentence arbitrale rendue par le roi d'Espagne le 23 décembre 1906, Arrêt du 18 novembre 1960: C. I. J. Recueil 1960, p. 192. »

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CASE CONCERNING THE ARBITRAL AWARD MADE BY THE KING OF SPAIN ON 23 DECEMBER 1906

(HONDURAS *v.* NICARAGUA)

Arbitration.—Contention that arbitrator not regularly designated and Award a nullity.—Acceptance of designation of arbitrator and of Award.—Grounds of nullity invoked.—Executability of Award.

JUDGMENT

Present: *President* KLAESTAD; *Vice-President* ZAFRULLA KHAN; *Judges* HACKWORTH, WINIARSKI, BADAWI, ARMAND-UGON, KOJEVNIKOV, MORENO QUINTANA, CÓRDOVA, WELLINGTON KOO, SPIROPOULOS, Sir Percy SPENDER, ALFARO; *Judges ad hoc* AGO and URRUTIA HOLGUÍN; *Registrar* GARNIER-COIGNET.

In the case concerning the Arbitral Award made by the King of Spain on 23 December 1906,

between

the Republic of Honduras,

represented by

M. Ramón E. Cruz, Former President of the Supreme Court of Honduras,

M. Esteban Mendoza, Former Minister for Foreign Affairs of Honduras,

M. José Angel Ulloa, Ambassador of Honduras to the Netherlands,

as Agents,

assisted by

M. C. Roberto Reina, Ambassador of Honduras to France,

as Adviser,

and by

M. Paul Guggenheim, Professor of International Law in the Law Faculty of the University of Geneva and in the Graduate Institute of International Studies at Geneva,

M. Paul De Visscher, Professor of International Public Law at the University of Louvain,

Mr. Herbert W. Briggs, Professor of International Law at Cornell University,

as Counsel,

and by

M. Christian Dominicé, Member of the Geneva Bar,

as Expert,

and

the Republic of Nicaragua,

represented by

M. José Sansón-Terán, Ambassador of Nicaragua to the Netherlands and Minister to Belgium,

as Agent,

assisted by

M. Diego M. Chamorro, Ambassador,

as co-Agent,

and by

M. Henri Rolin, Professor of International Law at the Free University of Brussels,

M. Camilo Barcía Trelles, Dean of the Faculty of Law at the University of Santiago de Compostela,

Mr. Philip C. Jessup, Professor of International Law at Columbia University,

M. Gaetano Morelli, Professor of International Law at the Faculty of Law of the University of Rome,

M. Antonio Malintoppi, Professor of International Law at the University of Camerino,

as Counsel,

and by

M. Jaime Somarriba Salazar, Counselor of the Nicaraguan Embassy to the Netherlands,

M. Michel Waelbroeck, Member of the Brussels Bar,

as Assistant Counsel and Secretaries,

THE COURT,

composed as above,

delivers the following Judgment:

On 1 July 1958, the Minister of Honduras in the Netherlands delivered to the Registry on behalf of his Government an Application of the same date, instituting proceedings before the Court with regard to a dispute between the Republic of Honduras and the Republic of Nicaragua concerning the Arbitral Award made by the King of Spain on 23 December 1906.

The Application relies on the Washington Agreement of 21 July 1957 between the Parties with regard to the procedure to be followed in submitting the dispute to the Court; the Application states, furthermore, that the Parties have recognized the compulsory jurisdiction of the Court on the basis of Article 36, paragraph 2, of its Statute.

In accordance with Article 40, paragraph 2, of the Statute, the Application was communicated to the Minister for Foreign Affairs of Nicaragua. In accordance with paragraph 3 of the same article, the other Members of the United Nations and the non-member States entitled to appear before the Court were notified.

Time-limits for the filing of the Memorial, the Counter-Memorial, the Reply and the Rejoinder were fixed by Order of 3 September 1958; the time-limit for the filing of the Rejoinder was later extended by Order of 7 October 1959. The case became ready for hearing on the filing of the last pleading on 4 January 1960.

Dr. Roberto Ago, Professor of International Law at the University of Rome, and Professor Francisco Urrutia Holguín, Ambassador of Colombia, were respectively chosen, in accordance with

Article 31, paragraph 3, of the Statute, to sit as Judges *ad hoc* in the present case by the Government of Honduras and the Government of Nicaragua.

On 15, 16, 17, 19, 20, 21, 22, 23, 24, 27, 28, 29 and 30 September and on 1, 3, 4, 6, 7, 10 and 11 October 1960 public hearings were held in the course of which the Court heard successively the oral arguments and replies of M. José Angel Ulloa, Agent, M. Paul De Visscher, M. Paul Guggenheim and Mr. Herbert W. Briggs, Counsel, on behalf of the Government of Honduras, and M. José Sansón-Terán, Agent, Mr. Philip C. Jessup, M. Gaetano Morelli, M. Camilo Barcía Trelles, M. Antonio Malintoppi, Counsel, M. Diego M. Chamorro, co-Agent, and M. Henri Rolin, Counsel, for the Government of Nicaragua.

In the course of the written and oral proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Honduras,

in the Application:

"May it please the Court:

To communicate the present Application instituting proceedings to the Government of the Republic of Nicaragua, in accordance with Article 40, paragraph 2, of the Statute of the Court, and Article 2 of the Agreement of 21 July 1957 between the Foreign Ministers of Honduras and Nicaragua;

To adjudge and declare, whether the Government of Nicaragua appears or not, after considering the contentions of the Parties:

1. that failure by the Government of Nicaragua to give effect to the arbitral award made on 23 December 1906 by His Majesty the King of Spain constitutes a breach of an international obligation within the meaning of Article 36, paragraph 2 *(c)*, of the Statute of the International Court of Justice and of general international law;

2. that the Government of the Republic of Nicaragua is under an obligation to give effect to the award made on 23 December 1906 by His Majesty the King of Spain and in particular to comply with any measures for this purpose which it will be for the Court to determine;

The Government of the Republic of Honduras reserves in a general way the right to supplement and modify its submissions. In particular it reserves the right to request the Court to indicate practical measures to ensure compliance by Nicaragua with the judgment to be delivered by the Court";

in the Memorial:

"May it please the Court:

To communicate the present Memorial to the Government of the Republic of Nicaragua, in conformity with Article 43 of the Statute of the Court;

To adjudge and declare, whether the Government of Nicaragua appears or not, after considering the contentions of the Parties:

1. that failure by the Government of Nicaragua to give effect to the arbitral award made on 23 December 1906 by His Majesty the King of Spain constitutes a breach of an international obligation within the meaning of Article 36, paragraph 2 *(c)*, of the Statute of the International Court of Justice and of general international law;
2. that the Government of the Republic of Nicaragua is under an obligation to give effect to the award made on 23 December 1906 by His Majesty the King of Spain and in particular to comply with any measures for this purpose which it will be for the Court to determine.

