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 Type: Judgment
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 Requested by: Government of Honduras
 Party(ies): Honduras and Nicaragua v. Salvador and Guatemala
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| Dissenting opinion by Justice Medriz (Nicaragua) December 28, 1908 ⁷ | N/A | N/A |
| Separate Explanation by Justice (Guatemala) ⁸ | N/A | N/A |

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⁶ Libro Rosado de El Salvador (1908). Translation reproduced from: 3 Am. J. Int'l L. 434 1909 [AJIL, Vol. 3, No. 2 (Apr., 1909), 434-436].

⁷ Voto del Magistrado por Nicaragua en la Corte de Justicia Centroamericana (San Jose, 1908). This material is not yet available.

⁸ 5 Martens, Nouveau recueil général (3rd. ser.), p. 358. This material is not yet available.

To Their Excellencies the Presidents of Guatemala, Salvador, Honduras, and Nicaragua:

This court has been advised, through the instrumentality of His Excellency the President of Costa Rica, of the regrettable fact that the Republic of Honduras has been invaded from the Salvadorean frontier, by revolutionaries who have already attacked one or more Honduran towns. This tribunal is also apprised of the fact that, because the character of these events creates the inference that they have not merely the significance of phenomena of the internal politics of Honduras, there has been presented a protest against the Republic of Salvador, in the name of the Government of Nicaragua — a protest that contributes in investing these events with an international character and an evident interest for the general tranquillity of the Central American people.

This court can not, certainly, exercise in any case its attributes of arbiter unless at the solicitation of an interested party; but it considers itself bound by its high mission to exhaust the resources of its friendly and well-intentioned intervention for the maintainment of peace and harmony in the five brother States; it believes that a remedy should be applied to the evil that is beginning, [837] trusting to a collective action on the part of the Governments at once prompt and efficacious, and it has agreed, at a session held on this date, to address itself to Your Excellency, as well as to the other Chiefs of the Central American Republics, to urge its elevated sentiments of Central American fraternalism, with the end of preventing that the events, unfortunately begun in Honduras, bring on complications of international importance, for which noble end it suffices that recourse be had to this court, if the necessity has arrived, for the peaceful solution of whatever motive of disagreement there may exist, in conformity with the provisions of the first article of the convention which gave life and jurisdiction to this tribunal.

At this time any armed conflict would make Central America the object of universal censure, and, apart from the irreparable damages of a fratricidal war, would expose the nations composing it to perils of extreme gravity, which are not hidden from your illustrious mind.

The court believes that, in addressing this respectful solicitation to the Chief Magistrates, it fulfills one of its most important duties, and it does not doubt that it will be well received by the distinguished judgment of Your Excellency.

José Astúa Aguilar.
Salvador Gallegos.
Angel M. Bocanegra.
Alberto Ucles.
José Madriz.

Ernesto Martín, *Scrio.*

His Excellency the President of the Republic of Costa Rica,

San José.

With reference to the events that have lately taken place in the Republic of Honduras, mentioned in the telegram received yesterday by Your Excellency from His Excellency the President of Nicaragua, and which Your Excellency has been pleased to communicate [to] this tribunal, the Central American Court of Justice considers as a high duty of patriotism the exercise of collective action by the sister Republics for the purpose of arresting the course of those events, whose gravity and importance are not hidden from the illustrious mind of Your Excellency.

The court is of the opinion that in view of the especial position held by Costa Rica in the concert of Central America, Your Excellency is once more called to interpose your good offices between the other Governments of Central America, in order that by joint harmonious action they may proceed without delay to the peaceful solution of the unfortunate conflict now raging, or that this conflict be brought to the judicial knowledge of the court, in conformity with the convention of Washington, if the friendly exertions of the interested chancelleries should not yield satisfactory results.

The court, therefore, very respectfully requests Your Excellency to initiate the efforts toward collective action, indicated above, and has the honor to call to your attention that it has this day addressed to the Chief Magistrates of the other Republics the telegram of which a copy is inclosed.

[838] The court takes advantage of this opportunity to manifest to Your Excellency Its high consideration.

José Astúa Aguilar.

Salvador Gallegos.

Alberto Ucles.

Angel Bocanegra.

José Madriz.

Ernesto Martín, *Scrio.*

Central American Court of Justice,

Cartago, July 13, 1908, at 1 p. m.

