REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Aroa Mines Case (on merits)

1903

VOLUME IX pp. 402-445

NATIONS UNIES - UNITED NATIONS

AROA MINES (LIMITED) CASE — SUPPLEMENTARY CLAIM

(By the Umpire:)

Damages will not be allowed for injury to persons, or for injury to or wrongful seizure of property of resident aliens committed by the troops of unsuccessful rebels. [1]

Interpretation of the meaning of the words "claim," "injury," "seizure," "justice," and "equity," as used in the protocol.

CONTENTION OF BRITISH AGENT

In supporting the claim of the Aroa mines for damages due to the action of revolutionaries, it is desirable that the position taken up by His Majesty's Government should be clearly stated and explained.

During the events which led to the signing of the protocol of February 13, 1903, and when a decision was necessary as to what demands ought to be made on the Venezuelan Government, the question of damage due to the acts of insurgents naturally became prominent. His Majesty's Government, having carefully considered the past and present circumstances of Venezuela, which are of a very exceptional kind, came to the conclusion that in dealing with claims of this nature two alternative methods were possible:

(1) That foreign claimants should not receive compensation for damage caused by revolutionaries.

(2) That if any foreign claimants received such compensation British subjects should receive the same treatment.

Great Britain enjoys by treaty the advantages of the most-favored nation, and for this as well as other reasons took the view stated above. To show that His Majesty's Government had always consistently held this view, it may be pointed out that in forwarding claims to the Venezuelan Government the British minister had, long before the blockade, always asked that they should be settled on the same principle as might be applied to other nations.

In the view of His Majesty's Government it was preferable that of the two principles stated above No. 1 should be the one adopted, failing this it was essential to secure the alternative, No. 2.

At the same time it was considered that, owing to the light in which revolutions had come to be regarded by the people of Venezuela, there would be nothing contrary to justice in acting upon the latter principle.

The only way to give effect to these views seemed to be to obtain from Venezuela an agreement wide enough to cover the second principle if it should become necessary to act upon it.

His Majesty's Government have throughout acted consistently on these lines and have made no secret of the position taken up by them on the matter.

Accordingly, upon the sitting of the Commission, His Majesty's Government brought foward only such claims as were based upon the acts of the Venezuelan Government itself, without in any way giving up the right to present those of the other category if it should prove necessary. This course was followed until revolutionary awards had been made in favor of French and German claimants.

---

[1] This principle was followed in the cases of A. A. Pearse, F. G. Fitt, heirs of Christian Philip, W. N. Meston, W. A. Guy, Fortunato Amar, L. L. Michenaux, and Abdool Currim, which are not reported in this volume. For discussion of principle here laid down see the German - Venezuelan Commission (Kummerow Case), the Italian - Venezuelan Commission (Sambiaggio Case, Guastini Case) and the Spanish - Venezuelan Commission (Padrón Case, Mena Case), in Volume X of these *Reports*.

Since therefore, it was no longer possible to act upon the principle originally favored, it was decided to present to the Commission claims for damages due to the acts of the insurgent forces. These claims are supported upon the ground that the recovery of damages so caused is recognized by the protocol of February 13.

In order to show what the terms of the protocol were meant to include, it is necessary to refer to the circumstances under which the protocol was signed and to what had occurred previously.

His Majesty's Government having for a long time presented to the Venezuelan Government claims due not only to the acts of their own troops, but also to the acts of insurgents, without being able to obtain any redress, were at length compelled, in common with the German Government, to declare a blockade of Venezuelan ports. This blockade was not raised until after the signing, and upon the terms of the protocol of February 13.

This protocol was settled after negotiations between His Majesty's representative and Mr. Bowen as representing the Venezuelan Government. In order correctly to interpret the terms of the protocol regard should be paid to the stage of the negotiations at which the exact words ultimately used first appear, and to the connection in which they are there used.

The first step taken by the Venezuelan Government toward the raising of the blockade was a communication from Mr. Bowen through the Government of the United States to His Majesty's Government, asking that they and the German Government would refer " the settlement of claims for alleged damage to the subjects of the two nations during the civil war to arbitration."

To this a reply was sent by the two Governments, which is here quoted, December 23, 1902:

> His Majesty's Government have in consultation with the German Government taken into their careful consideration the proposal communicated by the United States Government at the instance of that of Venezuela.
>
> The proposal is as follows:
>
> That the present difficulty respecting the manner of settling claims for injuries to British and German subjects during the insurrection be submitted to arbitration.
>
> The scope and intention of this proposal would obviously require further explanation. Its effect would apparently be to refer to arbitration only such claims as had reference to injuries resulting from the recent insurrection. This formula would evidently include a part only of the claims put forward by the two Governments, and we are left in doubt as to the manner in which the remaining claims are to be dealt with.
>
> Apart, however, from this some of the claims are of a kind which no government would agree to submit to arbitration. The claims for injuries to the persons and properties of British subjects owing to the confiscation of British vessels, the plundering of their contents and the maltreatment of their crews, as well as some claims for the ill usage and false imprisonment of British subjects, are of this description. The amount of these claims is apparently insignificant, but the principle at stake is of the first importance, and His Majesty's Government could not admit that there was any doubt as to the liability of the Venezuelan Government in respect of them.
>
> His Majesty's Government desire, moreover, to draw attention to the circumstances under which arbitration is now proposed to them.
>
> The Venezuelan Government have, during the last six months, had ample opportunities for submitting such a proposal. On the 29th of July and again on the 11th of November it was intimated to them in the clearest language that unless His Majesty's Government received satisfactory assurances from them, and unless some steps were taken to compensate the parties injured by their conduct, it would become necessary for His Majesty's Government to enforce their just demands. No attention was paid to these solemn warnings, and, in consequence of the manner in which they were disregarded, His Majesty's Government found themselves

reluctantly compelled to have recourse to the measures of coercion which are now in progress.

His Majesty's Government have, moreover, agreed already that in the event of the Venezuelan Government making a declaration that they will recognize the principle of the justice of the British claims, and that they will at once pay compensation in the shipping cases and in the cases where British subjects have been falsely imprisoned or maltreated, His Majesty's Government will be ready, so far as the remaining claims are concerned, to accept the decision of a mixed commission which will determine the amount to be paid and the security to be given for payment. A corresponding intimation has been made by the German Government.

This mode of procedure seemed to both Governments to provide a reasonable and adequate mode of disposing of their claims. They have, however, no objection to substitute for the special Commission a reference to arbitration with certain essential reservations. These reservations, so far as the British claims are concerned, are as follows:

1. The claims (small, as has already been pointed out, in pecuniary amount) arising out of the seizure and plundering of British vessels and outrages on their crews and the maltreatment and false imprisonment of British subjects, are not to be referred to arbitration.

2. In cases where the claim is for injury to or wrongful seizure of property, the question which the arbitrators will have to decide will only be (a) whether the injury took place and whether the seizure was wrongful, and (b) if so, what amount of compensation is due. That in such cases a liability exists must be admitted in principle.

3. In the case of claims other than the above, we are ready to accept arbitration without any reserve. * * *

It will be seen from this that in the first place all claims are to be submitted to arbitration; that as regards claims " arising from the recent insurrection " where such claims are for injury to or wrongful seizure of property the allied Governments will only accept arbitration on the express terms " that in such cases a liability exists must be admitted in principle." Finally, in the case of other claims arbitration without any reserve is accepted.

It is clear that a meaning beyond the ordinary submission to arbitration must be given to this very pointed and special admission of liability. It admits as not open to discussion some principle which might be open to argument if nothing more than a bare submission to arbitration were found.

As it occurs in this document the meaning is plainly that —

> As regards all claims arising out of the recent insurrection, whether due to their own acts or to those of insurgents, the Venezuelan Government must admit their liability. Otherwise the blockade will not be raised.[1]

These particular terms were never afterwards discussed. In the protocol the Venezuelan Government admit their liability in these very words, and therefore with the same meaning.

There is nothing unreasonable in this. This treaty was made under pressure of a blockade. Under such circumstances what is more natural than to find that the blockading power has insisted upon its own standard of right?

To say that in face of the words " the Venezuelan Government admit their liability " the Venezuelan Government are only to be held liable under accepted and recognized principles of international law is to say that these words carefully and deliberately inserted in an important section of a treaty are without meaning or bearing on the effect of the treaty.

If it be suggested that " admit their liability " means that the Venezuelan Government agree not to raise as a defense that these specially mentioned

---

[1] See Appendix to original report, p. 1033. Not reproduced in this series.

claims are a matter for the law courts, it may be pointed out that if a claim which would otherwise be the subject of ordinary litigation be submitted to arbitration, that fact alone means that all other jurisdictions are, as regards that claim, set aside and superseded by the jurisdiction of the arbitral tribunal. Therefore, the further provision that the Venezuelan Government admit their liability would be superfluous and meaningless in the class of claims here submitted to arbitration.

This admission, then, is an acknowledgment on the part of the Venezuelan Government that they take upon themselves liability for all claims of the kind specified arising out of the insurrection, whether done by themselves or by insurgents.

Since injury to or seizure of property is necessarily wrongful in the case of insurgent forces, it is only needful to prove that they took place and arose out of the insurrection, and liability at once attaches to the Venezuelan Government, the only remaining question being one of amount.

It has already been indicated that this liability for the acts of insurgents in the case of a country so circumstanced is a doubtful point of international law, depending as it does upon the question whether the country is " well-ordered to an average extent " (Hall, p. 226), a point difficult and embarrassing to discuss. The admission of liability found here is therefore just such as would be expected under the circumstances.

It is not necessary to pursue the matter further, since, for the present purpose, it is sufficient to rely on the liability admitted in the protocol, without reference to the principles of international law. Attention is called to the point merely to show that His Majesty's Government have not acted in an arbitrary or unreasonable manner.

Upon another ground also this tribunal ought to interpret the words " admit their liability" in the sense above stated.

The treaty between Great Britain and Venezuela contains the following provision:

> In whatever relates to the safety of * * * merchandise, goods, or effects, * * * as also the administration of justice, the subjects and citizens of the two contracting parties shall enjoy * * * the same liberties, privileges, and rights as the most favored nation.

All awards given by the Mixed Commissions are to be paid out of one fund. It would therefore, in view of the above treaty, be a denial of equity if the subjects of any other nation were to be paid sums of money out of this fund upon a more favorable principle than British subjects.

German and French subjects have now obtained awards for damage caused by revolutionaries, which will be so paid.

When, therefore, words have to be interpreted which admit of any possible doubt as to their meaning — though it is contended that no such doubt exists here — regard must be paid first to the treaty, and secondly to the provision of the protocol, that decisions are to be based upon absolute equity. In such a case it is the duty of this tribunal to give to the words the most favorable possible interpretation as regards British subjects if by so doing the treaty rights of British subjects will be the better maintained. Therefore, in view of the treaty, the admission of liability must be read in the sense of a stipulation that, in awarding payments out of the common fund, British subjects shall be paid on as favorable a principle as the subjects of any other nation.

That is, since subjects of other nations receive payments on the ground of the liability of the Venezuelan Government for acts of insurgents, " admit their liability " must be read as conceding to British subjects the right to be paid

on the same principle, i.e., for damages caused by the acts of revolutionaries.

GRISANTI, *Commissioner*:

His Britannic Majesty's learned agent in his last argument confines himself almost exclusively to examining the circumstances and discussions which preceded the signing of the protocol of February 13, 1903, maintaining that the Government of Venezuela is liable for damages caused by revolutionists to British subjects.

The most suitable manner of interpreting a treaty between nations and a contract between private parties is to analyze carefully and minutely, without prejudice, the clauses of the treaty, which are the plain, true, authentic, and solemn meaning intended to be conveyed by the contracting parties, and of the reciprocal duties assumed by them by virtue of their mutual agreement. The examination of the preliminary work only entails the examination of the contentions and arguments which each of the contracting parties made and attempted to maintain, contentions and arguments which must necessarily be at variance and even contradictory, as thus only could the controversy exist. With regard to the preparatory work of legislation, Laurent says:

> En apparence, les travaux préparatoires sont le commentaire authentique de la loi, puisque c'est le législateur lui-même qui nous apprend ce qu'il veut; en réalité, ces travaux nous font seulement assister à l'élaboration de la loi, ils ne sont pas l'œuvre du législateur, mais de ceux qui ont contribué à faire la loi. Le texte seul a une autorité légale. Tout ce qui a été dit pendant que la loi s'elaborait n'est pas la loi, et on ne peut s'en prévaloir pour ajouter au texte, ou pour le modifier en quoi que ce soit, car ce ne sont que des opinions individuelles de ceux qui ont concouru à faire la loi. (Cours Elémentaire de Droit Civil, Vol. I, p. 22.)

This same criterion must be applied to the study of preliminary conferences leading to the negotiation of a treaty, and consequently to those preceding the protocol, confining its application, naturally, to the contracting parties. Because, although it is true that the blockade and cannons of the allied powers greatly strengthened their demands, it is not true that they could enforce their absolute will. Such will had to be held in check, but unfortunately it was not curbed as much as justice demanded.

Now, confining myself to the argument of His Britannic Majesty's agent in regard to the protocol itself, I am sorry to have to say that the meaning he gives to Article III is at variance with the proper interpretations of conventions.

Said article provides that "The Government of Venezuela admit their liability in cases where the claim is for injury to, or wrongful seizure of, property," etc., which clause can only be understood in its legal sense — that is to say, that the Republic answers for injuries caused by the National Government and by such persons as represented it. For Venezuela to assume responsibility for damages caused by revolutionists contrary to the principles of unquestioned justice in the general opinion of statesmen, and in the practice of nations, it would be necessary that it should be so stipulated in the protocol expressly and in the clearest manner; and it is not so stipulated. Justice and equity do not admit of amplifying the clause of the protocol to include and sanction an obligation which is contrary to principle. In case the clause was not plain (which it is) it could not be interpreted in a sense which would burden the party bound (that is, Venezuela) as violating accepted juridic principles. These keep powerful parties within the bounds of law, whereby they support the weaker and maintain the peace of the world.

His Britannic Majesty's agent affirms that Great Britain considered it preferable to strike a medium between these two extremes:

1. That foreign claimants should not receive compensation for damages caused by revolutionists.

2. But that if any foreign claimants received such compensation British subjects should receive the same treatment.

And that, although she considered the first preferable, she adopted a general form which would embrace the second if necessary.

This argument, which is of itself inadmissible, has already been refuted. From the moment two nations enter into a treaty they must agree in the sense and meaning of the same; and it is not right for one of the parties to reserve to itself *in pectore* the privilege of enlarging its scope in performance for reasons independent of the intention of both. It must be observed that this Mixed Commission has been acting since June 1, and it was not until September that His Britannic Majesty's agent decided to present the first claim for revolutionary damages; such determination was made in view of two awards made by the umpires of the Venezuelan-French and the Venezuelan-German mixed commissions. It is therefore evident that these awards caused the British Government to set aside their primary conviction, which was wholly in accordance with justice and equity.

His Britannic Majesty's agent asserts that by virtue of Article IX of the treaty of 1835 between Venezuela and Great Britain the subjects of the high contracting parties shall, in the territory of the other nation, enjoy the same privileges, prerogatives, and rights as those of the most-favored nation. This is true, but said clause can only apply to the matters purposely designated in the article which contains this stipulation, v.g., in everything relating to loading and unloading of vessels; security of merchandise, goods, and articles; the acquisition of goods of all kinds and denominations by sale, donation, exchange, testament, or any other way whatsoever; as also to the administration of justice. The latter point being the only one which, though in a most remote way, might have any connection with the claim in discussion, means only that British subjects in Venezuela, just as Venezuelan citizens in England, have the same warranties, securities, and recourses as other aliens for the protection and maintenance of their respective rights before the courts of justice established by the local laws of each nation. Said clause is not applicable to these mixed commissions, which are of a very extraordinary nature; and if it were, other countries which have agreed with Venezuela upon the provision of the most-favored nation would already have protested against some of the clauses of the Venezuelan-British protocol. On the other hand, as these mixed commissions proceed separately and absolutely independently of one another, and as the persons who constitute them must use their own individual judgment in order to render their decisions according to their own belief and conscience, the decisions of other commissions can not be set up to serve as a guide for those which this Commission will have to make.