The Government of the Republic of Honduras reserves in a general way the right to supplement and modify its submissions. In particular it reserves the right to request the Court to indicate practical measures to ensure compliance by Nicaragua with the arbitral award of His Majesty the King of Spain.

Honduras reserves the further right to ask the Court to fix the amount of reparation which Nicaragua shall pay to Honduras in conformity with Article 36, paragraph 2 *(d)*, of the Statute of the Court";

in the Reply:

"May it please the Court:

Whether the Government of Nicaragua appears or not:

1. To reject the submissions of Nicaragua;
2. To adjudge and declare that failure by the Government of Nicaragua to give effect to the Arbitral Award made on 23 December 1906 by His Majesty the King of Spain constitutes a breach of an international obligation within the meaning of Article 36, paragraph 2 *(c)*, of the Statute of the International Court of Justice and of general international law; and that this non-execution involves a consequent obligation to make reparation;
3. To adjudge and declare that the Government of the Republic of Nicaragua is under an obligation to give effect to the Award made on 23 December 1906 by His Majesty the King of Spain and in particular to comply with any measures for this purpose which it will be for the Court to determine.

The Government of the Republic of Honduras reserves in particular the right to request the Court to indicate practical measures to ensure compliance by Nicaragua with the arbitral award of His Majesty the King of Spain";

at the hearings, as final submissions:

"May it please the Court:

I. To adjudge and declare that the Government of the Republic of Nicaragua is under an obligation to give effect to the arbitral award made on 23 December 1906 by His Majesty the King of Spain.

II. Furthermore, to place on record the reservation which the Government of Honduras formulates in regard to its right to ask for compensation in respect of the prejudice that has been caused to it as a result of the non-execution of the said arbitral award.

III. To reject the submissions of Nicaragua.

The Government of Honduras will be able to give these submissions a final character, to modify them or to supplement them after hearing the statement of the opposing Party."

On behalf of the Government of Nicaragua,

in the Counter-Memorial:

"May it please the Court,

Rejecting the submissions of Honduras,

I. To adjudge and declare that, without prejudice to what is said in paragraph II, Nicaragua violated no undertaking in failing to execute the decision of King Alfonso XIII, dated 23 December 1906, its Government having pointed from the beginning to the obscurities and contradictions which made this execution impossible and having expressed readiness to submit to arbitration or mediation the disagreement between itself and the Government of Honduras concerning the validity of the said so-called arbitral decision.

II. To adjudge and declare that the decision given by King Alfonso XIII is not an arbitral award made in conformity with the Gámez-Bonilla Treaty of 7 October 1894, and thereby possessed of binding force:

because the above-mentioned treaty had expired at the time when the King accepted the office of sole arbitrator, *a fortiori* when he gave his decision described as 'arbitral';

because this 'arbitral' decision of King Alfonso XIII was given by him as sole arbitrator in flagrant breach of the provisions of the Gámez-Bonilla Treaty;

because the impugned decision is vitiated by essential errors;

because by this decision the King exceeded his jurisdiction;

because it is not supported by an adequate statement of reasons.

III. To adjudge and declare that the so-called 'arbitral' decision is in any case incapable of execution by reason of its obscurities and contradictions.

IV. To adjudge and declare in consequence that Nicaragua and Honduras are in respect of their frontier in the same legal situation as before 23 December 1906.

V. To adjudge and declare in consequence that, as all phases of the disagreement have not been settled by the Judgment of the Court, the Parties are bound, in accordance with the agreement reproduced in the resolution of 5 July 1957 of the Council of the Organization of American States, to conclude an additional agreement within a period of three months

from the date of the delivery of the Judgment, with a view to submitting forthwith the disagreement concerning their frontier to the arbitral procedure provided by the Pact of Bogotá";

in the Rejoinder:

"May it please the Court,

to reject the submissions of Honduras;

to find in favour of Nicaragua on the submissions which it made to the Court in its Counter-Memorial";

at the hearings, as final submissions:

"Whereas, in its submissions at the hearing filed on 15 September 1960, the Government of Honduras asks the Court to adjudge and declare that the Government of the Republic of Nicaragua is under an obligation to give effect to the arbitral award made on 23 December 1906 by His Majesty the King of Spain;

Whereas binding force can obviously be attributed to the royal decision invoked only if it in fact constitutes a valid award;

Whereas therefore, contrary to what was pleaded by Counsel for Honduras, the Court, to be able to adjudicate on the submissions of that Party, must necessarily first verify whether the document produced embodies an instrument which in fact offers the constituent elements of an arbitral award and, if so, whether the said award is valid;

Whereas according to doctrine and to jurisprudence he who relies upon an arbitral award in international proceedings as in private proceedings is under an obligation to prove that the person or body giving the decision described as an award was invested with the powers of an arbitrator and that the said person or the said body really acted within the limits of the powers possessed;

Whereas Honduras has not furnished such proof, whilst the contrary follows from the facts of the case;

Whereas furthermore the acts and declarations of organs of Nicaragua, relied upon by Honduras as recognitions or acquiescences rendering inadmissible the enumeration of the causes of nullity specified in the submissions of Nicaragua of 5 May 1959 have neither the signification nor the effect attributed to them by Honduras;

Whereas moreover the omissions, contradictions and obscurities of the award which were denounced from the very first by Nicaragua would suffice to prevent the execution demanded;

For these reasons,

May it please the Court,

Rejecting the submissions of Honduras,

I. To adjudge and declare that the decision given by King Alfonso XIII on 23 December 1906 invoked by Honduras does not possess the character of a binding arbitral award;

II. To adjudge and declare that the so-called 'arbitral' decision is in any case incapable of execution by reason of its omissions, contradictions and obscurities;

III. To adjudge and declare in consequence that Nicaragua and Honduras are in respect of their frontier in the same legal situation as before 23 December 1906;

IV. To adjudge and declare in consequence that, as all phases of the disagreement have not been settled by the Judgment of the Court, the Parties are bound, in accordance with the agreement reproduced in the resolution of 5 July 1957 of the Organization of American States, to conclude an additional agreement within a period of three months from the date of the delivery of the Judgment, with a view to submitting forthwith the disagreement concerning their frontier to the arbitral procedure provided by the Pact of Bogotá."

* * *

On 7 October 1894 Honduras and Nicaragua concluded a Treaty —hereinafter referred to as the Gámez-Bonilla Treaty—Articles I to XI of which are as follows:

[Translation from the Spanish revised by the Registry]

"Article I

The Governments of Honduras and Nicaragua shall appoint representatives who, duly authorized, shall organize a Mixed Boundary Commission, whose duty it shall be to settle in a friendly manner all pending doubts and differences, and to demarcate on the spot the dividing line which is to constitute the boundary between the two Republics.