Whereas, in a formal complaint addressed to this court by His Excellency the Minister of Foreign Relations of the Republic of Honduras in a telegram sent from Tegucigalpa at 6 p. m. of the 10th instant, and delivered to the clerk's office at 5 p. m. of the following day, the Government of said Republic, after reciting the facts which warrant its action, asserts that the Governments of El Salvador and Guatemala have protected and fomented the revolutionary movement which is now astir against the constituted authorities of the nation; and it files against both the charges that they have not fulfilled " the duty imposed on them by article 17 of the treaty of peace and amity signed at Washington, to 'concentrate' and proceed against discontented Hondurans who are preparing to carry civil war into their country," and that they have violated "the neutrality which they ought to have observed in accordance with article 2 of the additional agreement annexed to the said treaty." The complaining Government adds that "Honduras declines (and charges) to the Governments of El Salvador and Guatemala the responsibility for the damage to lives and property resulting from the present armed conflict, for the unwarranted scandal it will cause before other nations, and for the breach of public faith and of the promise given to the United States and Mexican Governments at the Washington Conference;" that "it has sufficient evidence to prove the guilt of the Governments which it accuses, and places right now at the disposal of the court the documents which [839] it possesses in this connection, to be transmitted by telegraph or sent by mail, at the discretion of the court." It asks, finally, that the court "determine at once the status in which the Governments of El Salvador and Guatemala are to remain, in order to prevent greater mischief, until the court pronounces the sentence condemning these Governments as is due."

Whereas, the complaint of the Hondurean Government should be supplemented by indicating the proofs on which it is based before it is communicated or transmitted to the Governments against which it is filed (article 14 of the convention for the establishment of a Central American court of justice).

Whereas, notwithstanding the foregoing, immediate attention should be given to the request of the high plaintiff that this court determine the status in which the contending parties are to remain during the litigation.

Therefore, in accordance with what has been said, with the provisions of the treaty cited, and with articles 1, 2, 3, 16, and 17 of the general treaty of peace and amity of December 20, 1907, as well as article 2 of the additional agreement, it is resolved:

(1) To acknowledge the presentation of the complaint of the Honduran Government (which is asked to indicate by telegraph the proofs on which it bases its complaint, without prejudice to the

subsequent presentation thereof in the proper manner), and to wait until the said proofs are indicated before serving notice of the complaint on the high parties who are to answer it.

(2) In order to fix the status in which the high interested parties are to remain pending the final decision of the case, the court resolves to establish the following rules, which may be subsequently modified or supplemented, according to necessities and circumstances arising during the course of events: The Governments of El Salvador and Guatemala must (a) refrain from any military measure or movement, naval or land, and from all acts of whatsoever nature which might directly or indirectly imply interference in the Republic of Honduras; (b) confine in one place all emigrants suspected of being interested in the Honduran revolution or of being hostile toward the Honduran Government; (c) prevent preparations from being made, or any kind of requisites intended to help or foment the conflict from being solicited, within their territories; (d) rigorously prosecute any person who abets the struggle in any manner; (e) disarm and confine in one place any revolutionary force entering their territory; (f) discharge any Central American emigrants holding positions as officers in their service and compel them to reside in their respective capitals, subject to strict vigilance; (g) reduce their military forces to the proportion necessary for their ordinary service, plus the detachments required at suitable places along the frontiers for the sake of preventing assistance being afforded the revolutionists in the shape of men, war stores or subsistence supplies. On its part, the Honduran Government shall refrain from any act of hostility against the aforementioned Republics. Let this resolution be communicated to the Central American Governments.

José Astúa Aguilar.
Salv. Gallegos.
Angel M. Bocanegra.
Alberto Ucles.
José Madriz.

Ernesto Martin, *Clerk*.

[840] Central American Court of Justice,

July 13, 1908—1.30 p. m.

Whereas, His Excellency the President of the Republic of Nicaragua, in a telegram deposited at Campo de Marte on July 9 instant, at 11 p. m., and received in the clerk's office at 7 a. m. on the following day, states that his Government will file due complaint before this court on account of the revolution begun in Honduras, and that consequently His Excellency the Minister of Foreign Relations will answer the circular communication of this court under date of the 8th instant.