The argument contained in the following paragraph is no more forcible:

> All awards given by the mixed commissions are to be paid out of one fund. It would, therefore, in view of the above treaty, be a denial of equity if the subjects of any other nation were to be paid sums of money out of this fund upon a more favorable principle than British subjects.

Equity would be violated in injuring Venezuela, who is held liable to pay claims which are entirely unfounded.

In the preliminary discussion which arose in the case of Consul de Lemos, I demonstrated that publicists, such as Calvo, Fiore, Bonfils, and Seijas, in addition to the statesmen — Lord Stanley, Count Nesselrode, Lord Granville, and Lord Palmerston — are unanimously of opinion that nations are not

liable for injuries sustained by foreigners in times of war, considering such irresponsibility *absolute* when said injuries are caused by revolutionists or by Government functionaries when compelled by the fatality of circumstances, confining the obligation of repairing only willfully committed injuries by the same. I consider it unnecessary to reinsert those quotations, which, moreover, would make this statement extremely long. I might likewise cite the opinions of other publicists and statesmen, but I do not consider it necessary, as the point is not capable of being disputed on the policy and practice of nations. Governments are not obliged to compensate for injuries committed by insurgents. His Britannic Majesty's agent having so understood, has sought to fix the liability from the terms of the protocol.

By virtue of the reasons stated I ask that the supplemental claim of the Aroa Mines (Limited) be declared inequitable and unlawful.

Great Britain has always professed the principle that governments are not liable for damages caused by rebels; Venezuela has likewise upheld the same doctrine at all times, as is shown by the executive decree of February 14, 1873. (Official Compilation of Laws, vol. 5, p. 243, No. 1820, art. 6.)

It is impossible for these two nations to have revoked said principle in the protocol without having expressly and definitely so stated.

PLUMLEY, *Umpire*:

At the beginning of the umpire's opinion upon the important questions involved in this case, he desires to express his sense of obligation to the learned agents and the honorable Commissioners of both Governments for their very able and painstaking presentation of their views upon the points raised, and for their valued assistance in the matter of authorities and documents.

This case raises the question whether the Government of Venezuela shall be held responsible to indemnify the claimants for injuries and losses received at the hands of revolutionists during the last civil war.

Before entering upon an analysis of the case itself there are several matters which may well be considered.

It is insisted upon by the claimant Government and resisted by the respondent Government that the paragraph in Article III of the February protocol, in which occurs a certain admission of liability on the part of Venezuela, is, when properly interpreted and applied, an absolute and unavoidable admission of liability for all claims arising out of the recent insurrection, whether due to their own acts or to those of insurgents.

In the claim of de Lemos, upon the preliminary objection of the learned British agent, raising the question that upon the terms of the protocol of February 13, 1903, " the Venezuelan agent is not entitled to set up any matter of principle as an answer to this claim " because of the said admission of liability in said Article III of the protocol, and that there remained only an inquiry as to the facts, the umpire held in his interlocutory opinion therein (p. 421) —

that the word " injury " was chosen because of its legal adaptation and significance, and not in its colloquial sense.

That (p. 421) —

the word " injury " was taken by the signatory parties to import a legal wrong, and in accordance with its fixed and determinate use in law as involving and importing *ipso facto* an *intentional wrongdoing* on the part of those responsible therefor.

By giving to this word its meaning in law and applying it to a document of peculiar legal importance drawn and carefully considered by minds of profound scholarship and erudition in law, skilled in words accurate and apt, in sentences short, clear, and trenchant, it is certain we can do no violence to the thought. By adopt-

ing any other interpretation of the language used, it becomes ambiguous, indiscriminative, and inapt. * * *

The umpire regards the section quoted from Article III of the same import and value as though it had been written:

"The Venezuelan Government admit their liability in cases where the claim is for a legal injury to property, and consequently the question which the Mixed Commission will have to decide will only be:

"(a) Whether the legal injury took place. * * *

"(b) If so, what amount of compensation is due."

The question in each case being whether by the law governing the facts in the case there has been such an injury. (See p. 422.)

In the case then before the umpire he held (p. 422) that there was open for discussion and decision (a) whether the acts complained of were wrongful or rightful governmental acts, (b) whether the injuries received were a necessary sequence of the existing conditions, or (c) resulted from some wrongful *act* or *neglect* of the Venezuelan Government.

In the claim of James Crossman,[1] which was for the seizure and appropriation by Government troops of certain personal property of the complainant, the learned agent for Venezuela in his answer contended that upon the admitted facts the property was not taken by virtue of the orders of an officer, or because of neglect by the military authorities, but was in fact a necessary calamity of civil war, and that the claimant must be remitted to his action at law against those who were responsible therefor.

To this answer the learned British agent raised a preliminary objection, insisting that by the terms of Article III of the protocol of February 13, the Venezuelan Government had denied to themselves the right to raise the questions of law named in their answer and that in virtue of those admissions "the only questions open to the Commission are: (1) Did the seizure take place? (2) Was the seizure wrongful or not? (3) If wrongful, how much is due?"

In the interlocutory opinion of the umpire in said case, he held[2] that the word "seizure" as used in said protocol did not include property "taken by robbery, theft, pillage, plunder, sacking or trespass." That it was "limited to a seizing under and by virtue of authority, civil or military." That "there is required in every case a wrongdoer as well as that wrong has been done or suffered. A wrong intent or willful purpose must accompany the act." "Not only must the act be willful or with wrong intent, *but it must be perpetrated by some one having a right whereby to declare and express a governmental will and intent.*" The umpire now underscores these words to call especial attention to their force and inclusiveness concerning the question in hand.

In neither of these cases was the opinion of the umpire given in expectation that he would later meet before this Commission the question of responsibility by Venezuela for the acts of unsuccessful revolutionists, since the historic attitude of Great Britain concerning the principle in issue would negative such a proposition, save upon exceptional conditions carefully defined by international law, in the development of which law that Government had borne a very important and honorable part.

Held in their entirety and to their full rigor, the umpire would be compelled by the force of these two opinions to declare *stare decisis* upon the question of admitted responsibility for the acts of unsuccessful revolutionists, in which case such question would stand before this Commission upon the respective merits of

---

[1] *Supra*, p. 356.

[2] *Supra*, p. 358.

each claim having only an admitted liability if well founded in law and fact, in justice and equity.

Both of these opinions were given on mature deliberation after careful and painstaking study of the protocols in all of their parts and of such authorities upon the questions under consideration as were at his hand. He did not in the opinions there given cite these authorities or quote therefrom. As briefly as may be, he will now place them upon the record, that he may have them before him to aid in the present determination, and that his honored associates, the learned agents and their respective Governments, may know the authorities he accepted and upon which he relied in coming to his aforementioned decisions.

The intention of the *parties* is the pole star of construction; but their intention *must be found expressed in the contract* and be consistent with rules of law. The court will not make a new contract for the parties nor will words be *forced* from their *real signification.* (Bouvier, *Law Dict.*, vol. 1, p. 429.)

One leading principle of construction is to carry out the intention of the authors of or parties to the instrument or agreement so far as it can be done without infringing upon any law of superior binding force.

In regard to cases where this intention is clearly expressed, there is little room for variety of construction; and it is mainly in cases where the intention is indistinctly disclosed, though fairly presumed to exist in the minds of the parties, that any liberty of construction exists.

Words, if of common use, are to be taken in their *natural*, plain, *obvious*, and ordinary significations; but if technical words are used, they are to be taken in a technical sense, unless a contrary intention clearly appear in either case *from the context.* (Bouvier, *Law Dict.*, vol. 1, p. 416, citing 9 Wheat., 188; 32 Miss., 678; 49 N. Y., 281; 54 Cal., 111.)

Technical. Of or pertaining to the useful or mechanic arts, or to any *science*, *business*, or the like; specially appropriate to any art, *science*, or *business;* as the words of an indictment must be technical. Blackstone. (Webster.)

Technicality. That which is technical or peculiar to any trade, profession, sect, or the like. (Ib.)

In construing written laws, it is the intent of the lawgiver which is to be enforced; this intent is found in the law itself. The first resort is to the natural significance of the words employed, in their order of grammatical arrangement. (Bouvier, *Law Dict.*, vol. 1, p. 1106, citing Cooley Const. Lim., 70; 130 U. S., 670.)

Statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or absurd conclusion. (Bouvier, *Law Dict.*, vol. 1, p. 1106, citing 144 U. S., 47.)

Where a law is expressed in plain and unambiguous terms, whether those terms are general or limited, the legislature should be intended to mean what they have plainly expressed, and *consequently no room is left for construction.* (Bouvier, *Law Dict.*, vol. 1, p. 1106, citing 130 U. S., 671; 99 id., 72; 2 Cranch, 399.)

Courts will not assume to make a contract for the parties which they did not choose to make themselves. (Morgan County *v.* Allen, 103 U. S., 498.)

When language is susceptible of two meanings, one of which would work a forfeiture which the other would not, the latter must prevail. (Bouvier, *Law Dict.*, vol. 1, p. 1106, citing 71 Wis., 177.)

When a court of law is construing an instrument, whether a public law or a private contract, it is legitimate, if two constructions are fairly possible, to adopt that one which equity would favor. (Bouvier, *Law Dict.*, vol. 1, p. 416, citing 160 U. S., 77.)

Neither will it be allowed to contravene established rules of law. (Bouvier, *Law Dict.*, vol. 1, p. 124.)

All statutes are to be construed with reference to the provisions of the common law, and provisions in derogation of the common law are held strictly. (Bouvier, *Law Dict.*, vol. 1, p. 416, citing 2 Black, 358; 117 Ind., 447; 4 Mich., 322; 5 W. Va., 1.)

Where words have two senses of which only one is agreeable to the law, that one must prevail. (Bouvier, *Law Dict.*, vol. 1, p. 1106, citing Cowp., 714.)

Construction is against claims or contracts which are in themselves against common right or common law. (Bouvier, *Law Dict.*, vol. 1, p. 429.)

Where the language of an instrument requires construction, it shall be taken most strongly against the party making the instrument. (Orient Mut. Ins. Co. *v.* Wright, 1 Wall., 456, U. S. Sup. Ct.)

A party who takes an agreement prepared by another, and upon its faith incurs obligations or parts with his property, should have it construed most favorably to him. (Noonan *v.* Bradley, 9 Wall., 394, U. S. Sup. Ct.)

What one party to a contract understands or believes is not to govern its construction unless such understanding or belief was induced by the conduct or declaration of the other party. (National Bank of Metropolis *v.* Kennedy, 17 Wall., 19, U. S. Sup. Ct.)

Agreements are construed most strongly against the party proposing. (Bouvier, *Law Dict.*, vol. 1, p. 124, citing 6 M. & W., 662; 2 Pars. Contr., 20; 3 B. & S., 929; 7 R. I., 26.)

The more the text partakes of a solemn compact the stricter should be its construction. (Bouvier, *Law Dict.*, vol. 1, p. 1107.)

Every agreement should be so complete as to give either party his action upon it; *both* parties *must assent* to *all* its terms. (Bouvier, *Law Dict.*, vol. 1, p. 428, citing 3 Term, 653; 1 B. & Ald., 681; 1 Pick., 278.)

The parties must agree or assent. They must assent to the same thing in the same sense. (Bouvier, *Law Dict.*, vol. 1, p. 123, citing 4 Wheat., 225, U. S. Sup. Ct.)

There is no contract unless the parties assent thereto. (Bouvier, *Law Dict.*, vol. 1, p. 429.)

The whole contract is to be considered with relation to the meaning of any of its parts. (Bouvier, *Law Dict.*, vol. 1, p. 429.)

All parts will be construed, if possible, so as to have effect. (Bouvier, *Law Dict.*, vol. 1, p. 429.)

Words are to be taken, if possible, in their ordinary and common use. (Bouvier, *Law Dict.*, vol. 1, p. 429.)

The subject-matter of the contract and the situation of the parties are to be fully considered with regard to the sense in which language is used. (Bouvier, *Law Dict.*, vol. 1, p. 429.)

The law of the interpretation of treaties is substantially the same as in the case of other contracts. (Bouvier, *Law Dict.*, vol. 2, p. 1137, citing Woolsey's Int. Law, 185; 22 Ct. of Claims U. S., 1.)

That the contracting party, who might and ought to have expressed himself clearly and fully, must take the consequences of the carelessness. (Phillimore, Int. Law, ed. 1854, vol. 2, p. 93.)

If two meanings are admissible, that is to be preferred which is least for the advantage of the party for whose benefit a clause is inserted, for in securing a benefit he ought to express himself clearly. (Woolsey, *Intro. Int. Law*, sec. 113.)

"To follow the ordinary and usual acceptation, the plain and *obvious* meaning of the language employed," which Phillimore says is the principal rule of interpretation. (Vol. I, sec. LXX.)

In all human affairs when absolute certainty is not at hand to point out the way we must take probability for our guide. In most cases it is extremely probable that the parties have expressed themselves conformably to the established usage, and such probability affords a strong presumption, which can not be overruled but by a still stronger presumption to the contrary. (Moore, 3621, quoting Vattel.)

When the language of a treaty, taken in the ordinary meaning of the words, yields a plain and reasonable sense, it must be taken as intended to be read in that sense, subject to the qualifications that any words which may have a *customary meaning in treaties* differing from their common signification *must be understood to have that meaning*, and that a sense *can not* be adopted which leads to an absurdity or to incompatibility of the contract with an *accepted fundamental principle of law.* (Hall, *Int. Law.*, 350.)

International law names the source through which the claims of a British subject against Venezuela must come. (Wharton, *Dig. Int. Law*, sec. 215.)

The law of nations is the law of England. (IV Black. Com., 67; Phillimore, *Int.*

Law, vol. 1, ed. 1854, 62 (in brackets), citing Triquet and others *v.* Bath; Peach and others *v.* same; Burrows Rep., 1480, quoting Lord Talbot as there saying: " The law of nations in its full extent was part of the law of England." (Woolsey, *Intro. to Int. Law*, sec. 29.)

The Supreme Court of the United States refuse to construe an act of Congress to be in violation of " the law of nations if *any other possible construction remains.*" (*Betsy*, 2 Cranch, 118, U. S. Sup. Ct., Marshall, C. J.)

An act of Parliament will be so construed, *if possible*, as not to conflict with the rule of international law covering the same subject-matter. Lord Stowell and Doctor Lushington insist that in a prize court an act of Parliament can not control, and if the act of Parliament plainly does conflict it is nugatory. (Holland's Studies in Int. Law, 199.)

The law of nations should be respected by the Federal courts as a part of the law of the land. (The *Nereide*, 9 Cranch, 388, U. S. Sup. Ct.)

The laws of the United States ought not, if it be avoidable, so to be construed as to infract the common principles and usages of nations or the general doctrines of international law. (Wharton, *Int. Law Dig.*, vol. 1, sec. 8, p. 30, citing Talbott *v.* Seaman, 1 Cranch, 1.)

The law of nations is the great source from which we derive those rules respecting belligerent and neutral rights which are recognized by all civilized and commercial states throughout Europe and America. (Wharton, *Int. Law Dig.*, vol. 1, sec. 8, p. 30.)

In what has been stated I have referred exclusively to the international obligations imposed on the United States by the general principles of international law, which are the only standards measuring our duty to the Government of Honduras. (Mr. Bayard, Sec. of State, to Mr. Hall, 6 Feb. 1886.)

The law of nations is the *science* of the law subsisting between nations or states and of the obligations that flow from it. (U. S. *v.* The *Active*, 24 Fed. Cases, 755, quoting Vattel.)

CLAIMS

A claim " is, in a just juridical sense, a demand of some matter, as of right, made by one person upon another, to do or to forbear to do some act or thing as a matter of duty." (Prigg *v.* Penna., 16 Pet., 539, U. S. Sup. Ct.)

In my judgment a claim upon the United States is something in the nature of a demand for damages arising out of some alleged act or omission of the *Government* not yet provided for or acknowledged. As the term imports, it is something asked for or demanded on the one hand and not admitted or allowed on the other. (Moore's Int. Arb., 3623, citing Dowell *v.* Cordwell, 4 Saw., U. S. Cir. Ct., 228, and quoting from Deady, J.)

On a claim against a foreign government for spoliation the demand is founded upon the law of nations and the obligation of the offending government is perfect. (Emerson *v.* Hall, 13 Pet., 409, U. S. Sup. Ct.)