Article II

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

1. Boundaries between Honduras and Nicaragua shall be those lines on which both Republics may be agreed or which neither of them may dispute.
2. Those lines drawn in public documents not contradicted by equally public documents of greater force shall also constitute the boundary between Honduras and Nicaragua.
3. It is to be understood that each Republic is owner of the territory which at the date of independence constituted, respectively, the provinces of Honduras and Nicaragua.
4. In determining the boundaries, the Mixed Commission shall consider fully proven ownership of territory and shall not

recognize juridical value to *de facto* possession alleged by one party or the other.

5. In case of lack of proof of ownership the maps of both Republics and public or private documents, geographical or of any other nature, which may shed light upon the matter, shall be consulted; and the boundary line between the two Republics shall be that which the Mixed Commission shall equitably determine as a result of such study.
6. The same Mixed Commission, if it deems it appropriate, may grant compensations and even fix indemnities in order to establish, in so far as possible, a well-defined, natural boundary line.
7. In studying the plans, maps and other similar documents which the two Governments may submit, the Mixed Commission shall prefer those which it deems more rational and just.
8. In case the Mixed Commission should fail to reach a friendly agreement on any point, it shall record this fact separately in two special books, signing the double detailed record, with a statement of the allegations of both parties, and it shall continue its study in regard to the other points of the line of demarcation, disregarding the above referred point until the limit at the extreme end of the dividing line is fixed.
9. The books referred to in the preceding clause shall be sent by the Mixed Commission, one to each of the interested Governments, for its custody in the national archives.

Article III

The point or points of the boundary line which may not have been settled by the Mixed Commission referred to in this Treaty, shall be submitted, no later than one month after the final session of the said Commission, to the decision, without appeal, of an arbitral tribunal which shall be composed of one representative for Honduras and another for Nicaragua, and of one Member of the foreign Diplomatic Corps accredited to Guatemala, the latter to be elected by the first two, or chosen by lot from two lists each containing three names, and proposed one by each party.

Article IV

The arbitral Tribunal shall be organized in the city of Guatemala within twenty days following dissolution of the Mixed Commission, and within the next ten days shall begin its work, which is to be recorded in a Minutes Book, kept in duplicate, the majority vote constituting law.

Article V

In case the foreign Diplomatic Representative should decline the appointment, another election shall take place within the following ten days, and so on. When the membership of the foreign Diplomatic Corps is exhausted, any other foreign or Central Amer-

ican public figure may be elected, by agreement of the Commissions of Honduras and Nicaragua, and should this agreement not be possible, the point or points in controversy shall be submitted to the decision of the Government of Spain, and, failing this, to that of any South American Government upon which the Foreign Offices of both countries may agree.

Article VI

The procedure and time-limit to which the arbitration shall be subject, are as follows:

1. Within twenty days following the date on which the acceptance of the third arbitrator shall have been notified to the parties, the latter shall present to him, through their counsel, their pleadings, plans, maps and documents.
2. Should there be pleadings, he shall submit these, within eight days following their presentation, to the respective opposing counsel, who shall have a period of ten days within which to rebut them and to present any other documents they may deem appropriate.
3. The arbitral award shall be rendered within twenty days following the date on which the period for rebutting pleadings shall have expired, whether these have been presented or not.

Article VII

The arbitral decision, whatever it be, rendered by a majority vote, shall be held as a perfect, binding and perpetual treaty between the High Contracting Parties, and shall not be subject to appeal.

Article VIII

This Convention shall be submitted in Honduras and in Nicaragua to constitutional ratifications, the exchange of which shall take place in Tegucigalpa or in Managua, within sixty days following the date on which both Governments shall have complied with the stipulations of this article.

Article IX

The provision in the preceding article shall in no way hinder the immediate organization of the Mixed Commission, which shall begin its studies no later than two months after the last ratification, in conformity with the provisions of the present Convention, without prejudice to so doing prior to the ratifications, should these be delayed, in order to take advantage of the dry or summer season.

Article X

Immediately following exchange of ratifications of this Convention, whether the work of the Mixed Commission has begun or not, the Governments of Honduras and Nicaragua shall appoint their representatives, who, in conformity with Article IV, shall constitute

the arbitral Tribunal, in order that, by organizing themselves in a preliminary meeting, they may name the third arbitrator and so communicate it to the respective Ministers of Foreign Affairs, in order to obtain the acceptance of the appointee. If the latter should decline to serve they shall forthwith proceed to the appointment of another third arbitrator in the manner stipulated, and so on until the arbitral Tribunal shall have been organized.

Article XI

The periods stipulated in this Treaty for the appointment of arbitrators, the initiation of studies, the ratifications and the exchange thereof, as well as any other periods herein fixed, shall not be fatal nor shall they in any way produce nullity.

The object of these periods has been to speed up the work; but if for any reason they cannot be complied with, it is the will of the High Contracting Parties that the negotiation be carried on to its conclusion in the manner herein stipulated, which is the one they deem most appropriate. To this end they agree that this Treaty shall be in force for a period of ten years, in case its execution should be interrupted, within which period it may be neither revised nor amended in any manner whatever, nor the matter of boundaries be settled by any other means."

The Mixed Boundary Commission provided for in Article I of the Treaty met from 24 February 1900 onwards and succeeded in fixing the boundary from the Pacific Coast to the *Portillo de Teotecacinte;* it was however unable to agree on the boundary from that point to the Atlantic Coast and recorded its disagreement at its meeting of 4 July 1901. With regard to the latter section of the boundary, the King of Spain handed down, on 23 December 1906, an arbitral award—hereinafter referred to as the Award—the operative part of which reads as follows:

[Translation from the Spanish revised by the Registry]

"I do hereby declare that the dividing line between the Republics of Honduras and Nicaragua from the Atlantic to the *Portillo de Teotecacinte* where the joint Commission of Boundaries abandoned it in 1901, owing to their inability to arrive at an understanding as to its continuation at their subsequent meetings, is now fixed in the following manner:

The extreme common boundary point on the coast of the Atlantic will be the mouth of the River Coco, Segovia or Wanks, where it flows out in the sea close to Cape Gracias a Dios, taking as the mouth of the river that of its principal arm between Hara and the Island of San Pío where said Cape is situated, leaving to Honduras the islets and shoals existing within said principal arm before reaching the harbour bar, and retaining for Nicaragua the southern shore of the said principal mouth with the said Island of San Pío, and also the bay and town of Cape Gracias a Dios and the arm or estuary called Gracias which flows to Gracias a Dios Bay, between the mainland and said Island of San Pío.