Whereas, His Excellency the Minister of Foreign Relations of the Republic of Nicaragua, in a telegram deposited at the Campo de Marte on July 10, at 12.30 a. m., and received in the clerk's office on the same day at 11.30 a. m., states that, by special instructions from His Excellency the President of that Republic, he has the honor to refer to the aforementioned circular, and in connection therewith he presents to the court a recital of the events which have occurred in the Republic of Honduras and declares that the Republic of Nicaragua is interested, in the present contest for the reason that it participated in the Washington treaties, because it is concerned in the maintenance of general peace in Central America, because its territory borders on that of Honduras, and because of the possible participation in the conflict of Nicaraguan emigrants, who might pursue ulterior ends against its own tranquillity. The Minister of Foreign Relations enumerates, moreover, the grounds on which his Government bases its action in pointing out the Republics of El Salvador and Guatemala as the instigators in the said revolutionary movement, and he prays the court to adopt such measures as it may deem effective.

Whereas, since it did not appear clearly in the telegram of His Excellency the Minister of Foreign Relations whether it was the intention of the Nicaraguan Government to file this as its formal complaint or to reserve the complaint for a subsequent document which has been officially announced; and since it was not precisely specified whether the action should be understood as being directed solely against the Guatemalan Government, the court ordered, as shown in the appropriate document, that the clerk should ask His Excellency the Minister of Foreign Relations by telegraph for the necessary explanatory data, declaring, however, that the message mentioned was sufficiently complete to enable the court to adopt, on the strength of it, the precautionary measures referred to by article 8 of the convention for the establishment of a Central American court of justice, signed at Washington December 20, 1907.

Whereas, by virtue of the foregoing, and in the interest of the peace of Central America, it is appropriate, as one of the measures conducive to this end, to determine the *statu quo* in which the contending parties are to remain pending the final determination of their rights by judgment of the court: Therefore, in accordance with what has been said, with the above-cited provisions of the convention, and with articles 1, 2, 3, 16, and 17 of the general treaty of peace and amity of December 20, 1907, and with

article 2 of its additional convention, It is resolved: To provide, in fixing the *statu quo*, that the high interested parties shall, pending the final decision of the matter, observe the following rules, which [841] the court may modify or supplement, according to necessities and circumstances: (a) The Republic of El Salvador, Guatemala, and Nicaragua shall refrain from any act which, as regards the pending conflict in Honduras, involves violation of the neutrality agreed upon in article 2 of the aforementioned additional convention; (b) they shall prevent any assistance or encouragement being given in any form from their territories or with their resources to the aforementioned revolutionary movement, for which purpose they shall exercise adequate vigilance on the frontiers by means of detachments of troops stationed at the most suitable places; (c) they shall confine to one place all the voluntary exiles (emigrados) to whom it is possible to ascribe intentions of participating in the pending struggle or who are known to be adversaries of the Honduran Government; (d) they shall proceed, as provided in article 17 of the general treaty of peace and amity, against all persons who assist or encourage the aforementioned revolution within their territories; (e) they shall reduce the strength of their army to the proportions required for ordinary service and the aforementioned guarding of the frontiers; (f) they shall discharge any officers of high or low grade in their service if they are emigrants from Central American countries, compelling them to reside in their respective capitals under official surveillance; (g) they shall disarm and intern any revolutionary force coming into their territories; and (h) they shall refrain from any act in their mutual relations which might imply hostility.

Let this resolution be communicated to the Governments of Central America.

José Astúa Aguilar.
Salv. Gallegos.
Angel M. Bocanegra.
Alberto Ucles.
José Madriz.

Ernesto Martin, *Clerk of Court*.

[CONSIDERANDOS]

Final Conclusions and Award

CHAPTER I.

The Court bears in mind, as regards the plea of inadmissibility of the complaint as entered by the representative of the Guatemalan government under the allegation that article I of the convention creating this court was violated:

1. That the theory on which said party wishes to base its plea would lead to the rejection, on the grounds of illegality, of any complaint not accompanied by proof that negotiations looking to a settlement between the respective foreign offices had been begun and concluded without success; we say begun and concluded, because if the requirement were confined to the mere beginning of conciliatory efforts, pending which a complaint were admissible, the objection would lose all its force.