Claim: 1. A demand of a right or supposed right; a calling on another for something due or supposed to be due. " Doth he lay *claim* to thine inheritance? " — Shak. 2. A right to claim or demand; a title to any debt, privilege, or other thing in possession of another. " A bar to all *claims* upon land." — Hallam. 3. The thing claimed or demanded; that to which any one has a right, as a settler's claim (U. S. and Australia). (Webster.)

Claim: 1. A demand of anything as due. 2. A title to any privilege or possession in the hands of another. (Johnson.)

In the Spanish language the word of corresponding meaning is *reclamación.*

" The opposition or contradiction which is made to anything as unjust." This is *reclamatio, oppositio.* (Salvá.)

" The demand made for anything by him who has the *right of property* in it against him who possesses or *denies* it." This is *reclamatio.* (Salvá.)

Reclamación (claim): The opposition or contradiction that is made in words or in writing against anything as *unjust*, or by showing that it contradicts itself; and the claim or demand for anything by him who has the right of property in it against him who possesses it. (Escriche, *Dict. of Legis.*)

Claimant: 1. One who claims; one who demands anything as of *right*; a claimer. 2. A person who has a *right*; to claim or demand. (Webster.)

Claimant: He that demands anything as unjustly detained by another. (Johnson.)

In discussing the scope of the word " claim " in the treaty of 1819 between the United States and Spain, Mr. John Q. Adams, Secretary of State, in his letter to Messrs. White and others, of March 9, 1822, observed that the treaty under the general term " claims " provided for the settlement of claims on contracts as well as claims on *torts*. (Am. St. Papers, For. Rel. VI, 796.)

The term " claims " in the convention must be construed so as to confine it to demands which must have been made the subject of international controversy, or which are of such a nature as, according to received international principles, would entitle them on presentation to the official support of the Government of the complainant. (Moore, Int. Arb., 3615, quoting Sir Frederick Bruce, umpire, U. S. and New Granada.)

We are led to the general rule of law, which has always prevailed and become consecrated almost as a maxim in the interpretation of statutes, that where the enacting clause is general in its language and objects, and a proviso is afterwards introduced, that proviso is construed strictly and takes no case out of the enacting clause which does not fall fairly within its terms. (Supreme Court of the United States in U. S. *v.* Dickson, 15 Peters, 165.)

The rule seems to be: — that qualifying words are, while the general terms of submission are not, to be taken in a restrictive sense, if there is to be any distinction. (Moore, Int. Arb., 3626, citing Vorhees *v.* Bank, 10 Peters, 449; Wayman *v.* Southard, 10 Wheat., 30; Bond *v.* U. S., 19 Wall., 227.)

Fundamentally, however, there is no difference in principle between wrongs inflicted by breach of a monetary agreement and *other wrongs* for which the state, as itself the wrongdoer, is immediately responsible. (Hall, 4th ed., p. 294.)

The mixed commission under the convention with that Republic (Mexico) has always been considered by this Government essentially a judicial tribunal with independent attributes and powers in regard to its peculiar functions. (Daniel Webster, Sec. of State, concerning Mexican - U. S. convention of April 11, 1839.) (Moore, Int. Arb., 1242.)

INJURY

Injury (Lat. *in*, negative, *jus*, a right.) A wrong or tort.

Injuries arise in three ways: First, by nonfeasance, or the not doing what was a legal obligation or duty, or contract to perform; second, misfeasance, or the performance in an improper manner of an act which it was either the party's duty or his contract to perform; third, malfeasance, or the unjust performance of some act which the party had no right, or which he had contracted not, to do.

When the injuries affect a private right and a private individual, although often also affecting the public, there are three descriptions of remedies: * * * second, remedies for compensation, which may be by arbitration, suit, action. * * * (Bouvier, Law Dict., Vol. I, 1044.)

There is a material distinction between damages and injury. Injury is the *wrongful act* or *tort* which causes loss or harm to another. Damages are allowed as an indemnity to the person who suffers loss or harm from the injury. *The word injury denotes* the illegal act, the term damages means the sum recoverable as amends for the wrong. (Bouvier, *Law Dict.*, vol. 1, p. 1045, citing 103 Ind., 319.)

Injury n.; pl. injuries. * * * L. *injuria*, fr. injurious, wrongful, unjust: pret. *in* — not + jus, right, law, justice; cf. F. injure. See *Just*, a.

Injury in morals and jurisprudence is the intentional doing of wrong. (Webster's Int. Dict.)

Damages in law is the estimated reparation in money for detriment or *injury* sustained; a compensating recompense or satisfaction to one party for a *wrong* or *injury* actually done to him by another. (Webster's *Int. Dict.*)

Damages. The indemnity recoverable by a person who has sustained an injury, either in his person, property, or relative rights through the *act* or *default* of another. (Bouvier, *Law Dict.*, vol. 1, p. 491.)

" There is no right to damages where there is no *wrong*. It is not necessary that there should be a tort, strictly so called — a willful wrong, an act involving moral guilt. The wrong may be either a willful, malicious *injury*, as in the case of assault and battery, libel, and the like, or one committed through mere motives of interest, as in many cases of conversion of goods, trespasses on lands, etc.; or it may consist in a mere neglect to discharge a duty," etc.; " or a simple breach of contract," etc.; " or it may be a wrong of another person for whose act or default a legal liability exists," etc. " But there must be something which the law recognizes as a *wrong*, some *breach* of a *legal duty*, some *violation* of a *legal right*, some *default* or *neglect*, some failure in responsibility sustained by the party claiming damages. *For the sufferer by accident or by* the *innocent* or *rightful acts* of *another can not claim indemnity for his misfortune*." It is called *damnum absque injuria* — a loss without a wrong for which the law gives no remedy. (Bouvier, *Law Dict.*, vol. 1, p. 492, citing many cases and law writers.)

The umpire is not of opinion that he would be justified in making an award against the Mexican Government.

The damages and losses alleged by the claimants seem rather to be the result of the inevitable accidents of a state of war than to have arisen from a wanton destruction of property by Mexican authorities. (Moore Int. Arb., 3868, Shattuck's case, Thornton, umpire, Mex. Com., 1868.)

The umpire is further of opinion that the damage done to cotton crops by cavalry passing over them in the neighborhood of the scene of hostilities must be attributed to the hazards of war, and for which the government of the belligerent can not be held responsible. (Moore Int. Arb., 3670, Cole's case, Thornton, umpire, Mex. Com., 1868.)

The umpire is of opinion that when during time of war and in the enemy's country straggling soldiers and marauders go about robbing and destroying property it can not be considered that it is an injury done by the authorities of the country whose troops are invading an enemy's country * * * . The umpire therefore awards that the above mentioned claim be dismissed. (Moore Int. Arb., 3670, Buentello's case, Thornton, umpire, Mex. Com., 1868.)

Damages done to property in consequence of battles being fought upon it between the belligerents is to be ascribed to the hazards of war and can not be made the foundation of a claim against the government of the country in which the engagement took place. (Moore Int. Arb., 3668, Riggs's case, Thornton, umpire, Mex. Com., 1868.)

The umpire is therefore of opinion that the claimant was committing no illegal act in transporting his cotton through Coahuila and Tamaulipas with destination to Matamoras on the 20th of September, 1864, and that as it was seized by Mexican authorities the Mexican Government is bound to indemnify the claimant. (Moore Int. Arb., 1327, Weil case, Mex. Com., 1868.)

The umpire can not doubt that robbery of cattle on the borders of Texas adjacent to Mexico and their transportation across the Rio Grande has been carried on for several years past; but he thinks that the proofs are entirely insufficient and he is not at all satisfied that the robbers were always Mexican citizens and soldiers; that bands of robbers were organized on the Mexican side of the river under the eyes and countenance of the Mexican authorities, or that the sufferers by these plunderers were refused redress by those authorities when they were appealed to in particular instances with regard to specific cattle proved by the owners to have been stolen. * * * The umpire can not see that in the above-mentioned case there are sufficient grounds for holding the Mexican Government responsible for the losses suffered by the claimant, and he therefore awards that the claim be dismissed. (Moore Int. Arb., 3037, Dicken's case, Thornton, umpire, Mex. Com., 1868.)

* * * At this period Halstead entered Mexico without a passport, committing not " a criminal violation of the laws of Mexico " — passports are a matter of police — but an offense for which he was arrested according to the laws of Mexico. He was legally arrested and kept legally in prison for a couple of weeks, but he was held a prisoner for something like four months, plainly not according to right and justice. (Moore Int. Arb., 3244, Halstead's case, Lieber, umpire, Mex. Com., 1868.)

See also Mexican Claims Commission, convention of 1868, the following cases: Moore Int. Arb., 3669, Blumenkron; 3674, Wilson; 3672, Antrey; 3671, Schlinger; 3012, Donoughho; 3021, Wilson; 3027, Laguerene; 3032, Bowley; 3033, Moliere; 3721, Cole; 3722, Mark; 3726, Brach; 3673, Johnson; 3668, Baker.

SEIZURE

Seize. (Law.) To take possession of by virtue of a warrant or other legal authority; as, the sheriff seized the debtor's goods. (Webster's *Int. Dict.*)

Seizure. The act of seizing, or the state of being seized; sudden and violent grasp or gripe; a taking into possession, as the seizure of a thief, a property, a throne, etc. Retention within one's grasp or power: hold; possession; ownership. (Webster's *Int. Dict.*)

Seizure. In practice, the act of taking possession of the property of a person condemned by the judgment of a competent tribunal to pay a certain sum of money, by a sheriff, constable, or other officer lawfully authorized thereto, by virtue of an execution, for the purpose of having such property sold according to law to satisfy the judgment. (54 N. W. Rep. (Wis.), 30.) The taking possession of goods for a violation of public law; as, the taking possession of a ship for attempting an illicit trade. (2 Cra., 187; 4 Wheat., 100; 1 Gall., 75; 2 Wash. C. C., 127, 567; 6 Cowp., 404; Bouvier, *Law Dict.*, vol. 2, p. 976.)

The Constitution of the United States, amendment, article 4, declares that " the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and *seizures*, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be *seized*." (Bouvier, *Law Dict.*, vol. 2, p. 969, citing 11 Johns, 500; 3 Cra., 447; Story, Const., 1900; 116 U. S., 616.)

In the conventional agreement between the United States of America and Peru, March 17, 1841, these words are used: " Seizures, captures, detention, sequestrations, and confiscations of their vessels." And the limits placed are to " claims on account of the seizure, damage," etc. (Moore Int. Arb., 4590-4607.)

JUSTICE

Justice. The quality of being just; conformity to the principles of righteousness and rectitude in all things; strict performance of moral obligations; *practical conformity* to *human* or *divine law;* integrity in the dealings of men with each other; rectitude; equity; uprightness.

The rendering to everyone of his due or right; just treatment; requital of desert; merited reward or punishment; that which is due to one's conduct or motives.

Examples of justice must be made for terror to some. Bacon. (Webster's *Int. Dict.*)

Justice refers more especially to the *carrying out of law*, and has been considered by moralists of three kinds: (1) Commutative justice, which *gives every man his own property*, including things pledged by promise; (2) distributive justice, which gives every man *his exact desert;* (3) general justice, which carries out all the ends of law, though not in every case through the precise channels of commutative or distributive justice. (Webster's *Int. Dict.*)

The constant and perpetual disposition to render every man his due. The conformity of our *actions* and our *will* to the *law*

There is properly but one single general rule of right, namely: Give every one his own.

The foregoing are the authorities upon which the umpire rested his opinions in the two aforementioned cases, and the force and effect of which opinions were that the expressions in question were to be given their usual, ordinary, and obvious meaning when employed in claims treaties under accepted and recognized principles of international law, and that the effect and purpose of admitted liability on the part of Venezuela was not to extend the meaning and appli-

cation of " injuries " and " wrongful seizures " beyond their well-established bounds.

The learned agent of Great Britain in the case before us contends that this holding practically emasculates the admission of liability and deprives it of all meaning and bearing in connection with the treaty, and that it can not be presumed that this expression, carefully selected and deliberatedly inserted in an important section of such treaty, was to be treated as without meaning and effect. The learned agent urges that the treaty under consideration was made while a blockade of the Venezuelan ports was in progress and that his Government made the acceptance of liability, in the sense and in the words finally used in the perfected treaty, a condition precedent to the lifting of the blockade; and that this fact is, in his judgment, conclusive in favor of his proposition that Venezuela thereby admitted her liability for all claims arising out of the recent insurrection, whether due to their own acts or to those of the insurgents.

Since there is no mention of civil wars or war of any kind in that part of the protocol, the umpire understands the learned agent's contention to rest upon the position that all injuries to property and all wrongfull seizures thereof are included in Venezuela's admitted liability. That it is, in his present contention, applied to all claims arising out of the insurrection is simply because such claims are the only claims under consideration in this particular case.

The umpire is of opinion that the expression of admitted liability was not used carelessly or without purpose, but was intended to have grave and important effect upon the Commission assembled under the provisions of said treaty. The question is simply this: Is it the effect claimed by the learned agent or some other?

As held by the umpire, there was no ambiguity in the language used, and, as considered by the umpire, there was nothing ineffective in any of the provisions of the treaty. There seemed to him, on the face of its provisions, nothing to interpret, nothing to construe.

But the learned agent contends that, when viewed historically with a wise regard for all the conditions antecedent, proximate, and immediate, construction becomes necessary, and that when properly construed his contention will prevail; that there is, in fact, a latent ambiguity which first arises in the application of the treaty to the facts in hand.

It is held in Bouvier (vol. I, p. 1107, citing 1 Dall., 426; 3 S. and R., 609), that " when there is a latent ambiguity which arises only in the application and does not appear upon the face of the instrument it may be supplied by other proof." That " the journals of a legislature may be referred to if the meaning of a statute is doubtful or badly expressed." (Bouvier, vol. I, p. 417) That in contracts in case of doubt " there must always be reference to the surrounding circumstances and the object the parties intended to accomplish." (Bouvier, vol. I, p. 1107.)

The umpire has therefore carefully reviewed the historical status and the circumstances surrounding the parties at the time the treaty was made.

By the courtesy of the two Governments he is in possession of the Blue Book containing correspondence respecting the affairs of Venezuela, and the Yellow Book of Venezuela, together covering all the time which it is important to include in this inquiry, and it is from these two sources that the umpire has obtained his knowledge of the circumstances preceding and leading up to the blockade and the adjustment of matters between the war powers and Venezuela, finally crystallizing in the respective protocols.

(1) The scene opens with a dispatch from the governor of Trinidad to the British colonial office, of date March 16, 1901, concerning an outrage on British subjects by the *Venezuelan* gunboat *Augusto*, the event having relation also to

Patos Island. Representations concerning the same were made by the British minister resident at Caracas to the Venezuelan minister of foreign affairs prior to March 22, 1901, (No. 3); and, later, a report from the minister of the contemplated steps of the Venezuelan Government in reference thereto.

(2) Outrage on J. N. Kelly, of Trinidad, by *Venezuelan* soldiers, reported to the Marquis of Lansdowne by the British minister resident at Caracas by communication of date March 22, 1901, which outrage occurred during the then recent insurrection in the eastern part of Venezuela. On March 12 the British minister had communicated in writing (No. 6) to the Venezuelan minister of foreign affairs a description of this outrage, the last paragraph of which contains in part the following:

> I will not dwell on the prejudicial effect on the interests of Venezuela herself caused by occurrences of this nature, as I feel sure that your excellency will agree with me in thinking that the injury done — *not by insurgents*, but by *soldiers* of the *Government* — to an inoffensive and law-abiding immigrant — * * *

In connection with the *Augusto* incident, there were claims and counterclaims as to the respective rights of the British Government and of Venezuela in the island of Patos, both asserting sovereignty therein. (See No. 8 and inclosures 1 and 2 in No. 8.)

(3) Communication from the British minister resident at Caracas to the Marquis of Lansdowne, of date April 17, 1901, relating to the alleged burning and plundering of the sloop *Maria Teresa*, the property of a British subject, by a *Venezuelan* gunboat off Guiria during the then late disturbances on the Gulf of Paria and the maltreatment of British subjects in connection therewith, inclosure 9 in No. 11 being a copy of the communication addressed by the British minister at Carcaras to the Venezuelan secretary of foreign affairs. It appears from this communication that the sloop was first taken by the insurrectionary troops at Yrapa and ordered to proceed to Yaguarapaso with revolutionary soldiers, who were landed there. It is also claimed that this service to the revolutionary forces was compulsory, that the master received no compensation therefor, and that the sloop was engaged in lawful traffic. But there was no demand upon the Government of Venezuela because of the compulsory service under revolutionary orders, and these facts were referred to in an exculpatory and explanatory way.