> Starting from the mouth of the Segovia or Coco, the frontier line will follow the *vaguada* or thalweg of this river upstream without interruption until it reaches the place of its confluence with the Poteca or Bodega, and thence said frontier line will depart from the River Segovia, continuing along the thalweg of the said Poteca or Bodega upstream until it joins the River Guineo or Namaslí.
>
> From this junction the line will follow the direction which corresponds to the demarcation of the *Sitio de Teotecacinte* in accordance with the demarcation made in 1720 to terminate at the *Portillo de Teotecacinte* in such manner that said *Sitio* remains wholly within the jurisdiction of Nicaragua."

Following upon a series of exchanges between the two Governments, some of which will be referred to later, the Foreign Minister of Honduras in a Note dated 25 April 1911 brought to the notice of the Foreign Minister of Nicaragua certain steps taken by Honduras in execution of the Award and made a proposal relating to the demarcation of a certain part of the boundary line in accordance with the concluding portion of the operative clause. In reply to this Note, the Foreign Minister of Nicaragua, in a Note dated 19 March 1912, challenged the validity and binding character of the Award. This gave rise to a dispute between the Parties.

Subsequently, the two Governments made several attempts at settlement by direct negotiation or through the good offices or mediation of other States, but these were all unfruitful. The good offices of the United States of America in 1918-1920 did not succeed. The Irías-Ulloa protocol of 21 January 1931, negotiated directly between the two Governments, failed of ratification. Nor was the joint mediation of Costa Rica, the United States of America and Venezuela in 1937 productive of positive result. Certain incidents between the two Parties having taken place in 1957, the Organization of American States, acting as a consultative body, was led to deal with the dispute with the result that on 21 July 1957, Honduras and Nicaragua reached an agreement at Washington by virtue of which they undertook to submit:

> "to the International Court of Justice, in accordance with its Statute and Rules of Court, the disagreement existing between them with respect to the Arbitral Award handed down by His Majesty the King of Spain on 23 December 1906, with the understanding that each, in the exercise of its sovereignty and in accordance with the procedures outlined in this instrument, shall present such facets of the matter in disagreement as it deems pertinent."

The Foreign Ministers of Honduras and Nicaragua attached the following statements to the Agreement as Appendices A and B thereto:

"Appendix 'A'

STATEMENT OF THE MINISTER OF FOREIGN AFFAIRS OF HONDURAS ON THE POSITION OF HIS GOVERNMENT IN RESORTING TO THE INTERNATIONAL COURT OF JUSTICE

Honduras is submitting to the International Court of Justice its claim against Nicaragua that the Arbitral Award of His Majesty the King of Spain handed down on 23 December 1906 be carried out, basing its stand on the fact that the Arbitral Award is in force and is unassailable. Honduras has maintained and continues to maintain that Nicaragua's failure to comply with that arbitral decision constitutes, under Article 36 of the Statute of the International Court of Justice and in accordance with the principles of international law, a breach of an international obligation.

The foregoing reference to the position of Honduras in this proceeding is only of a general nature and in no wise constitutes a definition or limitation of the matter to be submitted to the Court, or a formula that restricts in any way the exercise of the right that Honduras will maintain in the action before the Court.

Appendix 'B'

STATEMENT OF THE MINISTER OF FOREIGN AFFAIRS OF NICARAGUA ON THE POSITION OF HIS GOVERNMENT IN APPEARING BEFORE THE INTERNATIONAL COURT OF JUSTICE

Nicaragua, when it appears before the International Court of Justice, will answer the claim of Honduras, presenting reasons, actions, and facts, and opposing the exceptions that it considers appropriate, in order to impugn the validity of the Arbitral Award of 23 December 1906, and its compulsory force, and also invoking all those rights that may be in its interest. Nicaragua has maintained and now maintains that its boundaries with Honduras continue in the same legal status as before the issuance of the above-mentioned Arbitral Award.

The foregoing reference to the position of Nicaragua in this proceeding is only of a general nature and in no wise constitutes a definition or limitation of the matter to be submitted to the Court, or a formula that restricts in any way the exercise of the right that Nicaragua will maintain before the Court."

* * *

By the Application instituting proceedings in the present case, Honduras asks the Court *inter alia* to declare that Nicaragua is under an obligation to give effect to the Award. This request was maintained in the final Submissions presented by Honduras at the hearing.

In its final Submissions presented at the hearing, Nicaragua asks the Court to reject the Submissions of Honduras and to adjudge and declare *inter alia* that the decision given by King Alfonso XIII on

23 December 1906, invoked by Honduras, does not possess the character of a binding arbitral award and that the so-called "arbitral" decision is in any case incapable of execution by reason of its omissions, contradictions and obscurities.

Honduras alleges that there is a presumption in favour of the binding character of the Award as it presents all the outward appearances of regularity and was made after the Parties had every opportunity to put their respective cases before the Arbitrator. It contends that the burden lay upon Nicaragua to rebut this presumption by furnishing proof that the Award was invalid.

Nicaragua contends that, as Honduras relies upon the Award, it is under an obligation to prove that the person giving the decision described as an award was invested with the powers of an arbitrator, and it argues that the King of Spain was not so invested inasmuch as:

(a) he was not designated arbitrator in conformity with the provisions of the Gámez-Bonilla Treaty, and

(b) the Treaty had lapsed before he agreed to act as arbitrator.

* * *

In support of the first contention, Nicaragua has argued that the requirements of Articles III and V of the Gámez-Bonilla Treaty were not complied with in the designation of the King of Spain as arbitrator. It has urged that, before the two national arbitrators could proceed to this designation, it was necessary to exhaust the membership of the foreign Diplomatic Corps accredited to Guatemala and thereafter to attempt to come to an agreement on any other foreign or Central American public figure for the purpose of constituting a three-man arbitral tribunal.

The record shows that on 2 December 1899, the two national arbitrators designated the Mexican Chargé d'affaires in Central America, Federico Gamboa, as third member of the arbitral tribunal. In April 1902, he was recalled from Guatemala. On 21 August 1902, the two national arbitrators designated the Mexican Minister to Central America, Cayetano Romero, as third member of the tribunal. He left Guatemala for reasons of health without having accepted or rejected the designation. There is no record of any proceedings taken by the national arbitrators thereafter for the purpose of organizing the arbitration until 2 October 1904. On that date the two national arbitrators, José Dolores Gámez and Alberto Membreño, met in the City of Guatemala with the Spanish Minister to Central America, Pedro de Carrere y Lembeye, and, as stated in the Minutes of the meeting, "having verified their full powers and with the express consent of their Governments appointed the Spanish Minister to be the chairman of a meeting preliminary to the arbi-

tration which is to consider and settle the pending boundary question". At that meeting, "by common consent and the requirements of Articles III and IV of the Gámez-Bonilla Treaty having previously been complied with" *(de común acuerdo y previos los trámites que prescriben los artículos 3° y 4° del Tratado Gámez-Bonilla)* the King of Spain was designated as arbitrator.