2. That such a view of the matter finds no foundation either in the wording of the law, or much less in a correct interpretation of its spirit, which, in accordance with the principles governing the interpretation of international compacts, should be investigated with a view to deducing from its purport the consequence most in conformity with the order of ideas and interests to which it corresponds and most in conformity with the purpose of maintaining the full efficacy of the provision itself and as related to the remaining articles of the treaty. [730]

3. That the phrase “in case the respective foreign offices should have been unable to reach an agreement,” is far from entailing as a corollary the imperative precept that efforts in this direction must be begun and concluded in every case; for apart from the fact that there would thus be excluded, to the detriment of Central American peace, those claims in which this condition was impossible of fulfillment, we must observe that the certainty of *not being able*, that is, of the real or moral impossibility of reaching an amicable agreement, does not always and solely exist as the result of unsuccessful endeavors, but is usually the result of circumstances which render it necessary at once to characterize such steps as useless, inadmissible, or perhaps dangerous, and therefore to desist there-from; for instance, if the honor of a nation were involved or a rupture of hostilities should occur by reason of a cessation of relations. And we must suppose that the high parties signing the convention thought thus, for the reason that they did not use the formula “in case the respective foreign offices should have begun and concluded negotiations for the purpose of reaching an agreement,” or some other explicit mode of expression, instead of the one adopted.

4. That the function assigned to this court by article XVIII *ibid.*, of arresting the course of an armed conflict by determining, from the very moment a claim is filed, the situation in which the contending governments are to remain pending the rendition of an award, presupposes the right to have recourse to the court without delay in matters of urgency, as occurred in the case under consideration, and if we accepted the above mentioned view of the matter the humanitarian and unquestionably utilitarian purpose for which this important article was inserted would be essentially frustrated, the article being reserved perhaps for emergencies of minor risk and significance or converted perhaps into a simple expression of wish.

5. That this error becomes obvious, moreover, if we observe that it would often shut off the nations from the path of judicial controversy, compelling them to accept war or humiliation as the only alternatives.

6. That the object of the reservation contained in the article under discussion is to hold intact the right of the nations to settle their controversies by amicable agreement notwithstanding their pledge to submit them to the court, but its purpose is not to lay down an inviolable rule that negotiations to this end must be made and exhausted, and if we construe its text in this manner there are no grounds upon which the plea in question can be sustained. [731]

7. That the construction placed upon the aforesaid reservation in the preceding paragraph is further supported by the text of article I of the General Treaty of Peace and Amity signed at the same time as the convention cited, in which article is also embodied the agreement of the signatory republics to submit to this court all their differences of whatsoever nature, and nevertheless the necessity or expediency of first endeavoring to procure an agreement between the respective foreign offices is not even hinted at.

CHAPTER II.

With regard to the plea of insufficiency of the complaint, entered by the same party in the belief that article XIV *ibid.*, was violated because the plaintiff failed to accompany his complaint with the proofs of his charges, we take into account:

1. That, as stated in chapter V of the first part of this award, after the complaint was communicated to the high defendants the said proofs were transmitted to them separately as soon as the period within which they were to answer had begun, and as a matter of fact these proofs formed the subject of an extensive and particular discussion on the part of the representative of the Guatemalan government in his written reply and defense.

2. That this second plea can also not be admitted for the reason that, since the ends of justice

sought to be satisfied by the said article are accomplished, the plea under discussion is without foundation, and because the party making the objection accepted the suit in this form and answered the charge, referring to all its points and the proof supporting it.

CHAPTER III.

In the complaint both the charges on which the suit is based are directed against the governments of El Salvador and Guatemala without making any distinction between the two high contracting parties regarding the ultimate purpose of the suit, although a distinction is made with regard to facts which are distinguished and separated in the recital; and in order to lay down the premises of the award, the court, * * * reaches the following conclusions:

1. That the records of the case do not show, even in the doubtful form of circumstantial evidence, a single act of support or aid lent to the conspirators by the said governments or by private parties with their [732] authorization or tolerance, by virtue of which they would incur direct or indirect liability for violation of their neutrality, in the incident which gave rise to this suit; and it must be noted that the only fact that could be cited in this connection against the Salvadorean government (the aid afforded the faction, by means of their personal cooperation, by Lee Roy Cannon and the emigrants Augusto C. Coello and associates, who departed from its territory), could not be charged against it for the aforementioned purpose either in accordance with the general principles of international law * * * or according to the provisions of the General Treaty of Peace and Amity concluded at Washington, or much less in conformity with the declaration embodied in the protocol of the San José Conference, referred to above.