(4) Communication No. 12, from the British minister resident at Caracas to the Marquis of Lansdowne, of date April 17, 1901, referring to the case of John Craig and his vessel, the *sea Horse*, a British subject of Trinidad, for indignities and losses received at the hands of an unnamed *Venezuelan* guardacosta carrying a crew of eight men, whose commander it is alleged landed on the island of Patos, assaulted the subjects of Great Britain, and seized their property while they were peacefully engaged in their lawful avocations. Inclosure 8 in No. 12 is a copy of the communication made by the British minister to the Venezuelan secretary for foreign affairs calling his official attention to the facts and the importance of the Craig case.

In the reply of the Venezuelan secretary for foreign affairs of the same date (p. 27) he reviews the claim of Venezuela to the island of Patos as a part of her territory.

In the statement of Raphael José Ortega (p. 33), referring to the case of the *María Teresa*, it is alleged that this sloop was engaged in clandestine trade and in carrying implements of war to the revolutionists, and also that her captain was in league with them.

In the inclosure No. 20 (p. 35) there is a copy of the communication of the minister for foreign affairs to the Bitish minister resident at Caracas, having

reference to the case of John Craig, in which there is brought forward the charge of complicity in revolutionary matters as a justification for the Venezuelan acts.

(5) Inclosure 1 in No. 24 is a communication from the governor of Trinidad to Mr. Chamberlain, of date October 3, 1901, calling attention to the seizure of the sloop *Pastor* by the *Venezuelan* gunboat *Tutono* off the island of Patos. And as is shown in the communication from the British foreign office to the colonial office, No. 37, of date November 30, 1901, the incidents connected with the seizure, when taken with other like acts in reference to this islands, make them a repeated violation of territory and as indicating a purpose on the part of Venezuela to consider and treat Patos as belonging to it, and therefore calling for a " strong remonstrance against any infraction of the sovereign rights of Great Britain." This was done by the British minister resident at Caracas by his communication to the Venezuelan minister for foreign affairs December 17, 1901, (inclosure 1 in No. 46), and on December 20, 1901, the Venezuelan minister for foreign affairs (inclosure 2 in No. 46, to the British minister resident at Caracas) replies to this communication, asserting that the matters there referred to —

must be considered in connection with the notorious circumstance that Venezuela considers the island in question as its legitimate possession.

(*a*) No. 25 is a communication from the customs to the British foreign office, of date November 8, 1901, concerning the fitting out of the *Ban Righ*, a matter which later assumed great importance in the minds of the Venezuelan Government, and was a cause of much feeling on their part against the British Government. This boat was nominally for the Colombian Government, and was fitted out as a vessel for offense and defense, and was loaded with a considerable quantity of arms and ammunition. At Antwerp it is alleged to have taken on a large quantity of arms and ammunition of French manufacture, and was expected to take on a consignment of shell at Pipe de Tabac, about 20 miles below Antwerp. (See Nos. 37 and 17 of date November 30, 1901.) Later the vessel was taken to Martinique and there turned over to General Matos. (No. 55.) On February 28, 1902, the Venezuelan Government took the position toward the British Government that until the latter would recede from its position of indifference and irresponsibility for the *Ban Righ* the Venezuelan Government could not consider " on bases of mutual cordiality the other matters which reciprocally concern " their respective Governments. On June 9, 1902 (No. 87), the Marquis of Lansdowne wrote the British minister that His Majesty's Government could not admit that there is any connection between the question of the Bolivar Railway and that of the *Ban Righ,* and could not acquiesce in the attempt of the Venezuelan Government to postpone dealing with other pending questions until that of the *Ban Righ* was disposed of.

(*b*) Communication of date November 18, 1901, from General Pachano to the British minister resident at Caracas (inclosure 1 in No. 40), calling attention to the landing of a great quantity of rifles and of cartridges on the island of Tobago and asking for the mediation of the minister in obtaining from the colonial authorities measures to prevent these arms leaving Tobago to the harm of Venezuela.

The governor of Trinidad declined to interfere. (Inclosure 2 in No. 42.)

(6) No. 49, British colonial office to the British foreign office, of date January 25, 1902, calls attention to " the *seizure* and detention by the *Venezuelan authorities* of a colonial British-owned and British-registered sloop, the *Indiana*, in the waters of the Barima River, in Venezuelan territory."

(7) The governor of Trinidad to Mr. Chamberlain, of date April 17, 1902, calls attention to the conduct of Señor Figuredo, Venezuelan consul at Port of

Spain, in connection with the dispatch of vessels from that port to Venezuela. This matter became one of serious importance and disturbance between the two Governments, and resulted in much correspondence between them, but no understanding.

(8) In the communication of the governor of Trinidad to Mr. Chamberlain of date May 12, 1902 (inclosure 1 in No. 88), attention is called to the destruction at Pedernales by the *Venezuelan* gunboat *General Crespo* of the British vessel *In Time*.

(9) Communication of the British minister resident at Caracas to the Marquis of Lansdowne, of date June 30, 1902 (No. 106), calling attention "to the seizure by a Venezuelan man-of-war on the high seas of the British vessel *Queen*," and stating that the attention of the Venezuelan Government had been called to the matter, with a request for information as to the steps proposed by them.

(10) Memorandum on existing causes of complaint against Venezuela by the British foreign office, of date July 20, 1902, No. 108, in which there appear case of seizures by the Venezuelan gunboat *Augusto*, case of the *Sea Horse*, case of the *Maria Teresa*, case of the *Pastor*, case of the *Indiana*, case of the *In Time*, case of the *Queen*. Under each case is a condensed statement of the facts accompanying each alleged outrage, the action of the British Government in connection therewith, and the position of the Venezuelan Government in reference thereto.

There follows, also, in said memorandum of causes for complaint a statement of the action of the Venezuelan consul at Trinidad, in which his offenses are summed up, and the fact also appears that the Venezuelan Government had been notified thereof and that notice had been taken of their communication.

In the same memorandum there occurs this:

> Besides these specific outrages and grounds of complaint there are cases in which British subjects and companies have large claims against the Venezuelan Government. The Venezuelan Government decline to accept the explanations and assurances of His Majesty's Government with regard to the *Ban Righ* as in any way modifying the situation. As a result, the position of His Majesty's legation at Caracas has been rendered for diplomatic purposes quite impracticable, as all representations, protests, and remonstrances now remain disregarded and unacknowledged.

Returning to an earlier date in the correspondence between the British Government and the Venezuelan Government, under date of December 31, 1901 (No. 41), in the communication from the British minister resident at Caracas and the Marquis of Lansdowne, and referring to the fact that Venezuela had proclaimed the vessel *Ban Righ* a pirate, there is found this statement:

> I have warned the Venezuelan Government unofficially that any infraction of *international law* with regard to the life and property of British subjects should be avoided. It is contended by the minister for foreign affairs that *international* law is overruled by the Venezuelan law of piracy.

In the index to the Blue Book there is this summary:

> *Ban Righ.* — The Venezuelan Government offer reward for capture. They declare municipal law overrules international law.

The instructions of the Marquis of Lansdowne to the British minister resident at Caracas, of date July 29, 1902 (No. 110), directing him to make final protest and demand for reparation with a sharp alternative, cover the points named in the foregoing memorandum and no other.

In the statement of the British foreign office to the Admiralty, of date August 8, 1902 (No. 115), there appears this:

For the past two years His Majesty's Government have had grave cause to complain on various occasions of unjustifiable interference on the part of the Venezuelan Government with the life and property of British subjects. The successive instances which have occurred since the beginning of last year are set forth in the accompanying memorandum. * * *

Lord Lansdowne is of opinion that the time has arrived when stronger measures must be resorted to for the purpose of bringing the Venezuelan Government to a sense of their *international obligations*. * * *

I am to add that, in conversation with Lord Lansdowne, Count Metternich, the German ambassador, has suggested that the powers concerned should take part in a joint naval demonstration.

In an extract from the dispatch of Minister Haggard to the Marquis of Lansdowne, of date August 1, 1902, he incloses a copy of the note which he addressed to the Venezuelan Government embodying the instructions conveyed to him by his lordship's telegram of 29th ultimo (No. 110), which note Minister Haggard says he took personally to the acting minister for foreign affairs and carefully translated it to him word for word. This note is of date July 30, 1902 (p. 138), and begins by saying that he has been informed —

by His Majesty's Government that they have had under their serious consideration a succession of cases in which the Venezuelan Government have interfered with the property and liberty of British subjects in a wholly unwarrantable manner.

Then follows an enumeration of the incidents and complaints named in No. 108. The communication closes with the following paragraph:

It is not possible, His Majesty's Government consider, to tolerate a continuance o conduct which, in this last incident, reached a climax; and they have consequently instructed me to record a formal protest with reference thereto and to convey to His Excellency the President and to the minister for foreign affairs, in terms about which there can be no mistake, that, unless explicit assurances are received by His Majesty's Government that such incidents shall not occur again, and that full compensation be paid promptly to the injured parties wherever it be shown to the satisfaction of His Majesty's Government that such compensation be justly due, they will take such steps as they may consider to be necessary to exact the reparation which they have the right to demand in these cases, as well as on account of the claims of the British railway companies in Venezuela as also for any loss caused by the conduct of the Venezuelan consul at Trinidad, for which there is no possible justification.

The reply of the Venezuelan Government (No. 123) was, in brief, that they declined discussing these matters unless at the same time the matter of the *Ban Righ* and their claims against Great Britain on account thereof were taken up for consideration. [1]

The memorandum of the British foreign office communicated to the German ambassador October 22, 1902 (No. 127), opens with the statement that —

His Majesty's Government have, within the last two years, had grave cause to complain of *unjustifiable interference* on the part of the *Venezuelan Government* with the liberty and property of British subjects.

Among other instances alluded to as supporting this statement is found this —

It may be mentioned that there are several British railway companies in Venezuela which have large claims against the Government in respect of services rendered, damage done to property by *Government troops*,

but no allusion to losses from revolutionists.

---

[1] British Blue Book (Venezuela, No. 1, 1903), p. 139.

September 1, 1902 (No. 129), the Marquis of Lansdowne is advised by the British minister resident at Caracas of the imprisonment of a British subject, A. Martin Gransaul, at Puerto Cabello by the Venezuelan authorities, and also, on October 22 (No. 130), another dispatch concerning the cutting and maiming of a British subject, John Jones, by the Caracas police.

November 11, 1902 (No. 134), the Marquis of Lansdowne telegraphed Sir M. Herbert, British ambassador to the United States of America, directing him to see Mr. Hay, Secretary of State for that country, and to make him a communication in the following terms:

> His Majesty's Government have, within the last two years, had grave cause to complain of *unjustifiable interference* on the part of the *Venezuelan Government* with the liberty and property of British subjects;

stating, also, that they had sought without result amicable settlement, and that it was felt that a continuance of such conduct could not be tolerated; that they had asked assurances as to the future and reparation for the past, but to no result.

It was on November 13, 1902 (No. 137), that through Count Metternich there was submitted to Great Britain a statement of Germany's claims, and in the first class were placed her claims arising out of the Venezuelan civil war of 1898-1900, amounting to 1,700,000 bolivars approximately. England's first-class claims were the illegal removal and destruction of her merchant ships. In the event of coercive measures becoming necessary the two powers were to make further claims, but there is no reference to acts of revolutionists.

In a communication (No. 140) from the Marquis of Lansdowne to Mr. Buchanan, of date November 17, 1902, concerning a conference had with representatives of the German Government, there is a further statement concerning an agreement with Germany, a recapitulation of the British claims, a reference to coercion if necessary, and then a statement as to the subsequent action of the British Government on receiving the submission of the Venezuelan Government " and on learning that they were prepared to admit their liability on every count." After providing for the immediate payment of the claims in the first class, they —

> would then consent to the heavier claims being referred to a small mixed commission of three members in case the Venezuelan Government should have any considerations to urge in mitigation of the damages claimed. An arrangement of this nature would be equitable as regards the Venezuelan Government, and would, moreover, prevent pressure being exercised in cases, such as might possibly occur, where the Venezuelan member of the commission could prove a claim to be *unfounded* or excessive.

Another note (No. 141) of same date, from the Marquis of Lansdowne to Mr. Buchanan, speaks of the action of the foreign bondholders of Venezuela and their request for the support of their governments; that this request did not come until September; that in consequence their claim was not included in the demand of July, and therefore suggesting that they act with the German Government in representations to Venezuela and in urging her to accept the arrangement proposed.

November 26, 1902 (No. 153), in the communication from the Marquis of Lansdowne to Mr. Buchanan there is a statement of the substance of the German ambassador's communication to him which contained a rehearsal of the claims of the Imperial Government, the first two of which are —

> (*a*) payment of the German claims arising out of the civil wars of the years 1898-1900, amounting to about 1,700,000 bolivars; (*b*) settlement of claims arising out of the present civil war in Venezuela. * * *

The Imperial Government also concur in the further proposal of His Majesty's Government to demand at once from the Venezuelan Government the acceptance *in principle* of all the German and English claims, and to reserve the separate settlement of claims for a mixed commission to be appointed later;

but declining to submit those under paragraph (*a*) to such commission, suggesting also that both Governments present simultaneously an ultimatum —

in which each power should embody its own collective demands, referring at the same time to the demands of the other power.

The communication of the Marquis of Lansdowne to Mr. Buchanan (No. 154) of even date with the last, but referring to a conversation with the German ambassador of date even with the communication, states the points in which the two Governments had not fully agreed.

On December 2, 1902 (No. 161), the Marquis of Lansdowne communicated to the British minister resident at Caracas the contents of the ultimatum to be presented by him to the Venezuelan Government. Among others there are these: He should state that His Majesty's Government —

can not accept the note as in any degree a sufficient answer to your communications, or as indicating an intention on the part of the Venezuelan Government to meet the claims which His Majesty's Government have put forward, and which must be understood to include all *well-founded claims* which have arisen in consequence of the late civil war and previous civil wars and of the maltreatment or false imprisonment of British subjects, and also a settlement of the external debt.

You will request the Venezuelan Government to make a declaration that they recognize *in principle* the *justice* of *these claims*. [And that] * * * as to the other claims they will be prepared to accept the decisions of a mixed commission with regard to the amount and the security for payment to be given.

It was on December 7, 1902, two days before the memorandum hereinafter referred to was submitted to the German Reichstag, that the ultimatum of the British Government and of the German Government were presented, in writing, by their representatives at Caracas to the Venezuelan Government through its secretary for foreign affairs. (See Inclosure 1 in No. 217.) The umpire quotes from the ultimatum of the British Government as follows:

I have the honor to state further that His Majesty's Government also regret the situation which has arisen, but that they can not accept your excellency's note as in any degree a sufficient answer to my communications or as indicating an intention on the part of the Venezuelan Government to meet the claims which His Majesty's Government have put forward and which *must be understood to include all well-founded claims* which have arisen in consequence of the late civil war and previous civil wars and of the maltreatment or false imprisonment of British subjects, and also a settlement of the external debt.

I am to request the Venezuelan Government to make a declaration that they *recognize in principle the justice of these claims*, that they will at once pay compensation in the shipping cases and in the above-mentioned cases and in those where British subjects have been falsely imprisoned or maltreated, and that in respect of other claims they will be prepared to accept the decisions of a mixed commission with regard to the amount and the security for payment to be given.

The umpire quotes from the ultimatum of the German Government (Yellow Book, pp. 37-41),[1] as follows:

The Imperial Government has, in good time, taken knowledge of the note of the ministry of foreign relations of the Republic of Venezuela of the 9th of May last. By that note the Venezuelan Government rejected the demands of the Imperial Government in respect to the payment of the German claims growing out of the

[1] See Appendix to original report, p. 969. Not reproduced in this series.

civil wars from 1898 to 1900, and, in support of its negative attitude, referred to arguments previously advanced. The Imperial Government, even after considering those arguments anew, does not think it can recognize them as probatory.

The Government of the Republic argues, in the first place, that by reason of the domestic legislation of the country, the settlement by diplomatic action of the claims of foreigners growing out of the wars is not admissible. It thus sets up the theory that diplomatic intervention may be barred by domestic legislation. This theory is not in conformity with international law, since the question of deciding whether such intervention is admissible is to be determined not according to provisions of domestic legislation, but in accordance with the principles of international law.