It has been suggested that this mention of Article IV was by mistake in place of Article V. Be that as it may, what was meant was that the procedure laid down in the Treaty to be followed antecedent to the designation of the King of Spain as arbitrator had already been complied with. In these circumstances, an allegation that such was not in fact the case must be established by positive proof. No such proof has been placed before the Court.

In the opinion of the Court it was within the power of the arbitrators to interpret and apply the articles in question in order to discharge their function of organizing the arbitral tribunal. Whether they had in fact exhausted the membership of the Diplomatic Corps accredited to Guatemala and failed to reach agreement on the election of any other foreign or Central American public figure or whether they had considered such steps as optional and unlikely to lead to a fruitful result, the fact remains that after agreeing that the relevant articles of the Treaty had been complied with they agreed to proceed to the designation of the King of Spain as arbitrator. The Court, therefore, concludes that the requirements of the relevant articles of the Gámez-Bonilla Treaty as interpreted by the two national arbitrators had already been complied with when, at the meeting of 2 October 1904, it was agreed by common consent that the King of Spain be designated as arbitrator and that he should be requested on behalf of both Governments to undertake the task.

On 4 October 1904, the Spanish Minister sent telegrams to the Presidents of Honduras and Nicaragua stating that it had been agreed to designate the King of Spain as arbitrator in the case.

On 6 October 1904, the President of Honduras expressed his satisfaction at the designation of the King of Spain to decide the question of boundaries of Honduras and Nicaragua, and expressed the hope that the King would accept the task.

On 7 October 1904, the President of Nicaragua replied that it would "be satisfactory and an honour for Nicaragua if H.M. the King of Spain will accept the designation of arbitrator to settle the boundaries dispute between Honduras and Nicaragua".

On 17 October 1904, the acceptance of the King of Spain was communicated to the Spanish Minister in Central America, who immediately dispatched telegrams to the Presidents of Honduras and Nicaragua informing them of the King's agreement "to be the

arbitrator in the question of the boundaries between Nicaragua and Honduras".

In his Note of 21 December 1904, addressed to the Spanish Minister of State, the Foreign Minister of Nicaragua renewed in the name of his Government "to His Majesty the King of Spain the expression of my deep gratitude for the generosity shown" in accepting his "designation as arbitrator to settle the question of boundaries between Nicaragua and Honduras".

In his Report to the National Legislative Assembly dated 30 November 1905, the Foreign Minister of Nicaragua stated:

> "At a meeting in Guatemala City in October 1904, under the presidency of His Excellency the Minister for Spain to Central America, the moment came to elect the third arbitrator who is to settle the affair definitively. His Majesty King Alfonso XIII of Spain was elected as the third arbitrator, the two arbitrators voting in favour, and no choice could have been more appropriate. The affair is now brought to the august cognizance of His Catholic Majesty, who has already appointed a commission of investigation made up of distinguished persons.
>
> . . . . . .
>
> I have already declared in the chapter referring to Honduras that His Majesty King Alfonso XIII is the arbitrator who is to settle our boundary question; I am glad to add that the August Sovereign of the Mother Country has generously informed the Nicaraguan Government, through his Minister of State, that he feels it a very great pleasure to have been appointed to settle the question pending between these two American Republics, for which he has a warm sympathy. For this we are very grateful to the Spanish Monarch and his enlightened Government."

No question was at any time raised in the arbitral proceedings before the King with regard either to the validity of his designation as arbitrator or his jurisdiction as such. Before him, the Parties followed the procedure that had been agreed upon for submitting their respective cases. Indeed, the very first occasion when the validity of the designation of the King of Spain as arbitrator was challenged was in the Note of the Foreign Minister of Nicaragua of 19 March 1912.

In these circumstances the Court is unable to hold that the designation of the King of Spain as arbitrator to decide the boundary dispute between the two Parties was invalid.

* * *

In support of its second contention, namely, that the Gámez-Bonilla Treaty had lapsed before the King of Spain agreed to act as arbitrator, Nicaragua argues that the Treaty came into effect on 7 October 1894, the date on which it was signed, and that, by

virtue of Article XI, it lapsed ten years later, on 7 October 1904. As the King of Spain agreed to act as arbitrator on 17 October 1904, his designation as arbitrator took effect ten days after the Treaty had, according to Nicaragua, ceased to be in force. On this view of the matter, it is contended that the whole proceeding before the King of Spain as arbitrator and his decision of 23 December 1906 was null and void and of no effect whatever. The reply of Honduras is that the Treaty did not come into effect till the exchange of ratifications between the Parties, which was effected on 24 December 1896, and that consequently the period of ten years laid down in Article XI of the Treaty expired on 24 December 1906. According to Honduras, therefore, the arbitral proceedings were completed, and the Award was handed down, during the currency of the Treaty.

It is argued on behalf of Nicaragua that Article IX of the Treaty, which provided that the requirements laid down in Article VIII with regard to ratifications and the exchange thereof should not hinder the immediate organization of the Mixed Commission, meant that the period of time specified in Article XI commenced to run, not as from the date of the exchange of ratifications, but as from the date of signature of the Treaty. Honduras, on the other hand, relies upon Article IX as making provision for an exception to the coming into effect of the Treaty, which was to await the exchange of ratifications, the object of the exception being that the organization of the Mixed Commission need not be delayed pending the coming into force of the Treaty on the date of the exchange of ratifications.

There is no express provision in the Treaty with regard to the date on which it was to come into force. Taking into consideration the provisions of Articles VIII, IX and X, the Court is of the view that the intention of the Parties was that the Treaty should come into force on the date of exchange of ratifications and that the ten-year period specified in Article XI should begin to run from that date but that, in the meantime, in pursuance of Article IX, the immediate organization of the Mixed Commission might be proceeded with. That this was the intention of the Parties is put beyond doubt by the action taken by the two Parties by agreement in respect of the designation of the King of Spain as arbitrator. Agreement on the designation of the King of Spain as arbitrator was reached on 2 October 1904. The Court finds it difficult to believe that the Parties, or one of them, had in mind an interpretation of the Treaty according to which the period provided for in Article XI should expire five days later and that the Treaty should then lapse. Indeed, on the very day on which, according to the present submission of Nicaragua, the Treaty expired, the President of Nicaragua stated in his telegram to the Spanish Minister to Central America that it would be satisfactory and an honour for Nicaragua if the King of Spain would accept his designation as arbitrator to settle the boundary dispute between Honduras and Nicaragua. This

furnishes a clear indication that Nicaragua did not regard the Treaty as having lapsed on that day.

