

## 7. Grenzstreitigkeiten zwischen Guatemala und Honduras.

Die Vereinigten Staaten haben in dem seit 1918 bestehenden Grenzstreit zwischen Honduras und Guatemala die Vermittlung übernommen und am 5. Juni 1928 den beiden Staaten vorgeschlagen, daß sie die Frage durch das zentralamerikanische Schiedsgericht entscheiden lassen sollten. Die Errichtung dieses Gerichts ist in der Konferenz über zentralamerikanische Angelegenheiten vom 4. Dezember 1922 beschlossen worden, an der sich die Vereinigten Staaten und die fünf zentralamerikanischen Staaten beteiligten. Im Februar 1923 wurde das Gericht durch Konvention zwischen den beteiligten Staaten errichtet, und diese Konvention wurde sowohl von Guatemala als auch von Honduras ratifiziert.

Durch Note vom 19. Juli 1928 nahm Guatemala den Vorschlag Kelloggs an; Honduras dagegen (mit Note vom 27. Juli 1928) lehnte ihn ab. Zur Begründung führte der Außenminister von Honduras an, daß die Schiedsrichter, die (nach der Konvention von 1923) von allen beteiligten Staaten gestellt werden sollten und aus denen das Gericht zusammensetzen sei, nur von einigen wenigen Staaten ernannt seien. Ein ad hoc zusammengesetztes Gericht könne nicht die erwünschte Autorität haben. Selbst aber für den Fall, daß die Zusammensetzung des Central American Tribunal in angemessener Weise erfolgte, wünscht der Außenminister zum Ausdruck zu bringen, daß eine Schiedsgerichtsbarkeit lediglich annehmbar sei, wenn mit Sicherheit feststehe, daß nach rein juristischen Gesichtspunkten gerichtet werde und daß die Politik ausgeschaltet würde. Der amerikanische Staatssekretär habe aber ausdrücklich politische und andere Interessen beider Staaten berücksichtigen wollen und in dem "legislative decree", in dem die Annahme der Schiedsgerichtsbarkeit genehmigt wurde, habe sich Guatemala diesem Gesichtspunkt angeschlossen. Aus diesen Gründen wurde der Vorschlag Kelloggs abgelehnt.

Am 8. August 1928 wurde Honduras durch Antwortnote der Vereinigten Staaten ersucht, die Frage erneut zu prüfen: die Tatsache, daß Honduras selbst noch keine Schiedsrichter für die Richterliste des Central American Tribunal ernannt habe, könne nicht ins Gewicht fallen, da diese auf keinen Fall für den vorliegenden Streit in Frage kommen könnten; die (von Costa Rica und Nicaragua) ernannten Richter seien durchaus nicht zum vorliegenden Streit ausgesucht worden, es sei gegen ihre Unparteilichkeit nichts einzuwenden, ein geeignetes Gericht sei also verfügbar, da zwölf hochstehende Juristen bereits genannt seien, von denen nur drei zu wählen wären.

Obgleich die Vereinigten Staaten nichts gegen die These einzuwenden hätten, daß Schiedsgerichtsbarkeit 'essentially judicial' sein sollte, erscheine es vom praktischen Gesichtspunkt richtig, auch politische, wirtschaftliche und Handelsinteressen beider Staaten in Betracht zu ziehen, wobei angenommen worden sei, daß eine solche Beurteilung auch für Honduras vorteilhaft wäre.

Das Zentralamerikanische Gericht schiene besonders geeignet, hier

zu entscheiden, da es gerade für solche Fälle ins Leben gerufen worden sei. Der Vorschlag vom 5. Juni sei noch offen.

Note der Vereinigten Staaten an Honduras und  
Guatemala vom 5. Juni 1928:<sup>1)</sup>

“Since 1918 the Department of State at the request of the Governments of Honduras and Guatemala has been serving as a friendly mediator in the matter of the adjustment of the boundary between the two countries. Through this friendly and disinterested cooperation useful exchanges of views have taken place. Animated by a sincere desire to be helpful to both parties, so far as lies in my power, and after a careful review of the situation, I now feel that I would be acting in the best interests of both nations by submitting the following proposal, which I earnestly commend to their favorable consideration.