The Venezuelan Government, aiming to demonstrate that the diplomatic prosecution of claims is inadmissible, further cites article 20 of the treaty of amity, commerce, and navigation between the German Empire and the Republic of Colombia of the 23rd of July, 1892. But this argument does not seem to have weight, first, because the treaty is operative between the Empire and Colombia only and, besides, because section 3 of the said article in nowise opposes the diplomatic prosecution of German claims growing out of acts committed by the *Colombian Government or its agents*. * * *

In the first place, the claims originating at an earlier period than the 23rd of May, 1899 — that is, prior to the accession of the present President of the Republic — are not, under the decree, to be taken into consideration, whereas Venezuela will be materially held responsible for the *acts of its preceding Governments*. Next, any diplomatic intervention in the decisions of the Commission is barred, no other resource than an appeal to the high federal court being admitted, notwithstanding the fact that has been proved in various instances that the judicial officers are depending on the Government and, when the occasion arose, have been dismissed from their offices without any formality whatever. * * *

By order of the Imperial Government I have also to ask that the Venezuelan Government will forthwith make a statement in the sense that it recognizes, *in principle*, those claims as valid and that it is disposed to accept the decision of a mixed commission for the purpose of having them determined and guaranteed in every particular.

To these ultimata there was an answer by the Venezuelan secretary for foreign affairs, of date December 9, 1902 (inclosed in No. 217), and from the one addressed to the British minister resident at Caracas the umpire quotes as follows: [1]

Your excellency then enters into the question of the British claims and asks, in the name of your Government, that Venezuela should declare that they are just in principle, and you finally allude to the necessity of paying them and to the common action which the United Kingdom and the German Empire have agreed to exercise in order to compel the Republic to do so. * * *

There is no reason why the Federal Government should not recognize the justice of obligations which are provided for in the national laws, and on this point you may be perfectly sure that the interests in question will be always protected and duly attended to.

With reference to the claims, your excellency would seem to refer definitely to those which you enumerated in a note of the 20th February, 1902, amounting, in your opinion, to 36,401 bolivars. The examining commission created with the agreement of the national legislative body will take them into consideration and will settle them in accordance with justice. The remaining cases which are not answered in the correspondence depend, as far as they can be considered as constituting claims, on facts which have to be proved or defined, and which the competent authorities will attend to or are attending to. And since your excellency speaks of well-founded claims, it does not appear possible that such cases, in their actual condition or legal position, can have the same character as those which are explained in documents which testify to their character and which give an oppor-

[1] See Appendix to original report, p. 985. Not reproduced in this series.

tunity of enlightening the judgment or guiding the decision of the body who will consider them. (As translated in Blue Book, p. 188.)

From the one addressed to the chargé d'affaires of the German Empire resident at Caracas (Yellow Book, p. 41) [1] the umpire quotes:

It takes up, as being the only argument of Venezuela against diplomatic intervention in matters of a certain nature, that which was concretely stated in the reply of May 9, in which the whole doctrine set forth in the previous correspondence was passed by, because a repetition of it was deemed unnecessary. And inasmuch as the very highest principles of international law have precisely been taken for a foundation of the defence of the position of Venezuela presented in the memorandum of March 19, 1901, it was found with extreme surprise that you ascribed to the Government a purpose to consider the question in no other light than that of domestic legislation. When article 20 of the treaty between the Empire and Colombia was cited in the note of May 9, last, it was with no other intention than that of adding supplementary proof to that already adduced in regard to the assent given by Germany to the doctrines upheld by Venezuela.

The three cases now cited as precedents for agreements reached through the diplomatic channel are self-explaining. In 1885 an arrangement was made with France for the payment of allowed claims and the examination of cases dating from much earlier periods; and proof of the fact that the doctrine maintained by Venezuela is therein duly recognized is found in Article V of that convention, whose force has just been fully confirmed. That article inhibits the diplomatic agents of the two contracting parties from intervening in private claims or complaints relating to matters appertaining to civil or criminal justice, unless there should be some denial of justice. * * * If the claims under discussion are just claims, the Federal Executive, as an honored and civilized power, hastens here and now to give the assurance that those claims will be examined and passed upon as such; and inasmuch as the proper board is already organized, there is no occasion for dilatoriness or the slightest departure from the rules laid down by the law in the conduct of the proceedings. In regard to the other particulars, every one of which comes under its regulating law, I need only call attention to the abnormal circumstances created by the war, which are paralyzing any action on the obligations connected therewith. The Government is considering the appointment of a fiscal agent, who, by entering into direct communication with the interested parties, will help in making the satisfaction of those obligations easier and less protracted. It is only hoped that the work of pacification in which the Government is now deeply and earnestly engaged will enable it to reestablish the service of public credit.

The claims growing out of the war, that is still desolating and devastating a part of the Republic, will share fully in all the rights that are established by the law regulating the matter.

To prevent obscurity and to place before his honored associates and the learned agents of their respective Governments the facts which are within the knowledge of the umpire and which are referred to more or less directly in these ultimata and in the replies thereto, he makes a quick detour to a time antecedent to the correspondence hitherto quoted herein; and, beginning with the matters affecting Germany as indissolubly related to the affairs of the British Government in connection with the question before him, refers first to the written statement of the Venezuelan secretary for foreign affairs, of date August 12, 1902, and found in the "Yellow Book," pages 5-11,[2] in which it appears that the United States of America were officially advised that Germany was contemplating "coercive or comminatory action against the Republic of Venezuela" as early as December 11, 1901, and that their reasons therefor were given at that time and were, as then understood by Venezuela —

---

[1] See Appendix to original report, p. 971. Not reproduced in this series.
[2] *Idem*, p. 955. Ditto.

based on the refusal of the Venezuelan Government to permit that powers, foreign to the nationals, take part in the examination, classification, or mode of payment of the claims that various German subjects have presented or reserve the right to present for alleged losses or damages sustained during the last wars since 1898. While the text of the memorandum makes unfavorable remarks about the Venezuelan magistrates of the judiciary, whose office it is to pass upon the nature of these claims, it sets forth the resolution of the Imperial Government to present the claims itself, as finally examined, in order that they may be accepted in that form by Venezuela whether willing or not.

In consequence of the above-mentioned publication, the Government of the Republic is now confronted by a document by which it is seriously affected and of whose spirit and tendency it was entirely unaware. * * *

The paper of the German ambassador, once known to Venezuela, can not be allowed to pass without the protest resulting from its contravening maxims of strict equality that international law advocates as a principle of harmony among the states of the civilized world. * * *

The views and arguments advanced by the Republic since the beginning in support of its refusal to accept diplomatic action in the settlement of claims of the Empire have never been refuted, not even incidentally. * * *

In that series of diplomatic notes the Empire rested its case not only on the law of the country, which, as such, gave sufficient force to the argument, but on the best recognized rules of modern international law, on the opinion of eminent European and American writers, on the legislation of other countries, Germany herself, among others, and on the ideas and circumstances which no fair government can ignore when it has to examine claims with due regard to all those concerned. It never was the intent of the Republic, in that correspondence, to impose its will arbitrarily and capriciously, nor did it intend, as the ambassador seems to suppose, to evade sacred obligations in a frivolous manner, but to hold the ground it has stood on since its advent to political life, for natural and judicious reasons. * * *

The Imperial Government, according to the language of the ambassador, wishes to examine and decide for itself and by itself the character, amount, and mode of payment of claims connected with property or interests established in the Republic of Venezuela. The Venezuelan Government, supported by its constitution and the regulations, maintains that such procedure can not be granted to any but the respective national powers. * * *

If by exceptionally waiving the local laws, the matter of claims was allowed to be made one of mere diplomatic action, the simultaneous effect might be a constant injury to the internal sovereignty and a ceaseless threat to the national treasury. * * *

If the class of claims relating to property owned within the territory does not come exclusively under the law of the country, it would behoove the other party to prove t by representing such a statement as would upset all maxims, arguments, and opinions advanced by Venezuela.

This document distributed among the powers closes with a reference to " the organization of the two International Congresses convened on the powerful iniatiative of the Great Republic of the North," to which attention is here called by the umpire that it may be remembered in connection with what he has to say on the same matter further on in his opinion. Concerning the remaining part of the Yellow Book having reference to the correspondence with Germany beginning in April, 1900, and running on to the close of 1902, the umpire for the sake of brevity calls attention without quoting to the fact that it consists of claims upon the part of Germany covering the losses sustained by the great railroad of Venezuela in connection with the civil war up to the close of 1899; of general-indemnity claims growing out of the same war; of the claim of Venezuela that the decree of January 24, 1900, provided for their ascertainment and liquidation; of the refusal of Germany to allow the said decree to influence in any way its attitude " in regard to claims of German protégés," of its objection in detail to the provisions of such decree; of a reasser-

tion on the part of Venezuela of the propriety of the decree, and of the judicial validity of the law of February 14, 1873, regarding the manner of preferring claims against the nation; the arguments of Venezuela in favor of its positions on these questions; of a reference to " the celebrated International American Conference of 1889-90 and approval of the principles then enunciated by fifteen delegates there present; " of lengthy quotations from international law writers in supporting Venezuela's contention, and other matters considered relevant and important to the provision of her constitution making equal civil rights for natives and aliens; which positions are proclaimed and adhered to on the one part and denied on the other through a correspondence covering many pages of the Yellow Book. The right of intervention on the part of Germany in behalf of her subjects is distinctly repudiated by Venezuela as being in " judicial impossibility; " " that such intervention is contrary to the *law* of the *country* and *therefore* inadmissible under the international law; " to which the German Government replies that it holds " that national laws which exclude diplomatic intervention are not in harmony with international law, because, according to the view of the powers of the Republic, all intervention of this character could be barred by means of municipal legislation." (See pp. 28, 29, 30, 31 of Yellow Book, May 9, 1902).[1] This is a communication from the Venezuelan minister of foreign affairs to the chargé d'affaires of the German Empire, closing the correspondence between Germany and Venezuela until the presentation of their ultimatum December 7, 1902, to which reference has already been had.

The British Government, through its minister resident at Caracas, in his communication of April 25, 1901, to the Venezuelan minister for foreign affairs, informs that Government [2]—

that the declaration communicated to the Government of Venezuela by Mr. Middleton, His Majesty's resident minister, in his communication of May 21, 1873, to the effect that His Majesty's Government reserves the right to object to any claim on the part of Venezuela at any future time to having released itself, by its own decree, from responsibility to Great Britain as to the injustice or damages caused to British subjects, for which Venezuela would be bound to give indemnization either by reason of the law of nations in general or by virtue of the provisions of treaties.

To this there is a reply by the Venezuelan minister for foreign affairs, of date May 11, 1901, in which he states in part as follows [3]:

On the other hand, the chief justice believes that no reservation of rights whatever concerning decrees issued in the name of the national sovereignty, and the effects of which include both natives and foreigners, is possible or acceptable. There is no principle of the law of nations, nor any assumption whatever in the stipulation which Venezuela should bear in mind concerning Great Britain, which binds the Government to establish discriminations in the protection of the interests which should be governed by internal legislation.

To the positions here taken the British minister resident at Caracas takes serious exception in his communication of May 13, 1901, asserting that it is in contradiction of the terms of the treaty of 1825, a part of which he quotes, and further on he says [4]:

This constitutes a marked difference which it would have been deemed impossible to deny and which it is impossible to avoid. His Majesty's Government has never admitted, therefore, the contention of the Venezuelan Government, which is of long

---

[1] See Appendix to original report, p. 970. Not reproduced in this series.
[2] *Idem*, p. 975. Ditto.
[3] *Idem*, p. 975. Ditto.
[4] *Idem*, p. 976. Ditto.

standing, that the claims of British subjects should be placed on the same footing as those of natives, submitting them to judicial intervention and decision to the exclusion of diplomatic intervention.

On May 25, 1901,[1] the Venezuelan minister for foreign affairs answered the communication last above referred to in a long letter reproducing the arguments of Venezuela in favor of her law of 1873, citing authorities in support thereof, citing the statutes and constitutions of Mexico, Guatemala, Salvador, Nicaragua, Honduras, Colombia, Brazil, Ecuador, Peru, the Argentine Republic, and Paraguay upon the same points; and asserts that the thirty years during which the law of 1873 has been upon the statutes adds much to its dignity and force among nations.

December 25, 1901, the British minister resident at Caracas communicates to the Venezuelan minister for foreign affairs the regrets of His Majesty's Government[2] —

that the Government of Venezuela refuses to recognize the reservations of rights made by His Majesty's Government in the question of British claims in the last and previous communications, concerning the right to object to any claim on the part of the Venezuelan Government at any time, of releasing itself, by its own decree, of responsibility with Great Britain with respect to damages or injuries caused to British subjects by which Venezuela would be bound to make indemnization, either in accordance with international law in general or in conformity with treaty obligations. These reservations include also the refusal of His Majesty's Government to recognize any limitation whatever by the national law of its right in accordance with the general principles of international law.

December 16, 1902 (No. 193), there was a communication from the Marquis of Lansdowne to Mr. Buchanan, referring to a conversation had with the German ambassador concerning the Venezuelan proposal for arbitration, in which he informed the German ambassador —

We were, however, inclined to admit that, whilst it was impossible for us to accept arbitration in regard to our claims for compensation in cases where injury had been done to the person and property of British subjects by the *misconduct* of the Venezuelan Government, it was not necessary to exclude the idea of arbitration in reference to claims of a different kind. We had already provided for the reference to a mixed commission.

On December 17, 1902 (No. 194), Count Metternich communicated to the British Government a memorandum which was communicated to the German Reichstag by Count Bülow on December 9, 1902:

By the civil wars which have taken place in Venezuela during the years 1898 to 1900 and again since the end of last year, numerous German merchants and land owners have suffered serious injury, partly through the exaction of forced loans, partly by the appropriation without payment of supplies found in their possession, especially cattle for feeding the troops, and, lastly, by the plundering of their houses and the devastation of their lands. The total of these damages, as regards the civil wars during the years 1898 to 1900, amounts to, roughly, 1,700,000 bolivars (francs), while for the last civil war damages to the extent of, roughly, 3,000,000 bolivars have already been reported. Some of the injured parties have lost almost the whole of their property, and have thereby inflicted loss on their creditors living in Germany.

* * * * * * *

It may be added that the Germans in the latest civil war have been treated in a particularly inimical manner. The acts of violence, for instance which were committed by the Government troops when they plundered Barquisimeto, were princi-

[1] See Appendix to original report, p. 976. Not reproduced in this series.
[2] *Idem*, p. 979. Ditto.

pally committed at the expense of German houses. This attitude of the Venezuelan authorities would, if not punished, create the impression that Germans in Venezuela were abandoned without protection to the arbitrary will of foreigners, and would be calculated seriously to detract from the prestige of the Empire in Central and South America, and be detrimental to the large German interests which have to be protected in those regions.

It is also here stated that the claim on behalf of the Great Venezuelan Railway, a German enterprise, equals about £ 300,000.

Count Metternich, in forwarding this memorandum to the British Government " points out that the German claims are not only pecuniary, but also based *on the ill treatment* of Germans by *the Venezuelan authorities.* "

This defines and limits the meaning of the claim arising from the civil wars spoken of by the Germans in this connection and elsewhere, and is conclusive in its exclusion of all acts of revolutionaries from the claim and demands contained in its ultimatum submitted to the Venezuelan Government December 7, 1902.

It was on December 17 that the Marquis of Lansdowne informed Sir Michael Herbert, at Washington, that —

the American chargé d'affaires told me to-day that he had received instructions to inform me that the Venezuelan Government now earnestly wished for arbitration, which, in the opinion of the United States Government, seemed to afford a most desirable solution of *the questions in dispute.*

On December 18, 1902, the Marquis of Lansdowne informed Sir M. Herbert at Washington that he had that afternoon informed the United States chargé d'affaires that the cabinet had decided to accept *in principle* the idea of settling the Venezuelan dispute by arbitration and that the German Government was in accord.

