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BAR BRIEFS

WORLD COURT – INTERNATIONAL BOUNDARY DISPUTES[1]

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In a decision last year[2] the International Court of Justice resolved a boundary dispute between Honduras and Nicaragua that had continued without settlement since the 19th century. In 1894 these countries signed the Gamez-Bonilla Treaty providing for a Mixed Boundary Commission to settle various points at issue on the boundary between them. Matters which the Commission could not settle were to be submitted to an arbitral tribunal composed of one representative from each country and a third representative chosen by procedures set out in the Treaty. The Treaty further provided that the arbitral decision would be considered "a perfect, binding and perpetual treaty between the High Contracting Parties, and shall not be subject to appeal."

The Commission settled part of the boundary but disagreed on a lengthy portion involving a sizable territory. An arbitral tribunal was formed and, as was frequently the case in international disputes during this era, the third arbitrator was to be the head of a friendly state. The King of Spain was asked to act as arbitrator; he accepted this task and handed down a decision generally favorable to Honduras. After initially appearing to accept this decision, Nicaragua later claimed that the decision was invalid. Numerous settlement attempts over the years failed. Finally, Honduras and Nicaragua agreed to submit the matter to the World Court, both states recognizing that the Court had compulsory jurisdiction in view of each state's acceptance of jurisdiction under the "optional" clause of the Court's statute, article 36, paragraph 2.

Neither party had a national of its own country on the Court at the time this case was heard and consequently, in accordance with the statute of the Court, each was able to appoint a so-called "National Judge" to sit with the regular Judges. Honduras appointed Professor Robert Ago of Rome and Nicaragua appointed Professor Francisco Urrutia Holguin, Ambassador of Columbia; thirteen of the fifteen regular Judges of the Court participated. The decision was in favor of Honduras 14 to 1, the Court holding that Nic-

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1 Mr. Justice Sutton is Chairman of the Colorado Bar Association Committee on World Peace through law. A function of this committee is to bring to the attention of the bar and laity of Colorado present instances of effective world and international law with a view to fostering understanding of the rule of law among nations.

This comment on an important decision of the International Court of Justice is published as a means of bringing the work and methods of the court to the attention of the Colorado Bar.

2 Arbitral Award Made by The King of Spain on December 23, 1906 (Honduras vs. Nicaragua), Judgment of November 18, 1960. International Court of Justice Reports 1960, page 192.

aragua is under an international obligation to give effect to the Spanish monarch's award.[3]

The majority rejected the contentions of Nicaragua that the King of Spain was not designated an arbitrator in conformity with the provisions of the Gamez-Bonilla Treaty, and that the Treaty had lapsed before the King agreed to act as arbitrator. It was pointed out that no question was at any time raised in the arbitral proceedings before the King with regard either to the validity of his designation or to his jurisdiction. As to effective date of the Treaty, the Court examined the language and actions of the parties in determining their intention as to when the Treaty first came into effect and decided that Nicaragua had not regarded the Treaty as lapsed during the appointment proceedings. Without citation of specific authority, the reliance of the Court upon principles of acquiescence by and estoppel against Nicaragua seems clear.

Nicaragua further tried to establish the nullity of the award of the King of Spain on the grounds that it was vitiated by: (a) Excess of jurisdiction; (b) Essential error; (c) Lack or inadequacy of reasons in support of its conclusions. Nicaragua further contended that the award was incapable of execution by reason of its omissions, contradictions and obscurities.

All of these contentions were rejected by the Court, which held that the award was sufficiently clear to be executed, that no "essential error" had been proved, and that repeated acts of recognition of the award by Nicaragua barred it from further challenge.

Throughout the opinion reliance is placed upon the failure of Nicaragua to raise its arguments in due time, although the Court holds that in any event the award would be binding. Furthermore, there is reluctance to examine in detail the procedure employed by the King of Spain. The approach is rather like that of an appeals court refusing to reverse a trier of facts where the decision appears regular on its face and is based upon no obvious inaccuracies or irregularities.

The opinion shows an instance of judicial decision in a type of question which has frequently led to armed conflict and deep resentment between nations. It further demonstrates the respect for and adherence to principles of international law and jurisdiction which have frequently marked the course of Latin American history. It is encouraging to see two nations recognizing the compulsory jurisdiction of the Court over a case which arose many years before the Court's establishment.[4]

3 The Nicaraguan National Judge dissented in favor of Nicaragua. Judge Moreno Quintana (Argentina) attached a declaration to the majority opinion suggesting that a different procedure would have been more appropriate in reaching the decision. Judge Sir Percy Spender (Australia) attached a separate concurring opinion. The dissent of Judge Urrutia Holguia was long and detailed and involved a number of points of law peculiar to the Latin American countries. The majority opinion is free from detailed reliance on legal doctrine and it is interesting to note that of the four Latin American Judges sitting in the case, only Judge Moreno Quintana took up any one of the points of the dissent and even he failed to agree in the result with Judge Urrutria Holguin. As is frequently the case in the World Court, there seems to have been little difference in point of view between Judges from civil law and common law countries on the Court, which included Judges trained in Islamic, Chinese and Russian legal systems.

4 An interesting footnote to the case is that Professor Philip C. Jessup participated as co-counsel for the losing party, Nicaragua. Professor Jessup has recently been elected a Judge of the Court to replace Judge Sackworth in a position traditionally held by a Judge from the United States.