Some support for Nicaragua's contention was sought to be drawn from the suggestion made by the Spanish Minister to Central America to the President of Honduras on 21 October 1904 and to the President of Nicaragua on 24 October 1904 that the period of the Treaty might be extended. In the opinion of the Court, the time at which this initiative was taken shows that it did not carry with it any implication that the Treaty had expired on 7 October 1904. In actual fact, no action was taken to extend the duration of the Treaty. This furnishes confirmation of the view which the Court takes that the Treaty was not due to expire till ten years after the date of the exchange of ratifications, that is to say, on 24 December 1906. Had this not been so, the two Governments, when confronted with the suggestion made by the Spanish Minister to Central America, would either have taken immediate appropriate measures for the renewal or extension of the Treaty or would have terminated all further proceedings in respect of the arbitration on the ground that the Treaty providing for arbitration had already lapsed. On the contrary, the two Governments proceeded with the arbitration and submitted their respective cases to the arbitrator. This shows that the intention of the Parties had been that the Treaty should come into force on the date of the exchange of ratifications.

Again, it may be noted that no objection was taken before the King of Spain to his proceeding with the arbitration on the ground that the Gámez-Bonilla Treaty had already expired. Indeed, the very first allegation that the Treaty had expired on 7 October 1904 was made as late as 1920 during a mediation procedure undertaken by the Government of the United States of America in an effort to resolve the boundary dispute between Honduras and Nicaragua.

The Court, therefore, concludes that the Gámez-Bonilla Treaty was in force till 24 December 1906, and that the King's acceptance on 17 October 1904 of his designation as arbitrator was well within the currency of the Treaty.

* * *

Finally, the Court considers that, having regard to the fact that the designation of the King of Spain as arbitrator was freely agreed to by Nicaragua, that no objection was taken by Nicaragua to the jurisdiction of the King of Spain as arbitrator either on the ground of irregularity in his designation as arbitrator or on the ground that the Gámez-Bonilla Treaty had lapsed even before the King of Spain had signified his acceptance of the office of arbitrator, and that Nicaragua fully participated in the arbitral proceedings before the King, it is no longer open to Nicaragua to rely on either of these contentions as furnishing a ground for the nullity of the Award.

* * *

Honduras is thus seeking execution of the Award made on 23 December 1906 by the King of Spain who, in the opinion of the Court, was validly designated arbitrator by the Parties during the currency of the Gámez-Bonilla Treaty. Nicaragua urges that even under those conditions the Award is a nullity and seeks to establish the nullity of the Award on the grounds that it was vitiated by:

(a) excess of jurisdiction;

(b) essential error;

(c) lack or inadequacy of reasons in support of the conclusions arrived at by the Arbitrator.

Nicaragua also contends that the Award is in any case incapable of execution by reason of its omissions, contradictions and obscurities.

Honduras contends that the conduct and attitudes of Nicaragua show that it accepted the Award as binding and that in consequence of that acceptance and of its failure to raise any objection to the validity of the Award for a number of years, it is no longer open to Nicaragua to question the validity of the Award on the grounds alleged or indeed on any ground at all. Honduras further contends that the Award is clear and definite and is not incapable of execution.

As already stated, the Award was handed down on 23 December 1906. On 24 December 1906 the President of Nicaragua received a telegram from the Nicaraguan Minister in Madrid, which summarized the operative clause of the Award as follows:

> "Boundary begins mouth principal arm River Segovia leaving to Nicaragua Island San Pío, with the bay and the town of Gracias and arm called Gracias; line follows Segovia upstream until encounters Guineo; thereafter boundary takes direction corresponding Sitio Teotecacinte, according to marking established 1720, finishing at Portillo de Teotecacinte, said Sitio remaining entirely to Nicaragua."

On the next day, the President of Nicaragua sent the following telegram to the President of Honduras:

> "Through a cable of today's date I have taken cognizance of the arbitral award made by the King of Spain in the matter of the delimitation of the frontier. Having regard to this decision, it appears that you have won the day, upon which I congratulate you. A strip of land more or less is of no importance when it is a question of good relations between two sister nations. The irksome question of the delimitation of the frontier has been resolved in such a satisfactory manner thanks to friendly arbitration. I hope that in the future no obstacle will disturb the good relations between our respective countries."

In a Note dated 9 January 1907, addressed to the Spanish Chargé d'affaires in Central America, the Foreign Minister of Nicaragua expressed the appreciation of his Government "for the graciousness of the King of Spain who, by his arbitral award, has terminated our frontier dispute with the neighbouring state of Honduras".

On 28 January 1907, the full text of the Award was published in the Official Gazette of Nicaragua.

On 1 December 1907, the President of Nicaragua, in his message to the National Legislative Assembly of Nicaragua, stated as follows:

> "On 23 December 1906, His Majesty the King of Spain made the Arbitral Award in the matter of the delimitation of the frontier between this Republic and that of Honduras. My Government has noted with satisfaction that this important dispute has been terminated by the highly civilized method of arbitration and, although it accepts this decision with pleasure, it has given instructions to Minister Crisanto Medina with a view to requesting a relevant clarification since this decision contains some points that are obscure and even contradictory."

In the course of his report *(Memoria)* to the National Legislative Assembly of Nicaragua, dated 26 December 1907, covering the period between 1 December 1905 and 30 November 1907, the Foreign Minister of Nicaragua, José Dolores Gámez, referring to Honduras, stated: "Our long-standing question of boundaries with this sister Republic, which, as you will remember, we had submitted to arbitration by the King of Spain, was finally settled by the latter on 23 December 1906, on which date he made his Award." He went on to explain that, despite every effort that had been made by the Government of Nicaragua to obtain a more favourable decision, the decision was somewhat disappointing. The report continued: "The Award in question also contains contradictory concepts which make it difficult to put it into effect, for which reason our Minister in Spain has been instructed to ask for a clarification to avoid possible difficulties in the interpretation of these concepts by the parties interested in the case." The report then stated that, if satisfactory light was not thrown by the King upon the points submitted to him, a friendly approach would be made to the Government of Honduras so that "these final details" might be settled in all harmony and to the satisfaction of both countries. The report affirmed "that the irksome question of frontiers which has preoccupied us for so many years and which might at any moment have impaired the good relations which have always attached us to our Honduran brothers, has been settled. Boundary questions are normally of a very serious and dangerous character, and as a rule they leave in their wake feelings of deep resentment which are difficult to overcome. For that reason we must rejoice at the friendly solution we have been able

to find in the settlement of so delicate a question, whatever lines of demarcation have today been laid down for our frontiers with Honduras." In conclusion the report sounded a note of caution for the future with regard to the seeking of settlements by arbitration without appeal.

The section of the report dealing with Spain set out the Award in full.

The National Legislative Assembly of Nicaragua took note of the report and by decree of 14 January 1908 approved "the acts of the executive power in the field of foreign affairs between 1 December 1905 and 26 December 1907".