1) That the Governments of Honduras and Guatemala immediately submit the question of the boundary between their territories unreservedly to arbitration by the International Central American Tribunal established by the Convention of February 7, 1923, signed at Washington by the representatives of Honduras and Guatemala and duly ratified by those Governments, Article I of which provides as follows: ‘The contracting parties agree to submit to the International Tribunal established by the present Convention all controversies or questions which now exist between them or which may hereafter arise, whatever their nature or origin, in the event that they have failed to reach an understanding through diplomatic channels, or have not accepted some other form of arbitration, or have not agreed to submit said questions of controversies to the decision of another tribunal.’

2) That the said Tribunal be fully empowered to fix a common boundary between Honduras and Guatemala, taking into consideration the political, economic and commercial interests of both States and also to determine the amount of any compensation which it may find necessary or desirable for either party to make to the other; the decisions of the Tribunal to be, of course, conclusive and binding upon both parties.

3) That the existing Mixed Commission now in recess be convened at a time and place to be designated by its chairman for the purpose of drawing up and signing the protocol contemplated in Article VII of the aforesaid convention.

I am encouraged to make this proposal because I have become firmly convinced of the sincere desire of the governments and peoples of Honduras and Guatemala to eliminate this long-pending dispute and thus consolidate and put on a permanent footing friendly relations between them; and because I am inclined to feel that this method offers a more hopeful opportunity to arrive at a settlement than negotiations

<sup>1)</sup> U. S. D. 7. June 1928.

through diplomatic channels. In this connection I also venture to recall that at the Central American Conference of 1923 the Governments of Honduras and Guatemala through their duly authorized plenipotentiaries publicly announced their decision to submit this boundary question to arbitration.

I trust that both governments may find it possible to welcome the opportunity of adjusting their differences in this manner, at the same time making to the cause of international arbitration an impressive contribution which can not fail to call forth the unanimous approval of civilized nations throughout the world.

(Signed) Frank B. Kellogg."

Note Guatemalas vom 19. Juli 1928.<sup>2)</sup>

"Mr. Minister: I have the honor to inform Your Excellency as a continuation of my note number 4552 dated the seventh of last June, that the Legislative Assembly by decree 1568 dated yesterday has authorized the Executive to submit the boundary question pending between Guatemala and Honduras to the arbitration of the International Central American Tribunal instituted by the convention subscribed in Washington, D. C., the seventh of February of 1923, in conformity with the bases proposed by the Department of State of the United States. Herewith I am pleased to send copy of legislative decree number 1568.

I courteously request that Your Excellency be pleased to communicate the foregoing to His Excellency the Secretary of State, adding that the Government of Guatemala is ready to carry out the three points proposed in the courteous note which Your Excellency was pleased to communicate to me under date of fifth of June last passed.

(Signed) Carlos Salazar."

Note von Honduras vom 27. Juli 1928.<sup>3)</sup>

"I must first of all express the satisfaction of my government with the kind reception which His Excellency the Secretary of State gave to my previous note of June 26 already referred to; with so much the greater reason in view of the fact that according to the opinions in his communication the Department of State shares with the Government of Honduras its point of view relative to the effectiveness in 1923 of the convention of 1914 and relative to the promise of arbitration solemnly agreed upon in 1923 during the conferece on Central American affairs.

The weighty opinion of the Department of State comes to re-enforce the conviction always held by the Government of Honduras in regard to the effectiveness of those mutual obligations.

<sup>2)</sup> U. S. D. 24. July 1928.

<sup>3)</sup> U. S. D. 3. Aug. 1928.