It was on December 18, 1902 (No. 199), that the Marquis of Lansdowne communicated to Sir F. Lascelles that the German ambassador had that day informed him of his Government's agreement with Great Britain as to its treatment of the Venezuelan proposal for arbitration, but that his Government desired to make certain reservations similar to what had been previously suggested, and these reservations were submitted in a written memorandum. Paragraph 2 contains the following:

All further demands *contained in* the *two ultimatums* shall be submitted to the proposed court of arbitration. The latter will therefore have to consider not only the claims in connection with the present Venezuelan civil war, but also, as far as Germany is concerned, the demands mentioned in the memorandum laid before the Reichstag of German subjects arising from the nonfulfillment of liabilities incurred by contract by the Venezuelan Government. The court of arbitration will have to decide both *on the material* justification of the demands and on the ways and means of their settlement and security.

There is added:

The Government of the United States of America would be conferring an obligation on us if, by exerting their influence over the Venezuelan Government, they could succeed in persuading the latter to accept these proposals.

* * * * * * *

I told his excellency that I would communicate his statement to the cabinet, which was to meet in the afternoon, and that I had little doubt that, in principle, the two Governments would be found to entertain similar views.

I was able, later in the afternoon, to inform his excellency that the cabinet agreed to arbitration as a means of settling the dispute, subject to the following reservations, which he undertook to communicate to the German Government:

1. The shipping claims are not to be referred to arbitration.

2. In cases where the claim is for injury to, or wrongful seizure of, property, the questions which the arbitrators will have to decide will only be —

(a) Whether the injury took place and whether the seizure was wrongful; and

(b) If so, what amount of compensation is due. That in such cases a liability exists must be admitted in principle.

On December 22, 1902, the Marquis of Lansdowne sent to Sir F. Lascelles a copy (inclosure in No. 207), received from Count Metternich, of the reply which the German Government returned to the proposals made by Venezuela through the United States Government, from which reply certain extracts are here made. There were reserved from arbitration claims —

which originated in the Venezuelan civil wars from 1898 to 1900, and of which details are given in the inclosed memorandum of the *8th December, which was communicated to the Reichstag*. It will be seen that they consist of claims on account of *acts of violence on the part of the Venezuelan Government or their agents*. * * *

All other claims which have been put forward in the *two ultimata* could be submitted to the arbitrator.

The arbitrator will have to decide both about the *intrinsic justification* of *each separate claim*, etc.

In the case of claims in connection with damage done to, or unjustifiable seizure of property, the Venezuelan Government will have to recognize their liability in principle, so that the question of liability will not form the subject of arbitration, but the arbitrator will be concerned solely in the questions of the *illegality* of the *damage* or *seizure*. * * *

The Government of the United States of America would be conferring an obligation on the *Imperial* and *British* Governments if, by exerting their influence over the Venezuelan Government, they could succeed in persuading the latter to accept *these* proposals.

Memorandum communicated to Ambassador White December 23, 1902 (No. 209), stated among other matters that —

His Majesty's Government have in consultation with the German Government taken into their careful consideration the proposal communicated by the United States Government at the instance of that of Venezuela. * * *

His Majesty's Government have, moreover, already agreed that in the event of the Venezuelan Government making a declaration that they will recognize, *the principle of the justice* of the British claims, etc.

January 1, 1903, Ambassador White inclosed to the Marquis of Lansdowne a copy of a telegram, via Secretary Hay, from Minister Bowen, in which there is a signed communication from President Castro, and in which appears —

I recognize, in principle, *the claims which the allied powers have presented to Venezuela.*

Neither the British nor the German Governments were satisfied with this telegram of President Castro, and both insisted on an unreserved acceptance of conditions 1, 2, and 3, which were communicated to Ambassador White December 23, 1902, and on January 5, 1903 (No. 222), the Marquis of Lansdowne communicated to Ambassador White what President Castro's recognition " in principle" meant as understood by His Majesty's Government, and in that connection made a restatement of those conditions and required of President Castro a definite acceptance thereof, which was given of date January 9, 1903, through Mr. Bowen (No. 226), in the language following:

The Venezuelan Government accepts the conditions of Great Britain and Germany.

And the conditions which were thus presented so far as they affect the question now before the umpire, as he understands, were that Venezuela " will recognize the *principle* of the *justice* of the British claims."

Mr. Bowen telegraphs from Caracas to Mr. Hay, January 6, 1903 (Bowen's Pamphlet, p. 9),[1] among other things, that President Castro asserts —

that the claims against him are purely commercial in character; that he acknowledges that he must pay *such of them as are just.*

In the agreement which Mr. Bowen, representing Venezuela, signed January 27, 1903 (Bowen's Pamphlet, p. 15),[2] in regard to the 30 per cent of the total income of the ports of La Guaira and Puerto Cabello, communicated by telegram from Ambassador Herbert to the Marquis of Lansdowne, there appears a statement very significant as to his understanding of the claims to which Venezuela was obliged to respond, viz:

I hereby agree that Venezuela will pay 30 per cent of the total income of the ports of La Guaira and Puerto Cabello to the nations that have claims against her, and it is distinctly understood that the said 30 per cent will be given exclusively *to meet the claims mentioned* in the *recent ultimatums* of the *allied powers* and the unsettled claims of other nations that existed when said ultimatums were presented.

On January 23, 1903 (Bowen's Pamphlet, p. 12),[3] Sir Michael Herbert, at Washington, communicated to Mr. Bowen the demands of the British Government, so far as they referred to the claims included in Article III of the protocol, in the following language:

2. Other claims for compensation, including railway claims and those for injury or wrongful seizure of property, must be met by an immediate payment to His Majesty's Government or by a guaranty adequate to secure them. These claims can be, if desired, examined by a mixed commission.

These conditions were accepted by Mr. Bowen by a note of the same date.

January 24, 1903 (Bowen's Pamphlet, p. 14),[4] the imperial chargé d'affaires at Washington submitted a document to Mr. Bowen concerning the claims of Germany against Venezuela, and in Article II thereof says:

All the other claims which have already been brought to the knowledge of the Venezuelan Government in the *ultimatum* delivered by the imperial minister resident at Caracas, i. e., claims resulting from the present civil war, further claims resulting from the construction of the slaughterhouse at Caracas, as well as the claims of the German Great Venezuelan Railroad for the nonpayment of the guaranteed interest, are to be submitted to a mixed commission should an immediate settlement not be possible.

III. The said commission will have to decide both about the fact whether said claims are materially founded and about the manner in which they will have to be settled or which guaranty will have to be offered for their settlement. Inasmuch as these claims result from damages inflicted on property or the illegal seizure of such property, the Venezuelan Government has to acknowledge its liability in principle, so that such liability in itself will not be an object of arbitration, and the decision of the commission will *only* extend to the *question* whether the *inflicting* of *damages* or the *seizure* of such *property was illegal.* The commission will also have to fix the amount of indemnity.

February 5, 1903, the Marquis of Lansdowne cabled Sir Michael Herbert, ambassador, in part as follows:

A separate telegram is being sent to you which contains the draft of a protocol *embodying the conditions which have already been accepted by Mr. Bowen.*

---

[1] See Appendix to original report, p. 1035. Not reproduced in this series.
[2] *Idem*, p. 1039. Ditto.
[3] See Appendix to original report, p. 1037. Not reproduced in this series.
[4] *Idem*, p. 1037. Ditto.

Article III of the protocol thus submitted and Article III of the protocol of February 13, are identical. The language is every word the language of the claimant Government, and it was asserted by that Government (No. 263) to contain nothing not accepted by Mr. Bowen prior to February 5, 1903. What these agreements were has been set out here in substance.

From a careful reading of all the correspondence and conferences between the two allied powers and Venezuela, beginning in April, 1900, and continuing up to and including February 13, 1903, and which appear in the Yellow Book and the Blue Book, and in all the correspondence or conferences appearing in those two books and Mr. Bowen's pamphlet relating to the correspondence and conferences between him as the representative of Venezuela and the three war powers, Great Britain, Germany, and Italy, and in all the correspondence and conferences appearing in either of these documents in which the United States of America had a part, the umpire fails to find a sentence, a word, or a syllabe suggestive of a claim by either of these three powers that Venezuela should respond in damages or be held to indemnities because of the acts of insurgents. On the contrary, Germany had stated their claims to be based on "acts of violence on the part of the Venezuelan Government or their agents," and the statements of Great Britain were not opposed, but wholly consistent therewith.

The high contracting parties knew during the negotiation, and at the conclusion thereof when the protocols of February 13 were signed, that Germany had declared in the most formal and explicit manner, on an occasion not remote and in circumstances of the State not dissimilar, her view of equity and justice concerning the liability of governments for the acts of revolutionaries. This appears in her treaty with Colombia in 1892, where is laid down her view of law, justice, and equity in these words:

> It is also stipulated between the contracting parties that the German Government will not attempt to hold the Colombian Government responsible, unless there be due want of diligence on the part of the Colombian authorities or their agents, for the injuries, vexations, or exactions occasioned in time of insurrection or civil war to German subjects in the territory of Colombia, through rebels, or caused by savage tribes beyond the control of the Government. (Art. 20, sec. 3.)

Italy, the other war power, up to the time of signing the protocol of February 7, 1903, by her treaty with Venezuela in 1861 was bound to treat such matters reciprocally, as appears in the language following:

> In cases of revolution or of interior war the citizens and subjects of the contracting parties will, in the territory of the other, have the right of being indemnified for damages and losses which may be caused to their persons or property by the constituted authorities of the country on the same terms as the nationals would have a right to indemnification according to the laws which prevail in such country. (Art. 4.)

And she had deliberately restated her position on such questions under conditions not dissimilar to those of Venezuela in her treaty with Colombia in 1892, as follows:

> It is also stipulated between the two contracting parties that the Italian Government will not hold the Colombian Government responsible, save in the case of *proven* want of due diligence on the part of the Colombian authorities or of their agents, for injuries occasioned in time of insurrection or civil war, to Italian citizens in the territory of Colombia, through the acts of rebels, or caused by savage tribes beyond the control of the Government. (Art. 21, sec. 3.)

Great Britain had a historical attitude of a similar character on this question, which she had applied in the case of the United States of America in 1861-1865 (see Hall, p. 232). and again not many years since to a country no more well

ordered than Venezuela, namely, to Colombia, in 1885, when a British subject was injured by the burning of Colon, Colombia, and sought the aid of his Government for reparation from Colombia. Under instructions from the British foreign office, the English minister resident stated that the destruction of Colon was due solely to the revolutionists, and that when these events took place " the Government of Colombia was entirely unable to prevent them, even though it afterwards accidentally succeeded in putting down the rebellion." And from these facts it was thought it could not be asserted that his injury " was directly due to the fault of the Colombian Government to the extent of justifying a demand for redress in behalf of those English subjects who, like yourself, have unfortunately suffered losses by reason of the fire." And the conclusion of the matter was that, under instructions of the prime minister, he was informed by the English minister: " I am unable to support your claims against the Government of Colombia." (U.S.-Vene. Claims Commission, convention of 1892, p. 585.)

The umpire desires to call attention specifically to the general attitude of the South American and Central American republics relating to the right of the state by constitutional provision and municipal legislation to cut off the right of the government of the injured citizen to intervene to demand attention to injuries received by their subjects in property and person, who maintain, some of them, that in virtue of such legislation no diplomatic claim can exist, and if one is submitted to an arbitral tribunal a judgment of dismissal must be entered. He assumes, rightfully he believes, that all governments concerned in the matter of which we are now inquiring were fully informed and thoroughly advised concerning the legislation and the attitude to which the umpire refers. That they knew that at the time these protocols were drawn opinions irreconcilable with theirs were held by a very large part of the South American and Central American republics; that these opinions were strengthening rather than abating; that they had taken form in national constitutions and statutes, and in proposed treaties and international agreements.

They knew that at the Pan-American Conference of 1889-90, in a majority report of its committee on international law, among other things it was declared " that foreigners are entitled to enjoy all the civil rights enjoyed by natives, and to all substantive and remedial rights in the same manner as natives," and " that a nation has not, nor recognizes in favor of foreigners, any other obligation or responsibilities than those which are established in like cases in favor of the natives by the constitution and laws." That it was there recommended that these resolutions be adopted as " principles of American international law." They knew these principles there propounded were in sharp and rugged conflict with the law of nations as understood and accepted by Europe and the United States of America. They knew that at the Pan-American Conference held in the City of Mexico in 1901 the delegates representing fifteen of the twenty states which were there assembled reaffirmed the propositions of 1889 and declared again and emphatically that the states do not recognize in favor of foreigners any obligations or responsibilities other than those established by their constitutions and laws in favor of their own citizens, and that the states are not responsible for damages sustained by aliens originating from acts of war, whether civil or national, " except in case of failure on the part of the constituted authorities." From this deliverance both knew that if the constitution and laws of the given state gave no remedies, or illusive ones, to natives for the wrongful seizure of or injury to property, it would be claimed and urged that foreigners must accept the consequences; and that also where the property of aliens had been seized and confiscated for military use by the military powers of the government there was no compensation therefor, regardless of the constitution

or laws of the particular state, and in direct contravention to the generally accepted law of nations applicable thereto.

They knew that there were several treaties projected at this conference all more or less at war with international law as held by Europe; that one country urged a treaty declaring as one of its provisions that " in all cases where a foreigner has claims or complaints of a civil order, criminal or administrative, against a state, no matter what the ground of his allegations may be, he must address his complaint to the proper judicial authority of the state, without being entitled to claim the diplomatic support of the government of the country to which he belongs to enforce his pretensions, but only when justice shall have failed, or when the principles of international law shall have been violated by the court which took cognizance of the claim; " that " in every case where a foreigner has claims or complaints of a civil, criminal, or administrative order he shall file his claim with the ordinary courts of such state; " that no government should " officially support any of those claims which must be brought before a court of the country against which the claim is made, except cases in which the court has shown a denial of justice or extraordinary delay or evident violation of the principles of international law." They knew that to establish such a principle of action would prevent any government from intervention in any case until there had been an exhaustion of all legal remedies and a palpable denial of justice; and that concerning this it was provided that " a denial of justice exists only in case the court rejects the claim on the ground of the nationality of the claimant." A second country would establish an " international court of equity; " but provided that the claimant must first exhaust all legal remedies before the courts of the defendant state where the nature of the claim permitted it to be adjusted by such courts.

They knew that at this conference it was proposed by three of the States in conference that a treaty should be made declaring that the responsibility of the state to foreigners is not greater than that assured to natives; that the government should not entertain diplomatically any demand of a citizen in a foreign country where the claim arises out of a contract entered into between the authorities and the foreigner, or where it has been expressly stipulated in the contract that the government of the foreigner shall not interfere; that the government of a foreigner shall not interfere to support his complaint or claim originating in any civil, penal, or administrative affairs, except for denial or undue delay of justice, or for nonexecution of a final judgment of the courts, or when it is shown that all legal remedies have been exhausted, resulting in a violation of express treaty right, or of the precepts of public or private international law " *universally recognized by civilized nations.*" They knew that the words in quote, if agreed to, prevented any intervention, because of the fact that one of the South American states had by statute declared that no judgment rendered against a foreigner could be held as unjust or a denial of justice, even though the decision was iniquitous and against express law. They knew that the South American and Central American republics, with few, if any, exceptions, were permeated through and through with the seductive doctrines of Calvo, the distinguished Argentine publicist, the fundamental idea of which is that no government may rightfully intervene in aid of its citizens in another country, and that this fundamental doctrine to a greater or les extent had been brought into constitutions and statutes of the different states. They knew that in the constitution of Venezuela, Title III, Section I, article 14, there was to be found this provision, namely:

> Foreigners will enjoy all civil rights which are enjoyed by nationals, but the nation does not hold or recognize in favor of foreigners any other obligations or responsibilities than those which have been established in a similar case in the constitution and in the laws in favor of nationals.

And that in paragraph 2, article 14, there is to be found this:

> In no case may either nationals or foreigners pretend that either nation or states shall indemnify them for damages, prejudices, or expropriations which have not been executed by legitimate authority operating in its public character.