2. That moreover the evidence in the case does not warrant the assertion that such liability arose from a lack of due diligence on the part of the defendant governments in adopting and enforcing the necessary measures to prevent the crime, for the contrary is gathered from all the evidence adduced in the suit. From this standpoint the very recital of the plaintiff excludes the Guatemalan government from such liability by not charging it with any specific act, positive or negative, which would place it under this head of the indictment; and as far as the other high defendant is concerned, only two facts are worthy of discussion, namely, the failure of the prosecution of the aforementioned emigrants and the flight of Lee Roy Cannon from San Miguel where he held the office of Chief of Police, for the purpose of joining the insurrectionist party; but the documents in the case lead to the conviction that the chief executive of the republic of El Salvador, personally and through the authorities under him, exercised, both before and after July 5, all the vigilance that could reasonably be expected from the administrative authorities of the country, in order to prevent the departure of persons who, owing to their political affiliations in Honduras, might be attracted by the scheme of the conspirators, whereas the action taken by the Honduran officials

was deficient in this regard; the documents also show convincingly that the flight of Cannon from El Salvador, where he had committed embezzlement and was implicated in the faction, without either the consent or tolerance of the government, can in no wise involve the responsibility of the latter. In this manner there arises in its favor a presumption of honesty and good faith sufficient alone to shield it, if the charge were not further effectively counteracted by the [733] circumstance that the Honduran government contributed toward its own injury by a lack of precautionary effort. * * *

3. That it can also not be asserted that there was a culpable lack of diligence on the part of the said government because the aforementioned Hondurans had not been arrested and prosecuted at the date of the complaint and escaped from the measures of " concentration " although their seditious purposes were already known, which question is at once referred to article XVII of the treaty, which is cited by the author as the basis for this chapter of his complaint. The second point has already been treated in the preceding paragraph; with regard to the first point it must be remarked that the obligation assumed by the signatory governments by virtue of the stipulation contained in this article, which is nothing else than a confirmation of a universally recognized international duty, makes it incumbent upon them subject to trial in accordance with their positive law, that is, according to their penal laws and code of procedure any person who begins or foments revolutionary activity against either of them; that the penal code of the republic of El Salvador punishes the consummated crime, the frustrated crime, and the attempt, but not the mere preparation of an unlawful act, and, restricting the repressive power of the law with regard to the last-named imperfect form of the offense, it declares that the proposition and conspiracy are only punishable in the cases expressly indicated by the law, among which are not included violations of neutrality, this being the stand taken on the subject by the penal code of Honduras also; that consequently, even supposing it to be proven that the revolutionary plot had assumed the legal character of a conspiracy, the Honduran officials, owing to a lack of authority, were not under obligation to commence action against the aforementioned persons or to order their formal imprisonment, for which very reason they were obliged to confine themselves, in carrying out the Treaty, to " concentrating" and keeping watch of the suspects through the police authorities to the extent permitted by the laws; that in accordance with the foregoing, the presumption of good faith in favor of the government of El Salvador is not affected in this instance, since it is certain that such presumption is not destroyed by the fact that there were not exercised, for the sake of fulfilling the duties of neutrality, repressive or restrictive measures against individual liberty incompatible with the rules of Salvadorean public law. * * *

[734] 4. That it would not be admissible in the present controversy to invoke the obligation incumbent upon every nation to provide laws and institutions for its internal administration which shall render it practically capable of repressing within its territory acts which are injurious to the other members of the international commonwealth, and to be responsible, therefore, for every defect arising

from deficiency in the laws, for the penal code and the code of preliminary criminal procedure of the republic of El Salvador, in this part as well as in the remainder of its text, are based on the same principles which govern liability to punishment in the nations in and outside of Central America, and answer the requirements of a civilized people. * * *

5. That the negative conclusion resulting from the considerations above set forth with regard to the assertion of a culpable lack of diligence must be applied to the same charge as made against the government of Guatemala, for all the more reason since neither the complaint nor the evidence presented relate any circumstance which merits the special study and examination of the court.

6. That on account of what has been said it is just to declare also that no grounds are found among the records of the case for admitting that in this form the high defendants incurred, with respect to the revolutionary movement which occurred in Honduras, the responsibility with which they have been charged by the high plaintiff.