His Excellency the Secretary of State makes the observation that although the convention of 1914 was then in vigor the government of Honduras in 1918 had recourse to mediation and in 1923 to the negotiation of a new agreement. Permit me to remark with all respect to Your Excellency that it is precisely around the convention of 1914 that revolve all the diplomatic entanglements which obtained from the frontier difficulties between Honduras and Guatemala.

When the first incidents arose in the middle of 1917 the Government of Guatemala sent to this Republic an extraordinary legation under Victor Sanchez Ocano for the purpose of effecting a direct agreement between the two countries. Mr. Sanchez Ocano as plenipotentiary of Guatemala and Dr. Marino Vasquez, Minister for Foreign Affairs of Honduras, signed on September 20, 1917, a 'preliminary agreement', article 5 of which reads as follows:

'It is understood that if the treaty here projected does not become effective for any reason and if it should not be ratified by the respective legislatures of Honduras and Guatemala, the boundary convention signed between the two republics on August 1, 1914, will remain in force.'

No definite agreement then having been reached the boundary convention of 1914 remained naturally in full effect.

Neither in the opinion of my government does the mediation of the Government of the United States formally offered to this Government according to a note from the American Legation in Tegucigalpa, dated December 26, 1917, destroy the vigor of the convention of 1914 posterior to the mediation, as no definite agreement was reached through the mediation.

It is in consideration of such prior obligations that the Government of Honduras has maintained its thesis of arbitration by His Excellency the President of the United States of America, taking into account likewise the high equality and moral authority of the arbitrator and also the facilities which arbitration in this manner would offer, avoiding delays and difficulties which might prove to be unsurmountable in other methods recently suggested, as I ventured to indicate to Your Excellency in the previous note of June 25.

And I pass now to explain with the spirit of frankness and sincerity which animates my government in its cordial relations with that of your Excellency, the opinion just mentioned which was the subject of observation by His Excellency the Secretary of State, according to the courteous communication addressed to me by Your Excellency on July 11th, accompanying your note of the same date above referred to.

As Your Excellency is aware the members for the formation of the International Central American Tribunal who were (?) of the convention of 1923 should be selected from a list of 30 juriconsults constituted as indicated in the same article. The names of the persons designated by the contracting parties should be communicated to the Minister for Foreign Affairs of Honduras by the Government which names them.

The Minister for Foreign Affairs of Honduras should transmit the complete list to each one of the signatory republics.

Honduras as Your Excellency can see having been assigned the mission of communicating the complete lists for the formation of the tribunal in conjunction with chancellery is in a position to appreciate better than any other bureau in the other countries the lack of the lists made at the proper time for the formation of the International Central American Tribunal.

In fact with the exception of the Government of the United States of America which presented its due list in accordance with article three of the convention, of the Central American Governments which ratified it only the government of Costa Rica sent in its list dated October 30, 1925.

The Government of Nicaragua has just sent in a list drawn up by decree of His Excellency the President of the Republic dated June 27th of the present year 1928. The Government of Honduras has not made its corresponding appointments and as according to article two of the convention the appointments made by the President of the Republic must have the approval of the national congress, the list to be furnished by Honduras can only be valid after the next meeting of the congress.

As result of such antecedents of undebatable authenticity, the calm judgment of His Excellency the Secretary of State will appreciate that judicially, even when in a difficult and artificial manner we may have achieved the getting together of the present lists for the formation of the Central American Tribunal, such lists will be makeshift or temporary, gotten up for the handling of a concrete case in which event the tribunal could not be such a one as would result from permanent lists made with complete isolation from the pending problems of Central America.

In that sense the tribunal itself would suffer from the effects of its artificial creation against the spirit and hopes which undoubtedly governed its establishment by the convention of 1923 because it would carry the taint of nullity to any of its findings as claimed and explicitly apprehended by subsection A paragraph two of article one of the convention itself. Naturally the foregoing considerations have no reference whatever to the reputation or high moral worth of the distinguished jurists who have been or may be appointed for the formation of the proposed Central American Tribunal.