They knew of the Venezuelan law of March 6, 1854, concerning indemnity to foreigners, and the decree of Guzmán Blanco of date February 14, 1873, and that it was protested against by many, if not all, of the leading nations of Europe and by the United States of America; that notwithstanding these protests it was republished by order of President Castro January 24, 1901, and that, as republished, it required " all who bring claims against the nation, whether nationals or foreigners, by reason of *damages* and *injuries* and *seizures* by acts of national employees or of the states, whether in civil or international war, or in time of peace, will bring them " before the high federal court under the rules of procedure laid down in articles 3, 4, 5, and 6 of the decree; that article 8 of the decree provided " that whoever appears in a manifest manner to have exaggerated the amount of the injuries he may have suffered will lose his right to recover and be subject to fine or imprisonment, and if it be altogether false will be mulcted in a fine or sent to prison; " that article 9 of the decree provided " that in no case shall the nation or the state indemnify for losses, *damages*, or *injuries*, or *seizures* which have not been executed by legitimate authorities working in their public character; " that article 10 set a limitation of two years on all actions permissible under the law; that article 11 declared " that all who without public character decree contributions or forced loans or spoliations of any nature, as well as those who execute them, will be directly and personally responsible with their goods for whomever may be prejudiced; " that article 13 repealed the law of March 8, 1854, relating to indemnities above referred to. They knew that President Castro issued an order January 24, 1901, creating a junta to examine and determine the damages claimed by nationals and foreigners against the nation on account of the war initiated May 23, 1899, and limiting the time within which claimants must appear to *three months* from the date of the order, and otherwise their demands were to receive no attention " unless the delay be shown to be occasioned by a superior force." They knew that there was a law of the same date bearing the approval of President Castro, one article of which defined the losses which might be sustained before said junta, namely:

> Losses during the war to private property *not* proceeding from hostile acts for which no one is responsible, nor for the licentious conduct of soldiers who have taken advantage of moments of contention, unless they have been made voluntarily, intentionally, and deliberately by order of superior power in charge of belligerent operation.

They knew that article 140 of the Venezuelan constitution contained this important declaration:

> International law is *supplementary* to national legislation; but it can never be invoked against the provisions of this constitution and the individual rights which it guarantees.

They knew that such laws and constitution were based on the principle of the duty of nationals and aliens to obey the laws of the land wherein they dwell; that there was no injury to person or property unless incurred in violation of the national law; that there was no remedy save in manner and means as provided by that national law; that the alien had no recourse to the country of which he was a subject except for the causes recognized by such national law; that the nation whose subject he is has no right of intervention, except for causes prescribed by the law of the nation where he is commorant or domiciled; that all this is a

right of each nation to prescribe, and of each alien within its domains scrupulously to obey, and of each mother country to respect, regard, and by it to be controlled; that international law may aid, but can never control, dictate, or determine any matter which is in conflict with its own statute law and the national interpretation thereof; that whereas the generally accepted idea of Europe and the United States of America is the supremacy of international law in international matters, Venezuela and many of the other states of South and Central America of kindred thought maintain the supremacy of their own laws in international matters. They knew that before mixed commissions jurisdictional questions were always possible and might be frequent, and that unrestricted by express agreement Venezuela was bound by her laws, organic and other, to interpose objections jurisdictional to every claim not of the class recognized as proper subject-matter of international intervention by her constitution and her laws; that with unrestricted submission, among others, these questions could always be raised, namely:

I. That every claim by an alien for damages and injuries to property and of seizures thereof by national or state employees in time of peace or during the civil wars would be objected to as not within the jurisdiction of the mixed commissions until it had been heard before the junta provided and there had been a clear denial of justice.

II. That in all cases of losses, damages, or injuries to persons or property or seizure of the latter, not executed or caused by the legitimate authorities working in their public character, there would have been a denial of all liability in any manner at any time.

III. That in all cases otherwise admissible under the laws if the claim had run two years before presentation it was barred by their statutes.

IV. That if contributions or forced loans or spoliation had been decreed or caused by any one or more who were not of the public character required, the party injured had only his remedy against him or them who had caused the loss or injury.

V. That in cases arising on account of the war of 1899 there would be, also, the claim that no case was within the jurisdiction, because of the time limit of three months, except on proof that there had been the exception provided in connection therewith.

VI. That losses to property during that war which might escape the other objections would be met with the contention that such losses must not proceed from hostile acts for which no one is responsible, nor from the licentious conduct of soldiers who have taken advantage of moments of contention, nor are they recoverable unless they have been made voluntarily, intentionally, and deliberately by order of superior power in charge of belligerent operations.

For an agreement to arbitrate among nations, as among individuals, is simply a submission of all matters in dispute within the limits named, and there would be jurisdiction, law, equity, and fact as applied to each case. The admission of liability in the protocols prevented the raising of these objections. They knew that these objections, which the umpire has stated as not only possible but probable, had been, in fact, as a whole or in part during the correspondence interposed by Venezuela against the claims of Great Britain and Germany, who together agreed upon the formula in question. (See Yellow Book, pp. 16, 50, 59, and 65.) [1]

[1] See Appendix to original report, pp. 959, 975, 979, 982. Not reproduced in this series.

The umpire assumes that these important treaties were not made without great care and deliberation commensurate to their importance and by officials who were thoroughly and conscientiously able and apt to perform their high functions. In the Supreme Court of the United States of America, in the matter of the *Nereide* (9 Cranch, 419), Chief Justice Marshall says:

> Treaties are formed upon deliberate reflection. Diplomatic men read the public treaties made by other nations and can not be supposed either to omit or insert an article, common in public treaties, without being aware of the effect of such omission or insertion.

The umpire feels confident that the careful review and partial rehearsal of the conditions existing at the time of making these two protocols will convince the most skeptical that the inclusion of the clause in question is not meaningless if its interpretation is established in accordance with the previously expressed opinion in the de Lemos [1] and Crossman [2] cases, and that to so hold leads to an absurd conclusion.

But there are parallel or corollary provisions in the second protocol which in the judgment of the umpire rest upon the same and no other grounds.

> The commissioners, or in case of their disagreement the umpire, shall decide all claims upon a basis of absolute equity without regard to *objections of a technical nature or of provisions of local legislation.*

By a proper application of the usually accepted international law governing such commissions, controlling courts, and defining the diplomatic conduct of nations there could be no question that national laws must yield to the law of nations if there was a conflict.

As a general rule municipal statutes expanding or contracting the law of nations have no extraterritorial effect. (Wharton, vol. 3, sec. 403, p. 652, Digest.)

We hold that the international duty of the Queen's Government in this respect was above and independent of the municipal laws of England. It was a sovereign duty attaching to Great Britain as a sovereign power. The municipal law was but a means of repressing or punishing individual wrongdoers; the law of nations was the true and proper rule of duty for the Government. If the municipal laws were defective, that was a domestic inconvenience, of concern only to the local government, and for it to remedy or not by suitable legislation as it pleased. But no sovereign power can rightfully plead the defects of its own domestic penal statutes as justification or extenuation of an international wrong to another sovereign power. (Mr. Fish, Sec. of State, to Mr. Motley, Sept. 25, 1869; Wharton's Digest, vol. 3, sec. 403, p. 653.)

This position was sustained by the eminent jurists forming the Geneva arbitral tribunal. (See Wharton, vol. 3, sec. 402*a*, p. 645, Digest.)

The effect of the Salvadorean statute in question is to invest the officials of that Government with sole discretion and exclusive authority to determine conclusively all questions of American citizenship within their territory. This is in contravention of treaty right and the rules of international law and usage and would be an abnegation of its sovereign duty toward its citizens in foreign lands, to which this Government has never given consent.

Articles 39, 40, and 41, Chapter IV, of the law in question, purport to define the conditions under which diplomatic intervention is permitted on behalf of foreigners in Salvador whose national character is admitted. I regret that the Department is unable to accept the *principle* of any of these articles without important qualifications. (Mr. Bayard, Sec. of State, to Mr. Hall, Nov. 29, 1886. Wharton, vol. 3, Appendix, sec. 172*a*, p. 960.)

---

[1] *Supra*, p. 368.
[2] *Supra*, pp. 356, 365.

It is a settled principle of international law that a sovereign can not be permitted to set up one of his own municipal laws as a bar to a claim by a foreign sovereign for a wrong done to the latter's subjects. (Wharton, vol. 3, Appendix, sec. 238, p. 969.)

Similarly in Wharton, volume 3, Appendix, section 403, page 991.

In Phillimore, volume 1, Chapter II, Section CXVII, it is said:

Under the rights incident to the equity of states as a member of an universal community is placed " the right of a state to afford protection to her lawful subjects wheresoever commorant," and under this head may be considered the question of debts due from the government of a state to the subjects of another state.

The definition of international law, making it under one form of expression and another the rules which determine the general body of civilized states in their dealings with one another, necessarily excludes state statutes from doing the same thing.

They [aliens] are again, as we have seen, entitled to protection, and failure to secure this, or any act of oppression may be a ground of complaint, or retorsion, or even of war, on the part of their native country. (Woolsey's *Intro. to Int. Law*, p. 90, sec. 66.)

(See Hall, *Int. Law*, Chap. II; also Chap. VII, sec. 87.)

The right of states to give protection to their subjects abroad, to obtain redress for them, to intervene in their behalf in a proper case, which generally accepted public law always maintains, makes these municipal statutes under discussion in direct contravention thereto and therefore inadmissible principles by those states who hold to these general rules of international law.

A government has a right not only to exercise jurisdiction over all persons within its territory, but also to see to the good treatment of its subjects when in the territory of a foreign power, and generally that they sustain no injury. (Holland's *Studies on Int. Law*, p. 160.)

It is not, I think, to be presumed that the British Parliament could intend to legislate as to the rights and liabilities of foreigners. (4 K. & J., p. 367.)

In Healthfield *v.* Chilton (4 Burr, 2016) Lord Mansfield held that the act of 7 Anne, c. 12, " did not intend to alter, *nor can alter*, the law of nations."

As " the law of nations " it is, of course, insusceptible of modification by an act of the British Parliament. The act " can neither bestow upon this country any international right to which it would not otherwise be entitled, nor relieve our Government from any of its diplomatic responsibilities." (Holland's *Studies in Int. Law*, p. 195; 3 Phillimore's *Int. Law*, p. 387.)

It is, on the other hand, quite certain that no act of Parliament, or decision given in accordance with its provisions, will relieve this country from liability for any results of the act, or decision, which may be injurious to the rights of other countries. (Holland's *Studies in Int. Law*, p. 199.)

Referring to Venezuelan municipal laws by which they then sought to obviate their international responsibility for the acts of turbulent factions or armed insurgents, Secretary of State Fish says: " To assume, therefore, to dictate that no claim for such losses shall ever be made may be said to be arrogant to a degree likely to be offensive to most governments having relations with a republic so subject to sudden and violent changes in its authorities.

" Upon the whole, the enactments adverted to may be regarded as superfluous in their substance, and in their form by no means adapted to foster confidence in the good will of that government towards foreigners who may resort to Venezuela." (See U. S. - Vene. Claims Com., Convention of 1892, p. 520.)

Municipal variations of the law of nations have no extraterritorial effect. (The *Resolution*, 2 Dall., 1; the *Nereide*, 9 Cranch, p. 389.)

The municipal laws of one nation do not extend, in their operation, beyond its own territory, except as regards its own citizens or subjects. (The *Apollon*, 9 Wheaton, p. 362.)

Recurring then to the proposition made when the umpire referred to this part of the second protocol, there seems to be adequate reason for this unusual provision only in the fact that the respondent government held that its laws were paramount in such matters and would be expected to contend in behalf of its carefully conceived and tenaciously supported theory before the Mixed Commission, and to prevent such contention and to prevent the possibility of a successful contention this clause was inserted. A commission not in terms bound to follow the law of nations might go astray over such a question if unrestricted, and hence the restriction. But it is, equally with the other proposition, open to the objection that, being in accord with public law, it had no place if there were not some reason for its existence — if it did not contain some rule to govern this Commission either not to be found in the precepts of international law or directly opposed to it.

Again, there is the reservation concerning technical objections. The course of commissions has rarely strayed from equity and justice by a too close adherence to technical objections, but there have been frequent interruptions and costly delays because of such objections, and the astute and able lawyers of Venezuela had on several occasions shown their capacity to raise fine distinctions in fact and law, resulting in long and eventually valueless discussion. The claimant Government had known from experience how forcefully such objections could be raised. It proposed to end that trouble at the beginning. Hence the provision:

> They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the Governments, respectively, in support of or in answer to any claim.

And yet it had not been the practice of commissions in times past — and it is not required by law writers — that there be a strict compliance with the general requirements concerning evidence. But there had been much annoyance and many serious interruptions of the business of commissions and occasional refusal to consider a case because of assumed lack of evidential quality in the proof offered, and hence the provision. Yet neither of these last two provisions were new or novel or opposed to the ordinary practice of commissions or the generally varied rules of public law, but they did represent the views of the claimant Government on those matters, and if inwritten were safe and wise precautions against probable delays, and possible friction, misconception, and misdirection of the tribunal. The law on these points was well laid down by the eminent scholar, diplomat, and jurist, Judge J. C. Bancroft Davis, in the Caldera case, 15 Court of Claims Reports (U. S. A.), 546:

> In the means by which justice is to be attained, the court is freed from the technical rules of evidence imposed by the common law, and is permitted to ascertain truth by any method which produces *moral conviction.*
>
> In its wider and universal sense it [evidence] embraces all means by which any alleged fact, the truth of which is submitted to examination, may be established or disproved. (1 Greenleaf Ev., sec. 1.)
>
> International tribunals are not bound by local restraints. They always exercise great latitude in such matters (Meade's case, 2 Court of Claims, U. S. A., 271), and give to affidavits, and sometimes even to unverified statements, the force of depositions.

The umpire desires it to be distinctly understood once for all that he accepts the statement of the learned British agent that his Government thought the terms of the protocol broad enough to include all injuries and all wrongful seizures, whether caused by Venezuelan authorities or by insurgents. This statement of his is not questioned directly or indirectly; but he does not say, and

it has not been said, that there were not also in the mind of his Government in all of these provisions the protective and restrictive features here suggested. As a matter of fact, these are the plain, obvious, and reasonable grounds for their insertion, and there is not the slightest evidence which the umpire has been able to find that Venezuela knew of any other, thought of any other, or consented to any other grounds or reasons. This is the important question, for when there is found that which Venezuela or her representatives understood and consented to and understood that they consented to then there is found all there is of the treaty.

The position of all international law writers was in substantial accord touching this matter of nonresponsibility of nations for the acts of unsuccessful revolutionists at the time this protocol was signed, as was well known to the parties to the protocols in question.

The sovereign is responsible to alien residents for injuries they receive in his territories from belligerent action, or from insurgents whom he could control or whom the claimant government has not recognized as belligerents.

The umpire will rest his quotations from text writers upon Hall on International Law, pages 231-232, where the law is laid down in the language which follows:

> When a government is temporarily unable to control the acts of private persons within its dominions, owing to insurrection or civil commotion, is is not responsible for injury which may be received by foreign subjects in their person or property in the course of the struggle, either through the measures which it may be obliged to take for the recovery of its authority or through acts done by the part of the population which has broken loose from control. When strangers enter a state they must be prepared for the risks of intestine war, because the occurrence is one over which, from the nature of the case, the government can have no control; and they can not demand compensation for losses or injuries received, both because unless it can be shown that a state is not reasonably well ordered, it is not bound to do more for foreigners than for its own subjects, and no government compensates its subjects for losses or injuries suffered in the course of civil commotions, and because the highest interests of the state itself are too deeply involved in the avoidance of such commotions to allow the supposition to be entertained that they have been caused by carelessness on its part, which would affect it with responsibility toward a foreign state.

In the opinion of Umpire Ralston, in the matter of Salvatore Sambiaggio *v.* Venezuela,[1] before the Italian-Venezuelan Mixed Claims Commission, now sitting in Caracas, there is a valuable collocation of authorities upon this point, to which opinion and the authorities there cited the umpire is pleased to make reference, and, to quote the conclusions of Ralston, umpire, found on pages 2 and 3 of his typewritten opinion:[2]

> We find ourselves, therefore, obliged to conclude from the standpoint of general principle that, save under the exceptional circumstances indicated, the Government should not be held responsible for the acts of revolutionists, because —
>
> 1. Revolutionists are not the agents of government, and a natural responsibility does not exist.
>
> 2. Their acts are committed to destroy the government, and no one should be held responsible for the acts of an enemy attempting his life.
>
> 3. The revolutionists were beyond governmental control, and the Government can not be held responsible for injuries committed by those who have escaped its restraint.

---

[1] Volume X of these *Reports*.

[2] Italian - Venezuelan Commission (Sambiaggio Case) in Volume X of these *Reports*.