On 25 April 1911, the Foreign Minister of Honduras addressed a Note to the Foreign Minister of Nicaragua pointing out that

> "it would be desirable to demarcate the small portion of the line which, in conformity with the last paragraph of the Arbitral Award, extends from the junction of the River Poteca or Bodega with the River Guineo or Namaslí as far as the *Portillo de Teotecacinte*, since the Arbitral Award fixed the rest of the line along natural boundaries; for this purpose, as soon as the time is thought opportune, my Government will approach Your Excellency's Government with a view to carrying out this demarcation by agreement."

Early in September 1911, certain Nicaraguan papers carried a report attributed to the Ministry of Foreign Affairs of Nicaragua that one of its representatives, who was then in Europe, had been instructed to request the King of Spain for a clarification of the Award. The Honduran Chargé d'affaires in Nicaragua thereupon approached the Foreign Minister of Nicaragua and enquired whether the newspaper report was accurate. According to the Note of the Honduran Chargé d'affaires dated 8 September 1911, addressed to his own Foreign Minister, a document presented to the Court by Nicaragua, the Foreign Minister of Nicaragua replied that the press reports were not true and

> "that all that he had intimated to the journalists was that, together with the Chargé d'affaires, he was engaged in examining whatever had any reference to fixing, in accordance with the Award, the line of demarcation running from the junction of the Poteca or Bodega River as far as the *Portillo de Teotecacinte;* and that everything would be done in a satisfactory manner in view of the sincere and cordial relations existing between the Governments of Honduras and Nicaragua."

It follows from the facts referred to above that Nicaragua took cognizance of the Award and on several occasions between the date of the Award and 19 March 1912 expressed its satisfaction to Honduras that the dispute concerning the delimitation of frontiers

between the two countries had been finally settled through the method of arbitration.

Nicaragua urges that, when the President of Nicaragua dispatched his telegram of 25 December 1906 to the President of Honduras, he was not aware of the actual terms of the Award. From the telegram of the Minister of Nicaragua in Madrid of 24 December 1906, the President of Nicaragua had however learned where the boundary line was to begin under the Award, and the course it was to follow in order to join up with the point reached by the Mixed Boundary Commission. The President's own telegram to the President of Honduras shows that he considered that the Award was on the whole in favour of Honduras, and he gave expression to his feeling that the loss of a certain area of territory was not too serious a sacrifice as against the strengthening of friendly relations between the two countries. In any event, the full terms of the Award must have become available to the Nicaraguan Government fairly soon since the Award was published in the Official Gazette of Nicaragua on 28 January 1907. Even thereafter, the attitude of Nicaragua towards the Award continued to be one of acceptance, subject to a desire to seek clarification of certain points which would facilitate the carrying into effect of the Award. This desire was, however, not carried beyond the giving of certain instructions to the Nicaraguan Minister in Madrid and no request for clarification was in fact submitted to the King of Spain. Changes of Government in Nicaragua and Honduras did not bring about any change in this attitude till March of 1912 when the Foreign Minister of Nicaragua, in his reply dated 19 March 1912 to the Note of the Foreign Minister of Honduras, dated 25 April 1911, for the first time raised the question of the validity of the Award on the grounds that the King of Spain had not been validly designated arbitrator, that the Award did not comply with the conditions laid down by the Gámez-Bonilla Treaty and that it was not "a clear, really valid, effective and compulsory Award".

* * *

In the judgment of the Court, Nicaragua, by express declaration and by conduct, recognized the Award as valid and it is no longer open to Nicaragua to go back upon that recognition and to challenge the validity of the Award. Nicaragua's failure to raise any question with regard to the validity of the Award for several years after the full terms of the Award had become known to it further confirms the conclusion at which the Court has arrived. The attitude of the Nicaraguan authorities during that period was in conformity with Article VII of the Gámez-Bonilla Treaty which provided that the arbitral decision whatever it might be—and this, in the view of the Court, includes the decision of the King of Spain as arbitrator—

"shall be held as a perfect, binding and perpetual Treaty between the High Contracting Parties, and shall not be subject to appeal".

Nicaragua, however, contends that having in Appendix B of the Washington Agreement of 21 July 1957 made the reservation that, "when it appears before the International Court of Justice, it will answer the claim of Honduras, presenting reasons, actions and facts, and opposing the exceptions that it considers appropriate, in order to impugn the validity of the Arbitral Award of 23 December 1906, and its compulsory force, and also invoking all those rights that may be in its interest", it is entitled to ask the Court for a decision on the grounds of nullity put forward by it against the Award. The reply of Honduras to this contention is that the effect of Appendix A and Appendix B to the Washington Agreement was no more than to leave it open to the Parties to present their respective cases to the Court in any manner permissible to them under international law and the Statute and Rules of Court, that Nicaragua was free to submit to the Court any grounds on which it placed reliance in order to establish the nullity of the Award but that it was equally open to Honduras to submit that, having regard to the conduct and attitudes of Nicaragua, the Court was not called upon to pronounce on all or some of those grounds. The Court is inclined to the view that the Honduran contention is well-founded.

However, even if there had not been repeated acts of recognition by Nicaragua which, as the Court has found, debars it from relying subsequently on complaints of nullity and even if such complaints had been put forward in proper time, the Award would, in the judgment of the Court, still have to be recognized as valid. The Court will proceed to indicate very briefly the reasons for arriving at this conclusion. Before doing so, the Court will observe that the Award is not subject to appeal and that the Court cannot approach the consideration of the objections raised by Nicaragua to the validity of the Award as a Court of Appeal. The Court is not called upon to pronounce on whether the arbitrator's decision was right or wrong. These and cognate considerations have no relevance to the function that the Court is called upon to discharge in these proceedings, which is to decide whether the Award is proved to be a nullity having no effect.

Nicaragua's first complaint is that the King of Spain exceeded his jurisdiction by reason of non-observance of the rules laid down in Article II of the Gámez-Bonilla Treaty. It is contended in the first place that the arbitrator failed to observe the rules laid down in paragraphs 3 and 4 of that Article. The first of these two rules states that "each Republic is owner of the territory which at the date of Independence constituted respectively the provinces of Honduras and Nicaragua". The rule in paragraph 4 calls upon the arbitrator to consider "fully proven ownership of territory" and precludes recognition of "juridical value to *de facto* possession

alleged by one party or the other". Nicaragua contends that the arbitrator fixed what he regarded as a natural boundary line without taking into account the Laws and Royal Warrants of the Spanish State which established the Spanish administrative divisions before the date of Independence. In the judgment of the Court this complaint is without foundation inasmuch as the decision of the arbitrator is based on historical and legal considerations *(derecho histórico)* in accordance with paragraphs 3 and 4 of Article II.