In any event, even the remote contingency which would be considered by my government, of success in establishing the Central American Tribunal in proper manner, I wish to give immediately some idea of the attitude taken by the Government of Honduras as to the question of the nature of arbitration, in answer to the proposal made by His Excellency the Secretary of State and transmitted by Your Excellency in your note of June 5 last.

In the recently published work (1927) by the eminent American publicist, James Brown Scott 'The Hague Peace Conferences' the con-

sideration is brought forward on page 200 that the United States has not only favored arbitration as a policy but has made it a juridical proceeding.

Earlier on page 195 he cited the following concepts of Renault in support of his idea: 'International arbitration will never develop soundly until it frees itself in the most positive manner from the domination of politics and diplomacy by which it has been so long confined and limits itself solely to the judicial field into which it has barely entered.

It is only under such conditions that it can inspire confidence in governments and peoples and can offer guarantees to the smaller states often liable to victims of political considerations.'

In the proposal of the Department of State contained in the before-mentioned note of June 5 there is laid down as one of the points presented for the consideration of my government that the Tribunal of Arbitration be fully empowered to fix a definite boundary between Honduras and Guatemala 'taking into consideration the political, economic, and commercial interests of both States' and also to determine the amount of whatever compensation might be found necessary or desirable to be made by one party to the other.

His Excellency the Secretary of State with noble breadth of vision has later explained his idea indicating that his judgment does not exclude from the arbitration the judicial or documentary proof on which may rest the rights of the two parties; but as the legislative decree of Guatemala authorizing the executive power of that republic to accept arbitration establishes the above concept to which Honduras takes exception without other review, I must refer to him in that matter for the appropriate considerations.

My Government shares with the American author mentioned and with the United States of America, according to his opinion, the idea that arbitration is of an essentially judicial nature. Its judicial character is accentuated in territorial questions. In the boundary agreements made between Honduras and Guatemala in 1895 and 1914 it was established that to settle the question there would have to be considered the observations and studies of technical commissions; lines laid down in public documents and not contradicted by others of equal force, giving to each the value due its antiquity or judicial force; the extent of the territory comprised in the ancient provinces of Guatemala at the date of its independence, the contents of the royal ordinance of intendants which was then in force; and in general all the documents, maps, plan et cetera which lead to the uncovering or the truth, giving preference to those which through their nature might carry most weight by reason of clearness, exactness and impartiality or for any other sound reason according to the principles of justice, all being conditions as Your Excellency will duly appreciate of a particularly juridical and scientific nature. Possession was given only the weight due to what was justly, legitimately, and fundamentally held according to the general principles

of right and the rules of justice which in the premises had the sanction of the law of nations.

A proposal of arbitration which does not rest on a foundation essentially judicial, aside from any other conditions not based on right and justice, and the result being already interwoven with circumstantial conditions, is in the opinion of my government, an undertaking to which Honduras could not agree to entrust the vital interests of her territorial integrity without provoking the just censure of the public conscience.

Now animated by the highest sentiments of fraternity and conciliation and attentive to the friendly observations of the mediator government, Honduras would be able once a decision had been dictated based solely on juridical considerations, to consider then the question of reciprocal compensations on grounds of equity and mutual convenience. But such compensations, already contemplated in article seven of the convention of 1914, must be the result of juridical arbitration and not of prior stipulation and agreements which would prejudice the final decision.

In view therefore of the following fundamental considerations: the nonexistence of the arbitrating tribunal; the impossibility of organizing it in the form required; and the restriction of the territorial rights of Honduras contained in the stipulations in the legislative decrees of Guatemala which subjects the provisional arbitration to antecedent conditions dangerous for the integrity of the country, considerations which my government hopes will be received with a generous and benevolent spirit by the government of Your Excellency, in view of the rectitude and loyalty which has motivated them, my government regrets that it is not able to accept the arbitration in the form proposed by His Excellency the Secretary of State in the note of Your Excellency of June 5, 1928, at the same time protesting its firm intention to accept any other arbitration under His Excellency the President of the United States of America, the Chief Justice of the Supreme Court of the United States or any other tribunal established in regular and permanent form, the arbitration being made in conformity with proved rights and documents of the parties and without other considerations than the ones which are derived from those rights.

