any effects, as well as one which is no longer in force at the time of renewal.

Prior to the time when Thailand's 1950 declaration became ineffective, the previous declarations had come to an end; this would have been true even if Article 36, paragraph 5, had been operative with respect to it. The fact was well known to Thailand that when the 1950 declaration became effective that the declaration desired to be renewed had ceased to be in force.

Accordingly Thailand's argument based on the impossibility of renewing the declarations accepting the jurisdiction of the "old" Court by means of the declaration of 1950 is without foundation. By that declaration Thailand accepted the jurisdiction of the International Court of Justice, the "new court," but on conditions determinable by reference to the "old" Court declarations.

HONDURAS v. NICARAGUA[32]

Though both parties accepted the jurisdiction of the World Court pursuant to Article 36, paragraph 2, of the Court's Statute,[33] plaintiff, in instituting the present case, relied on the Washington Agreement of 21 July 1957[34] between the parties with regard to the procedure to be followed in submitting the dispute to the Court. The following submission in plaintiff's Application, quoted in the Court's judgment,[35] indicates the nature of the controversy:

> May it please the Court:
>
> * * *
>
> To adjudge and declare, whether the Government of Nicaragua appears or not, after considering the contentions of the Parties:
>
> 1. that failure of 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

[32] [1960] I.C.J. Rep. 192. The date of the arbitral award was 23 Dec. 1906; that of the Court's judgment, 1 Nov. 1960. The Court was composed of President Klaestad, Vice-President Zafrulla Khan, Judges Hackworth, Winiarski, Badawi, Armand-Ugon, Kojevnikov, Moreno Quintana, Córdova, Wellington Koo, Spiropoulos, Sir Percy Spender, and Alfaro, Judges *ad hoc* Ago and Urrutia Holguín. Of counsel for Nicaragua in this case was M. Gaetano Morelli, who, subsequently elected to the Court, delivered the separate (concurring) opinion in *Cambodia v. Thailand*, digested just above.

[33] See [1959-60] I.C.J. Y.B. 241, 247.

[34] 277 U.N.T.S. 159, No. 4005 (Effective 21 July 1957).

[35] [1960] I.C.J. Rep. 195.

Article 36, paragraph 2(c),[36] 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 delivered by the Court.

In its Memorial, Honduras reserved the right to ask the Court to fix the amount of reparation which Nicaragua should pay in conformity with Article 36, paragraph 2(d), of the Statute of the Court.

The contentions of Nicaragua will be set forth in connection with the respective pronouncements of the Court concerning them. Meanwhile, the immediate background of the ancient boundary dispute which the two nations parties had sought to settle by arbitration more than half a century ago, and in the present proceeding were seeking the settlement of a dispute about the arbitral award, should be stated; also the fact that, as the Court took occasion in the course of its judgment to observe:

> the Award is not subject to appeal and . . . 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.[37]

On 7 October 1894 an instrument was signed on behalf of Honduras and Nicaragua, known as the Gamez-Bonilla Treaty,[38] to be in force ten years, in which were set forth comprehensive and detailed stipulations for the settlement of the dispute and the demarcation of the boundary. Ratifications were exchanged 24 December 1906. The Mixed Boundary Commission provided for met from and after 24 February 1900 and succeeded in fixing the boundary from the Pacific Coast to the Portillo de Teotecacinte, but were unable to agree upon the boundary from that point to the Atlantic Coast. Article III of the

[36] Note 8 *supra.*

[37] [1960] I.C.J. Rep. 214.

[38] *Tratados celebrados por el Gobierno de Honduras con los Nicaragua Guatemala y el Salvador y aprobados per la Assembla nacional constituyente* (Tegulcigalpa, 1895).

treaty provided that the "point or points of the boundary line which may not have been settled by the Mixed Commission"[39] should be submitted to the decision without appeal of an arbitral tribunal to be composed of one representative for Honduras and another for Nicaragua, and a member of the diplomatic corps accredited to Guatemala, elected by the first two or chosen by lot; failing which the controversy to be submitted to the "Government of Spain." Further detailed provisions suggest intention to press for a prompt and definitive solution. Eventually the matter was referred to the King of Spain as arbitrator. He handed down, 23 December 1906, an arbitral award (which is the subject of the present adjudication) confirming the boundary as fixed by the Boundary Commission and completing the boundary as follows:[40]

> 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 Pio 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 Pio, 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 Pio.
>
> Starting from the mouth of the Segovia or Coco, the frontier line will follow the *vaguada* or thalweg[41] of this river upstream without interruption until it reaches the place of 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 Namasli.
>
> 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 certain expressions of dissatisfaction, Nicaragua in 1912 challenged the validity and binding character of the King's award. During the ensuing forty years various efforts at settlement failed. In 1957, certain incidents having taken place between the two parties, the Organi-

[39] [1960] I.C.J. Rep. 200.

[40] [1960] I.C.J. Rep. 202. Translation from the Spanish revised by the Registry of the Court. [See de Martens, *Nouveau Recueil général de Traites, Deuxieme serie*, tome XXXV p. 563, 100 Brit. & For. State Papers 1096.

[41] *I.e.*, middle of the navigable channel. *Cf.*, Iowa v. Illinois, 147 U.S. 1, 13 (1893).

zation of American States, acting as a consultative body, undertook to deal with the dispute, with the result of its submission to the World Court.