Whereas:

The proceedings in the present suit having been considered to be terminated and the deliberations of the court on the various points to be sufficient, the presiding judge proposed the following set of questions to be voted upon in rendering the award which is to decide the controversy:

First: Should we admit the plea of inadmissibility of the complaint as entered by the representative of the Guatemalan Government, under the allegation that the complaint was filed without exhausting the negotiations for an agreement between the respective Foreign Offices? *Second:* Shall we admit the plea, entered by the same party, of insufficiency of the complaint to institute the suit owing to the circumstance that it was not accompanied by the evidence when the charge was originally notified to the opposite party? *Third:* Is it demonstrated and should it be so declared, that the government of El Salvador violated article XVII of the General Treaty of Peace and Amity concluded at [735] Washington on December 20, 1907, by not "concentrating" and subjecting to trial the Honduran emigrants who threatened the peace of their country? *Fourth:* Is it demonstrated and should it be so declared, that the government of El Salvador violated article II of the Additional Convention to the said treaty, by protecting or fomenting the aforesaid insurrectionary movement? *Fifth:* Is it demonstrated and should it be so declared, that the government of El Salvador contributed towards the accomplishment of said political crime through a culpable lack of diligence? *Sixth:* Should the action begun against the government of El Salvador be consequently declared lawful and the latter therefore sentenced to pay the damages asked? *Seventh:* Is it demonstrated and should it be so declared, that the government of Guatemala violated article XVII of the General Treaty of Peace and Amity concluded at Washington on December 20, 1907, by not "concentrating" and subjecting to trial the Honduran emigrants who threatened the peace of their country? *Eighth:* Is it demonstrated and should it be so declared; that the

government of Guatemala violated article II of the Additional Convention to said treaty by protecting or fomenting the aforesaid insurrectionary movement? *Ninth*: Is it demonstrated and should it be so declared, that the government of Guatemala contributed towards the accomplishment of said political crime through a culpable lack of diligence? *Tenth*: Should the action begun against the government of Guatemala consequently be declared lawful and the latter therefore sentenced to pay the damages asked? *Eleventh*: Should the losing party or parties be sentenced to pay the costs of trial ?

Whereas:

Having weighed the evidence adduced by the high litigating parties with the freedom of judgment enjoined by article XXI of the aforementioned convention, the judges composing this court voted as follows on the eleven propositions contained in the foregoing paragraph:

The first was answered negatively by the five judges. The second was answered negatively by the five judges. The third was answered negatively by Judges Gallegos, Bocanegra and Astua, and affirmatively by Judges Ucles and Madriz. The fourth was answered negatively by Judges Gallegos, Bocanegra, Madriz and Astua, and affirmatively by Judge Ucles. The fifth was answered negatively by Judges Gallegos, Bocanegra and Astua, and affirmatively by Judges Ucles and Madriz. The sixth was answered negatively by Judges Gallegos, Bocanegra and Astua and affirmatively by Judges Ucles and Madriz. The seventh [736] was answered negatively by Judges Gallegos, Bocanegra, Madriz, and Astua, and affirmatively by Judge Ucles. The eighth was answered negatively by Judges Gallegos, Bocanegra, Madriz and Astua, and affirmatively by Judge Ucles. The ninth was answered negatively by Judges Gallegos, Bocanegra, Madriz and Astua, and affirmatively by Judge Ucles. The tenth was answered negatively by Judges Gallegos, Bocanegra, Madriz and Astua, and affirmatively by Judge Ucles. The eleventh was answered negatively by Judges Gallegos, Bocanegra, Madriz and Astua, Judge Ucles answering that the governments of El Salvador and Guatemala should be sentenced to the costs.

Whereas:

The court refrains from sentencing any party to pay the costs of trial, both in view of the silence of the convention on the subject and because it considers that it lacks authority to do so because the interested parties made no request in regard to this point.

Therefore:

This Court of Justice, in the name of the republic of Central America, in the exercise of the jurisdiction conferred upon it by the Washington Convention of December 20, 1907, to which it owes its existence, and in conformity with the principles of international law and the positive rules before cited, pronounces the following

AWARD:

ARTICLE 1. The pleas of inadmissibility of the complaint and of insufficiency thereof to begin the action, as entered by the representative of the Guatemalan Government, are declared inadmissible.