I am happy to take this occasion to renew to Your Excellency the assurance of my distinguished consideration and high esteem.  
(Signed) F. Davila."

Note der Vereinigten Staaten an die Regierung von Honduras vom 8. August 1928. 4)

"I have received Your Excellency's note of July 27, a copy of which I have duly transmitted to my Government, and in reply I am instructed to inform Your Excellency of the deep disappointment with which my Government has received the decision of the Government of Hon-

4) U. S. D. 10. Aug. 1928.

duras not to accept the proposal made by the Secretary of State as a friendly mediator in the matter of the boundary dispute between Honduras and Guatemala, for a settlement of this long-standing controversy through its submission unreservedly to arbitration by the International Central American Tribunal. This disappointment is all the more keen in view of the fact that the Government of Guatemala, as Your Excellency's Government is aware, has already signified its unqualified acceptance of this proposal.

While at first glance it would not seem that the communication from the Honduran Government above referred to requires any further reply, nevertheless my Government feels constrained to comment upon certain of the statements made in Your Excellency's note as forming grounds for the refusal by the Government of Honduras to submit this question unreservedly to arbitration.

My Government has duly noted Your Excellency's statements concerning previous agreements and efforts to adjust this controversy, but is convinced that no useful purpose will be served by recapitulation of past difficulties and efforts which have proved unfruitful. It was precisely because experience has shown the difficulty of bringing about a solution of this controversy based on previous agreements or on a continuation of the methods then employed, that my Government felt the best prospect of success lay in a new agreement to submit this question to arbitration by an impartial tribunal.

Your Excellency states that the panel of the International Central American Tribunal is incomplete and points out that only the Governments of Costa Rica and Nicaragua have sent in their lists of members, and further remarks that the latter list was drawn up by a decree dated June 27 of the present year. My Government has been informed that the list submitted by the Nicaraguan Government was prepared in 1923 and there would therefore seem to be no basis for any supposition that either the Costa Rican or Nicaraguan lists were drawn up with the present controversy in mind.

With regard to the failure of the Government of Honduras to make its appointments I have no comment to make, but inasmuch as the Government of Honduras would not have been able to select any jurists chosen from its own list the absence of this list would seem to be of no importance so far as Your Excellency's Government is concerned and does not limit the competency or the availability of the Tribunal in this case.

The Government of Salvador not having ratified the Convention establishing the International Central American Tribunal could not name a list of jurists; but nevertheless this Convention is in effect, with two lists of jurists nominated by countries not parties to the existing controversy.

As Your Excellency is doubtless aware, Article 26 of this Convention provides that the Convention shall take effect with respect to the parties that have ratified it from the date of its ratification by at least three of the signatory states. It was therefore foreseen that a case



might arise in which resort would be had to this Tribunal when only the list of one state not a party to the controversy would be available for the selection of a tribunal.

There are now available for nomination as members of the Tribunal 12 distinguished jurists, the reputation and high moral worth of whom Your Excellency does not question, and of whom two are South Americans, eight are Central Americans and two are North Americans. Since the Tribunal would be made up of only three jurists, one of whom could be selected by mutual agreement outside of the list of 12 mentioned above, it appears that it should not be difficult to select from this list the jurists necessary to form the Tribunal. My Government is fully satisfied therefore that if there is genuine desire to submit this question to settlement by the International Central American Tribunal, no obstacle to the creation of an impartial tribunal exists.

To Your Excellency's observations that the idea of arbitration is essentially of a judicial nature, my Government takes no exception. Nevertheless, though arbitrations are judicial in their nature, it has never been understood, nor has it been the practice, unless limited by the Protocol of Submission, that arbitrations of boundary disputes should not take into consideration the elements set forth in the proposal of the United States.