With regard to the same complaint, Nicaragua, in the second place, stresses that the arbitrator purported to exercise his discretion in granting compensations in order to establish, in so far as possible, a well-defined natural boundary line as provided for in paragraph 6 of Article II of the Treaty. Nicaragua contends that this discretion was, under the said paragraph, vested in the Mixed Boundary Commission and could not be exercised by the arbitrator. In exercising this discretion, the arbitrator, it is urged, exercised a power which he did not possess, or which, if conferred upon him, he exercised far beyond its legitimate limit. The Court is unable to share this view. An examination of the Treaty shows that the rules laid down in Article II were intended not only for the guidance of the Mixed Commission to which they expressly referred, but were also intended to furnish guidance for the arbitration. No convincing reason has been adduced by Nicaragua in support of the view that, while the remaining paragraphs of Article II were applicable to the arbitrator, paragraph 6 was excluded and that, if it was not excluded, the arbitrator, in applying it, exceeded his powers. In the view of the Court, the arbitrator was under obligation to take into account the whole of Article II, including paragraph 6, to assist him in arriving at his conclusions with regard to the delimitation of the frontier between the two States and, in applying the rule in that paragraph, he did not go beyond its legitimate scope.

The Court, having carefully considered the allegations of Nicaragua, is unable to arrive at the conclusion that the King of Spain went beyond the authority conferred upon him.

Nicaragua next contends that the Award is a nullity by reason of "essential error". The Court has not been able to discover in the arguments of Nicaragua any precise indication of "essential error" which would have the effect, as alleged by Nicaragua, of rendering the Award a nullity. Under paragraph 7 of Article II of the Gámez-Bonilla Treaty, "in studying the plans, maps and other similar documents which the two Governments may submit", the arbitrator was to prefer those which he "deems more rational and just". The instances of "essential error" that Nicaragua has brought to the notice of the Court amount to no more than evaluation of documents and of other evidence submitted to the arbitrator. The appraisal of the probative value of documents and

evidence appertained to the discretionary power of the arbitrator and is not open to question.

The last ground of nullity raised by Nicaragua is the alleged lack or inadequacy of reasons in support of the conclusions arrived at by the arbitrator. However, an examination of the Award shows that it deals in logical order and in some detail with all relevant considerations and that it contains ample reasoning and explanations in support of the conclusions arrived at by the arbitrator. In the opinion of the Court, this ground is without foundation.

* * *

It was further argued by Nicaragua that the Award is not capable of execution by reason of its omissions, contradictions and obscurities, and that therefore on this ground the Court must reject the submission of Honduras praying that the Court should adjudge and declare that Nicaragua is under an obligation to give effect to the Award.

The operative clause of the Award fixes the common boundary point on the coast of the Atlantic as the mouth of the river Segovia or Coco where it flows out into the sea, taking as the mouth of the river that of its principal arm between Hara and the Island of San Pío where Cape Gracias a Dios is situated, and directs that, from that point, the frontier line will follow the thalweg of the river Segovia or Coco upstream without interruption until it reaches the place of its confluence with the Poteca or Bodega and that thence the frontier line will depart from the river Segovia or Coco continuing along the thalweg of the Poteca or Bodega upstream until it joins the river Guineo or Namaslí. From this junction, the line will follow the direction which corresponds to the demarcation of the *Sitio* of Teotecacinte in accordance with the demarcation made in 1720 to terminate at the *Portillo de Teotecacinte* in such manner that the said *Sitio* remains wholly within the jurisdiction of Nicaragua.

Nicaragua has argued that the mouth of a river is not a fixed point and cannot serve as a common boundary between two States, and that vital questions of navigation rights would be involved in accepting the mouth of the river as the boundary between Honduras and Nicaragua. The operative clause of the Award, as already indicated, directs that "starting from the mouth of the Segovia or Coco the frontier line will follow the *vaguada* or thalweg of this river upstream". It is obvious that in this context the thalweg was contemplated in the Award as constituting the boundary between the two States even at the "mouth of the river". In the opinion of the Court, the determination of the boundary in this section should give rise to no difficulty.

Nicaragua argues further that the delimitation in the operative clause leaves a gap of a few kilometres between the point of depar-

ture of the frontier line from the junction of the Poteca or Bodega with the Guineo or Namaslí up to the *Portillo de Teotecacinte*, which was the point to which the Mixed Commission had brought the frontier line from its western boundary point. An examination of the Award fails to reveal that there is in fact any gap with regard to the drawing of the frontier line between the junction of the Poteca or Bodega with the Guineo or Namaslí and the *Portillo de Teotecacinte*.

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

For these reasons,

THE COURT,

by fourteen votes to one,

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

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this eighteenth day of November, one thousand nine hundred and sixty, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Honduras and the Government of the Republic of Nicaragua, respectively.

(Signed) Helge KLAESTAD,
President.

(Signed) GARNIER-COIGNET,
Registrar.

Judge MORENO QUINTANA makes the following Declaration:

Although I am in agreement with the virtually unanimous opinion of my colleagues with regard to the decision reached in this case, I consider that it should have been arrived at by a different procedural method. As a representative on this Court of a Spanish-American legal system and confronted with a dispute between two Spanish-American States, I believe that the legal questions which are of particular concern to them should have been dealt with in the first place. I refer in particular to that provided for in Article II, paragraph 3, of the Gámez-Bonilla Treaty, which relates to the

application by the arbitrator of the principle of *uti possidetis juris* which for more than a century has governed the territorial situation of the Spanish-American States. By reason of its importance this principle called for initial attention by the Court since Nicaragua based a major ground of nullity of the Award of the King of Spain on the arbitrator's failure to observe it.

Again, the case essentially involves the validity or invalidity of an international legal act. The Judgment might therefore with advantage have established the intrinsic regularity of the Award, after having analysed its extrinsic regularity, instead of—as it does—resting the solution of the case in advance upon acquiescence in the Award by the Parties. This latter situation, in the present case, in which one of the Parties contends for the nullity of the Award, is of no more than subsidiary importance. It provides a procedural argument based on a situation of fact, but it does not provide an adequate legal ground upon which to base the Judgment.

Furthermore, the features of the case do not put in issue the good faith of the unsuccessful party. Nicaragua, during the half century in which the Award was not implemented and in which the question of its non-implementation was not referred by Honduras to any international tribunal, may have had reasons, although ill-founded, for believing in the nullity of that legal act. A number of attempts by Nicaragua to obtain an arbitral decision to that effect remained unsuccessful. There was nothing to prevent the Court from so finding. Honour was due to the State which, together with the successful party and with Costa Rica, Guatemala and El Salvador, gave so splendid an example of devotion to the cause of law in setting up in 1907 the Central American Court of Justice, the first example in the world of an international judicial tribunal. The technical function of the Court is not incompatible with that of rendering in its judgments peace to the spirit, particularly in the case of sovereign States. *Pax est justitia.*

Judge Sir Percy SPENDER appends to the Judgment of the Court a statement of his Separate Opinion.

M. URRUTIA HOLGUÍN, Judge *ad hoc*, appends to the Judgment of the Court a statement of his Dissenting Opinion.

(Initialled) H. K.
(Initialled) G.-C.