ARTICLE 2. The governments of the Republics of El Salvador and Guatemala, the high defendants, are acquitted of the charges made against them in this suit and it is therefore declared that there are no grounds for holding them responsible as demanded by the high plaintiff, and no party is sentenced to pay the costs.

Jose Astua Aguilar.
Salv. Gallegos.
Angel M. Bocanegra.

The foregoing award was drawn up by the Presiding Judge Astua Aguilar, and is signed by only three judges, because Judges Ucles and Madriz refused to sign it.

Ernesto Martin, Secretary.

[JUDGMENT]

In the city of Cartago, Costa Rica, at 12 at night of December 19, 1908. The deliberations of the court having been considered to have been concluded, so that it could proceed to render judgment on the suit begun by the government of the republic of Honduras against the governments of El Salvador and Guatemala, [435] on account of responsibility with which the former government charges the latter two in connection with the revolution which occurred in the former of said republics in July of this year, the honorable presiding magistrate proposed the following set of questions to be answered in rendering the judgment which was to decide the controversy:

1. Should we allow the exception of inadmissibility of the complaint, as interposed by the representative of the Guatemalan government on the alleged ground that said complaint was filed without exhausting the means of settlement between the respective chancelries?

Negative: all five judges.

2. Should we allow the exception, interposed by the same party, alleging insufficiency of the petition to institute proceedings, owing to the circumstance that it was not accompanied by the appropriate evidence when the charge was first preferred ?

Negative: all five judges.

3. Is it demonstrated, and should it be so declared, that the government of the republic of El Salvador has violated article 17 of the General Treaty of Peace and Amity concluded at Washington on December 20, 1907, by not arresting and trying the Honduran emigrants who were threatening the peace of their country?

Negative: Judges Gallegos, Boeanegra and Astua.

Affirmative: Judges Ucles and Madriz.

4. Is it demonstrated, and should it be so declared, that the government of the republic of El Salvador violated article 2 of the Additional Convention annexed to said Treaty, by protecting or encouraging the aforesaid insurrectionary movement?

Negative: Judges Gallegos, Bocanegra, Madriz and Astua. Affirmative: Ucles.

5. Is it demonstrated, and should it be so declared, that the government of the republic of El Salvador contributed toward the accomplishment of said political offense by a culpable lack of diligence?

Negative: Judges Gallegos, Bocanegra and Astua.

Affirmative: Judges Ucles and Madriz.

6. Should, consequently, the action begun against the government of El Salvador be declared proper and the latter therefore sentenced to pay the damages asked?

Negative: Judges Gallegos, Bocanegra and Astua.

Affirmative: Judges Ucles and Madriz.

7. Is it demonstrated, and should it be so declared, that the government of the republic of Guatemala violated article 17 of the General Treaty of Peace and Amity concluded at Washington on December 20, 1907, by not arresting and trying the Honduran emigrants who were threatening the peace of their country?

Negative: Judges Gallegos, Bocanegra, Madriz and Astua.

Affirmative: Judge Ucles.

8. Is it demonstrated, and should it be so declared, that the government of the republic of Guatemala violated article 2 of the Additional Agreement to said treaty by protecting or fomenting the said insurrectionary movement?

Negative: Judges Gallegos, Bocanegra, Madriz and Astua.

Affirmative: Judge Ucles. [436]

9. Is it demonstrated, and should it be so declared, that the government of the republic of Guatemala contributed toward the accomplishment of the said political offense by a culpable lack of diligence ?

Negative: Judges Gallegos, Bocanegra, Madriz and Astua.

Affirmative: Judge Ucles.

10. Should, consequently, the action begun against the government of Guatemala be declared proper and the latter therefore sentenced to pay the damages asked?

Negative: Judges Gallegos, Bocanegra, Madriz and Astua.

Affirmative: Judge Ucles.

11. Should the losing party or parties be sentenced to pay the costs of trial? Negative: Judges Gallegos, Bocanegra, Madriz and Astua.

Judge Ucles answered that the governments of El Salvador and Guatemala should be sentenced to pay the costs.

From the foregoing vote, as stated, it results that judgment is pronounced rejecting the action brought against the high defendants, without sentencing them to payment of the costs.

Jose Astua Aguilar
Salv. Gallegos
Angel M. Bocanegra

Alberto Ucles
Jose Madriz
Ernesto Martin, Sec.