After a careful study of the present controversy, with the details of which my Government is thoroughly familiar, it was felt that it would be to the best interests of both countries that a decision should not be based solely upon historical evidence purporting to set forth boundaries between Honduras and Guatemala before either of those nations existed as an independent republic. It was not intended that the Tribunal should ignore the judicial or documentary or historic proof on which the rights of the parties might rest but, on the contrary, all such documents and historic proof would be available to the arbitrators in this case. This could easily be provided for by the Protocol of Submission.

It was to meet the practical considerations involved that my Government suggested that the arbitral tribunal should be authorized to take into consideration the existing political, economic, and commercial interests of both states, thus permitting the tribunal to draw a boundary line which would be felt to be suitable under existing circumstances.

In suggesting that the tribunal be empowered to take into consideration the political, economic, and commercial interests of both states in fixing a common boundary between them my Government did not doubt that this suggestion would be acceptable, in view of the fact that both Honduras and Guatemala, as a result of the mediation proceedings of 1917 and 1918, agreed to the appointment of a commission to make an economic survey of the territory in dispute. This survey was completed in 1919 and the report, which covered political, economic, and commercial conditions, was communicated to both Governments, who, through their duly appointed representatives, presented argu-

ments to the mediator based upon this report, thus making these elements a part of the controversy.

My Government has noted Your Excellency's expressed willingness to accept arbitration under the President of the United States of America or the Chief Justice of the Supreme Court of the United States, or any other tribunal established in regular and permanent form.

It was the firm opinion of my Government that this question, involving a boundary between two Central American republics, could and should be arbitrated by the Tribunal which has been created by the Central American republics for the express purpose of arbitrating just such questions as this one. For this reason the Secretary of State made the proposal in the form that he did, feeling sure that both countries, if they could agree to submit the question to arbitration, would welcome the opportunity to submit it to arbitration by a tribunal which they themselves established rather than by any foreign tribunal.

In conclusion I am instructed to say that my Government feels that the suggestion which the Secretary of State made on June 5 is still open to acceptance by the Government of Honduras and hopes that Government will give careful reconsideration to the matter."

Am 25. August 1928 hat die Regierung von Honduras abermals den Vorschlag der Vereinigten Staaten abgelehnt.

## 8. Die Rechtsstellung der besetzten Rheinlande.

Dr. J. M. Bumiller.

### I. Teil.

#### Das Preßrecht.

##### I. Die Rechtsgrundlagen.

Die Interalliierte Rheinlandkommission (IRK.) ist befugt, mit Gesetzeskraft Verordnungen zu erlassen, *soweit dies für die Gewährleistung des Unterhalts, der Sicherheit und der Bedürfnisse* der Alliierten Besatzungstruppen nötig ist (Art. 3, Abs. 1, 2 des Rheinlandabkommens). Die im Rahmen dieser Befugnis erlassenen Verordnungen gehen den bei Inkrafttreten des Versailler Vertrags und des Rheinlandabkommens (RhA.) bestehenden und seither erlassenen Gesetzen, Verordnungen usw. des Reichs und der Länder vor. Angesichts der knappen und außerordentlich dehnbaren Bestimmungen des RhA. — es ist auf die gleiche diktatorische Weise zustandegekommen wie der Versailler Vertrag — fanden nach seiner Ratifikation durch Deutschland im Juli und August 1919 auf deutsche Anregung hin Verhandlungen statt, um auf zahlreichen Gebieten noch eine besondere Verständigung über Detailfragen herbeizuführen und so die reibungslose Umsetzung des RhA. in die Praxis zu ermöglichen. Insbesondere erstrebte die unter Führung des Staatssekretärs Lewald stehende deutsche Delegation, zum Schutze der Bevölkerung des besetzten Gebietes in einem Zusatzabkommen