Asking the Court to adjudge that the award of King Alfonso XIII did not possess the character of a binding arbitral award, Nicaragua argued, as its first point, that the arbitrator was not designated in conformity with the treaty of 1897. The contention was that certain details had not been complied with by the appointees of Nicaragua and Honduras and the Spanish Minister to Central America, their designatee for third arbitrator, before asking the King of Spain to arbitrate the case. The record showed, however, their statement of compliance; also that not only was no objection raised, but satisfaction was expressed by Nicaragua, which had proceeded to present its case to the King and to give evidence of acquiescence in the award. The Court felt unable to hold that the designation of the King as arbitrator was invalid.

Nicaragua also argued that the arbitration was a nullity because the treaty of 1897, providing for the arbitration of the dispute, had lapsed before the King of Spain agreed to act as arbitrator. The question was chiefly whether the ten-year term began on the date of signature or on the date more than two years and two months later, of the exchange of ratifications. The treaty did not explicitly state which, the Court felt that the question was put beyond doubt by the action of the parties at the time of the designation of the King of Spain, approximately that of the expiration of the treaty had its term begun on signature. The Court's conclusion was accordingly that the treaty was still in force until after the arbitration was completed.

Though the Court thus found that the King of Spain "was validly designated arbitrator by the Parties during the currency of the Gamez-Bonilla Treaty,"[42] Nicaragua continued to urge that the award was a nullity because of excess of jurisdiction assumed by the arbitrator; essential error in the award; and lack of adequacy of reasons in support of the conclusions, claiming at the same time that the award was, in any event, "incapable of execution by reason of its omissions, contradictions and obscurities."[43] The contention of Honduras was that "the conduct and attitudes" of Nicaragua showed that it accepted the award as binding and that such acceptance and failure for a number of years to object, Nicaragua was no longer entitled to the validity on any ground at all; further that the award was clear, definite, and not incapable of execution.

[42] [1960] I.C.J. Rep. 210.
[43] *Ibid.*

The record before the Court did not support Nicaragua's argument:

> 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 Gamez-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."[44]

Nevertheless, the Court analyzed and carefully pronounced upon each of Nicaragua's points.

Article II of the Treaty of 1897 laid down rules "that each Republic is owner of the territory which at the date of independence" constituted its area, and that the arbitrator should consider "fully proven ownership" and not recognize as of juridical value . . . . de facto possession." The Court found that the award was based on historical and legal considerations in accord with these rules, disregarded no requirements of the treaty, and did not exceed the arbitrator's authority. The instances of "essential error" amounted to "no more than evaluation of documents and 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 was "not open to question."[45] Under the head of incapability of execution, by reason omissions, contradictions, and obscurities, Nicaragua urged that the mouth of a river is not a fixed point and cannot serve as a common boundary between two states; moreover, in the present case "vital questions of navigation rights would be involved." But the Court said that the thalweg was contemplated as the boundary even at the mouth of the river and that its determination ought not to give rise to difficulty. So also any other of the allegations of non-executability.

So the Court, by fourteen votes to one, found the award to be "valid and binding" and Nicaragua to be "under an obligation to give effect to it."[46]

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[44] *Id.* at 213.

[45] *Id.* at 215-216.

[46] *Id.* at 217.

With reference to the implementation of the Judgment of the World Court in the

The "one" vote was that of the Nicaragua *ad hoc* judge, M. Urrutia Holguin, who filed a lengthy dissenting opinion.

Judge Moreno Quintana[47] made a declaration in which, on the basis of his special knowledge of "a Spanish-American legal system and confronted with a dispute between two Spanish-American States," he urged that the Court should have given primary attention to Spanish-American legal concepts.

Judge Sir Percy Spender appended a separate opinion in which, with reference to Nicaragua's contentions of excess of jurisdiction, essential error, and lack of adequacy of reasons in support of the award, he rested his adverse conclusion "exclusively on the ground of preclusion." With reference to the case as a whole he observed:

> Nicaragua cannot be permitted to be placed in the position where, had the Award been satisfactory from its point of view, it could have accepted it, if not be free to disregard it as a nullity.
>
> It would be contrary to the principle of good faith governing the relations between States were it permitted now to rely upon any irregularity in the appointment to invalidate the Award. Its conduct up to the moment the Award was made operated in my opinion so as to preclude it thereafter from doing so, irrespective of any subsequent conduct on its part.[48]

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instant case, this JOURNAL is grateful to the Secretariat of the Inter-American Peace Committee of the Organization of American States for the following information, as of 7 July 1961:

"On February 16, 1961, Nicaragua requested the good offices of the Inter-American Peace Committee in connection with certain problems which had arisen relative to its compliance with the judgment of the International Court of Justice. On March 13, 1961, a Basis of Arrangement, proposed by the Peace Committee, was accepted by the Governments of Honduras and Nicaragua. By virtue of this Basis of Arrangement . . . the Honduras-Nicaragua Mixed Commission was established, composed of a representative of each of the two Governments, under the chairmanship of the Chairman of the Peace Committee. This Mixed Commission, with the collaboration of the Organization of American States, has been directing the demarcation of the frontier between the two countries and the transfer of residents to the territory of their respective countries. This work is being carried out very successfully.

"More detailed information will be contained in a report on this case to be prepared by the Inter-American Peace Committee for presentation to the Council of the Organization of American States."

[47] *Ibid.*

[48] *Id.* at 220.