Held by Duffield, umpire in the German-Venezuelan Mixed Claims Commission, late sitting at Caracas:

> That the late civil war in Venezuela from its onset " went beyond the power of the Government to control. * * * Under such circumstances it would be contrary to established principles of international law, and to justice and equity, to hold the Government responsible." (Claim of Otto Kummerow *v.* Venezuela.[1])

The precedents form an unbroken line, so far as the umpire has been favored with a chance to study them, supporting the usual nonresponsibility of governments for the acts of unsuccessful rebels. It was so held by the eminent Sir Edward Thornton in all cases which he decided as umpire in the United States-Mexican Commission. (Moore, vol. 3. pp. 2977-2980.) So held by the United States-Spanish Commission of 1871. (Moore, vol. 3, pp. 2981-2982.) So held by the United States and British Claims Commission of 1871. (Moore, vol. 3, pp. 2982-2987, 2989.) So held by the United States and Mexican Claims Commission of 1859. (Moore, vol. 3, pp. 2972.) So held in principle by the United States and Mexican Claims Commission of 1868. (Moore, vol. 3, pp. 2900, 2902, 2973.) So held concerning the nonresponsibility of the United States in the civil war of 1861. (Moore, vol. 3, 2900-2901.) So held in substance and effect by the United States-Venezuelan Mixed Commission now sitting at Caracas.[2] Even the cases which were claimed to qualify or oppose this rule and were not specifically attacked by the umpire in the Sambiaggio case above referred to are not opposed to the rule laid down when all of the facts appear.

In the Easton case, before the Peruvian Claims Commission,[3] careful investigation discloses that the Government of Peru had acknowledged that it was liable, in fact and law, to pay the actual loss, and had tendered $5,000 in satisfaction thereof; so that the Commission had before it only the question of amount.

In the case of the Venezuelan Steam Transportation Company against Venezuela there were presented peculiar conditions, in that a part of the damage was inflicted by the " Blues " and part by the " Yellows. " The " Blues " was the de jure government which had been driven from Caracas by the " Yellows," but retained authority and control over certain States, among them the State lying on the west of the Orinoco near Ciudad Bolívar, and, during the happening of a great part of the injuries complained of, were in control of the State of which Ciudad Bolívar is the capital. The " Yellows," being in possession of the national capital, were recognized as the de facto government. Mr. Evarts, Secretary of State for the United States of America, a very eminent lawyer, held that —

> there seems to be just as good ground for taking the organization of the party of the " Blues," so called, as the legitimate government at that time as the forces and managers of the party of the " Yellows." (U. S. - Vene. Claims Commission, 1892, pp. 516-517.)

For injuries inflicted by the " Yellows " the agent of the claimant government asked for damages several times in excess of the entire amount of the award given. Much of the damage claimed as inflicted by the " Blues " was placed upon the de facto Government, the " Yellows," by said agent on the ground of lack of diligence in permitting the " Blues " to remain so long at Ciudad Bolívar and in control of the vessels in question, when they could have been so

---

[1] Volume X of these *Reports*.
[2] *Supra*, p. 145.
[3] Moore, p. 1629.

easily dislodged, as was proven when the effort was in fact made. The case can not be held as authority for or against the general rule of international law on this subject.

The umpire holds that this historical review emphasizes and strengthens at every point the position taken by him in the cases of de Lemos [1] and Crossman [2] as to the meaning of the charging words used, interpreting the same from the general purpose, plan, and purview of the protocol itself. It did not seem to him, then, that there could possibly be any uncertainty concerning language apparently so plain and unambiguous to which he gave the only meaning of which it is susceptible *in law*.

From this review of the differences which arose between the claimant government it is found that the ultimatum contained no claim for injuries or damages other than those *well founded in law and fact*. That Germany, its ally, speaking for both, explained that under the language in question there was always the necessity resting upon the claimant government of " intrinsic justification " in each particular case; and that there was always to be decided the question of the legality or illegality of the injuries or seizures complained of. And in silence and tacit acquiescence passed on the statement of Germany, made in careful comparison of views, that its civil-war claims were for acts of violence committed by Venezuelan authorities and her agents. That during the time covered by this review in none of the correspondence or conferences of the allies with Venezuela, or between the allies themselves, or of the allies or Venezuela with the United States Government, or with Mr. Bowen, has the umpire been able to find a sentence, a phrase, or a word directly or indirectly making claim to indemnity for losses suffered through acts of insurgents or directly or indirectly making allusion thereto.

The umpire finds that President Castro understood he was admitting the liability of his Government only for such claims as were " just; " that Mr. Bowen understood he was submitting to arbitration only the matters contained in the ultimatum of each of the allied powers; that the claimant government thought the terms of submission broad enough to include such claims or other claims is not important when considered alone. It becomes important only when it is established that the respondent government knew of and assented to the submission of such claims. The review which has been made does not disclose to the umpire any such knowledge or assent. Rather, he finds not the slightest hint that such a proposition could or would be made or was made to the respondent government by the claimant government or by either of the allied powers. Neither was there anything in the anterior diplomatic action or attitude of the claimant government, or of Germany or of Italy, toward other nations similarly constituted and conditioned, to suggest the possibility, even, of such a claim upon the respondent government, but quite the contrary conclusion was to be drawn therefrom. Hence the umpire holds that the Government of Venezuela did not specifically agree in the protocols to be subject to indemnities for the acts of insurgents.

This leaves the question of liability for the acts of insurgents to rest upon the general principles governing such case.

In the opinion of the umpire it is stated with precision in the treaty of Germany with Colombia in 1892:

It is also stipulated between the contracting parties that the German Government will not attempt to hold the Colombian Government responsible, unless there be due want of diligence on the part of the Colombian authorities or their agents, for

[1] *Supra*, p. 360.
[2] *Supra*, p. 356.

the injuries, oppressions, or extortions occasioned in time of insurrection or civil war to German subjects in the territory of Colombia, through rebels, or caused by savage tribes beyond the control of the Government.[1]

It is also held that the want of due diligence must be made a part of the claimant's case and be established by competent evidence. This is brought out in the treaty of Italy with Colombia in 1892, where the language is " save in the case of *proven* want of due diligence on the part of the Colombian authorities or their agents," and such a requirement is strictly in accord with the ordinary rules of evidence.

If less inequity would result to *all* parties concerned were the British claims allowed than if they were denied it might be necessary to allow them. Reference to the treaties existing between many of the claimant countries and other South American or Central American republics, and of Italy with Venezuela, will settle the question of general equity and will demonstrate that it is only by minimizing the use of the rule of responsibility that we can cause the least inequity. It is, also, easily apparent that if wrong has been done in the cases of Germany and of France it will not be righted by repeating it. The British Government is not in fault because some government has asked and obtained awards for such acts. Its foreign office carefully excluded all claims for acts of revolutionists from the memorials to be presented to the Mixed Commission, and thus prepared they were presented.

The learned British agent is frank and free to assert that his Government preferred that there should be no award in any commission based on such a claim. It is also as apparent as though stated that the British Government expected there would be no such claim made or allowed in any commission. Otherwise they would have admitted the revolutionary feature into their reclamations in the first instance as, according to the learned British agent, they considered such demands rightful to them if granted to any. Certainly, it is not the fault of the umpire of the British-Venezuelan Mixed Commission who held in the de Lemos case that there was responsibility only for illegal acts by the Government or some one acting in its behalf or under its order. It is not the fault of the Italian-Venezuelan Mixed Commission, whose umpire settled the question adversely to such claims before any opinion had been given favoring such claims. The questions of equity by equality and equity by relation of Venezuela to other governments were very strongly before the representatives of the governments, who asked and obtained favorable rulings thereon after the opinions opposed thereto had been declared and filed and after these very governments had established the law and the equities to be in accordance with such denial by their own solemn engagements with similarly ordered republics.

A broader view than is obtained within these ten mixed commissions may well be taken before passing upon this question of equity by equality and by relation. How stands the record? The countries hereinafter named have treaties identical in principle with those of Germany and Colombia and Italy and Colombia:

Italy-Venezuela, 1861;[2] Italy-Colombia, 1892; Spain-Venezuela, 1861;[3] Spain-Ecuador, 1888;[4] Spain-Honduras, 1895; Belgium-Venezuela, 1884;[5]

---

[1] Art. XX. (See British and Foreign State Papers, Vol. 84, p. 144.)
[2] British and Foreign St. Papers, vol. 54, p. 1330.
[3] *Id.*, vol. 53, p. 1050.
[4] *Id.*, vol. 79, p. 632.
[5] *Id.*, vol. 75, p. 39.

France-Mexico, 1886;[1] France-Colombia, 1892;[2] Germany Mexico; San Salvador-Venezuela, 1883.[3]

The learned British agent also raises the point that an international rule applicable to "well-ordered States" in regard to the irresponsibility of governments for the acts of unsuccessful revolutionists may not be easily applied to States possessing the history of the respondent Government.

Concerning this point the umpire is content to accept the concrete judgment, practically uniform, of States whose skilled and trained diplomatists have given this question long years of patient consideration. This concrete judgment he has in the treaties made between Germany and Colombia and Italy and Colombia heretofore quoted and between the other countries above cited, as well as by the historic attitude of the British Government and the Government of the United States of America in their diplomatic treatment of these question in relation to countries having the same general characteristics, in this regard, as Venezuela.

There now remains to consider only the "most favored-nation" proposition. Regarding this it is sufficient in the judgment of the umpire to say that Venezuela has granted to no other country any favors in these protocols not granted to the Government of His Britannic Majesty. He says this modestly, but conscientiously, after careful study. He would avoid, if he could, the clash in judgment this statement involves, but he can not do so and be true to his solemn convictions. That there have been interpretations of several protocols with which the present umpire can not agree and with which this opinion will not accord, he admits to be true. But these interpretations were had and the consequent results followed against the earnest protest and vigorous opposition of the Government of Venezuela, and were therefore clearly not favors granted by her.

In considering, determining, and applying the protocols to this case and to all others; in weighing and settling the facts and the law in each case; in meeting and answering every proposition connected with the proceedings of this Mixed Commission the umpire must never lose sight of the most essential part of the protocols which is none other than the solemn oath or declaration which it prescribes. Before we were allowed to assume the functions of our high office we were required by its provisions to make solemn agreement and declaration —

> carefully to examine and impartially decide, according to justice and the provisions of the protocol of the 13th February, 1903, and of the present agreement, all claims submitted to them (us).

While the oath adds to the requirements of administering our trust according to justice the provisions of the protocol, it is not to be presumed or admitted that there is aught in either of those protocols which is contrary to or subversive of its high and principal behest — justice. This, then, is the ultimate purpose and required result of all our inquiries, examinations, and decisions. It is made, as it should be made, the chief cornerstone of this arbitral structure. There is one other and very important rule of action prescribed to govern us in our deliberations: it is that we "shall decide all claims upon a basis of absolute equity." The way is equity, the end is justice. There is no other way and no other end within the purview of the protocol. Not only must each particular case be determined on these two bases, but each part of the protocols relating to this Commission must be interpreted and construed in accordance therewith. If there be two views of some provisions which, although differing, strike the mind

[1] British and Foreign St. Papers, vol. 77, p. 1090.
[2] *Id.*, vol. 84, p. 137.
[3] *Id.*, vol. 74, p. 298.

with equal force and there is a hesitancy which to adopt, the one must be taken which best withstands the application of this supreme test. The protocols will permit no construction of any part which in its adaptation may deviate from the chosen path or lead to a conclusion at war with the required end. All and every part thereof must be read and interpreted with this fact always predominant. If a question arises, not readily to be apprehended, wherein equity and justice differentiate, then the former must yield, because the obligation of the prescribed oath is the superior rule of action.

International law is not in terms invoked in these protocols, neither is it renounced. But in the judgment of the umpire, since it is a part of the law of the land of both Governments, and since it is the only definitive rule between nations, it is the law of this tribunal interwoven in every line, word, and syllable of the protocols, defining their meaning and illuminating the text; restraining, impelling, and directing every act thereunder.

Webster thus defines equity:

> Equality of rights; natural justice or right; * * * fairness in determination of conflicting claims; impartiality.

Bouvier says in part:

> In a more limited application, it denotes equal justice between contending parties. This is its moral signification, in reference to the rights of parties having conflicting claims; but applied to courts and their jurisdiction and proceedings it has a more restrained and limited signification. (Vol. 1, p. 680.)

The phrase, " absolute equity," used in the protocols the umpire understands and interprets to mean equity unrestrained by any artificial rules in its applic-cation to the given case.

Since this is an international tribunal established by the agreement of nations there can be no other law, in the opinion of the umpire, for its government than the law of nations; and it is, indeed, scarcely necessary to say that the protocols are to be interpreted and this tribunal governed by that law, for there is no other; and that justice and equity are invoked and are to be paramount is not in conflict with this position, for international law is assumed to conform to justice and to be inspired by the principles of equity.

> International law is founded upon natural reason and justice. * * * (Wharton, vol. 1, sec. 8, p. 32.)
>
> The law of nations is the law of nature realized in the relations of separate political communities. (Holland's *Studies in Int. Law*, 169.)
>
> It is the necessary law of nations, because nations are bound by the law of nature to observe it. It is termed by others the natural law of nations because it is obligatory upon them in point of conscience. (Kent's Com., vol. 1, 2.)
>
> The end of the law of nations is the happiness and perfection of the general society of mankind, etc. (*Ib.*)
>
> International law * * * is a system of rules * * * not inconsistent with the principles of natural justice. (Woolsey, *Introd. to Int. Law*, secs. 2 and 3.)
>
> The rules of conduct regulating the intercourse of States. (Halleck, chap. 2, sec. 1.)
>
> The intercourse of nations, therefore, gives rise to international rights and duties, and these require an international law for their regulation and enforcement. That law is not enacted by the will of any common superior upon earth, but it is enacted by the will of God; and is expressed in the consent, tacit or declared, of independent nations. * * * Custom and usage, moreover, outwardly express the consent of nations to things which are naturally — that is, by the law of God — binding upon them. (*Ib.*, sec. 6, quoting Phillimore, vol. 1, preface.)
>
> That when international law has arisen by the free assent of those who enter into certain arrangements, obedience to its provisions is as truly in accordance with

natural law — which requires the observance of contracts — as if natural law had been intuitively discerned or revealed from Heaven, and no consent had been necessary at the outset. (Bouvier's *Law Dict.*, vol. 1, p. 1102.)

The rules which determine the conduct of the general body of civilized States in their dealings with one another. (Lawrence, *Int. Law*, sec. 1.)

International law consists in certain rules of conduct which modern civilized states regard as being binding on them in their relations with one another with a force comparable in nature and degree to that binding the conscientious person to obey the laws of his country. (Hall, *Int. Law*, 1.)

In what has been stated I have referred exclusively to the international obligations imposed on the United States by the general principles of international law, which are the only standards measuring our duty to the Government of Honduras. (Mr. Bayard, Sec. of State, to Mr. Hall, Feb. 6, 1886.)

International law in its practical result guides, restricts, and restrains the strong states, guards and protects the weak.

The guide, commonly safe and constant and usually to be followed, is international law. But if in the given case, not easily to be assumed, it should occur that its precepts are opposed to justice, or lead away from it, or are in disregard of it, or are inadequate or inapplicable, then the determination must be made by recourse to the underlying principles of justice and equity applied as best may be to the cause in hand. The umpire will apply the precepts of international law in all cases where such use will insure justice and equity for this reason, if for no other — that well-defined principles and precepts which have successfully endured the test of time and the crucible of experience and criticism are safe in use, and should never carelessly be departed from in order that one may step out into a way unknown to walk by a course unmarked. But these precepts are to be used as a means to the end, which end is justice.

The rule of justice, equity, and law deduced by the umpire and to be applied here is well expressed in the treaties of Germany and Italy with Colombia hereinbefore quoted. Adapted for our use, the rule will read as follows:

> The Government of Venezuela will not be held liable to the British Government for injuries to property or wrongful seizures thereof, or for damages, vexations, or exactions committed upon or suffered by British subjects in Venezuela during any unsuccessfull insurrection or civil war which has occurred in that country unless there be proven fault or want of due diligence on the part of the Venezuelan authorities or their agents.

The Aroa mines supplementary claim is based wholly on the seizure of their property by revolutionary troops without proof of any fault or lack of due diligence on the part of the titular and respondent Government.

Under the rule adopted this claim must be, and is hereby, disallowed, and judgment will be entered to that effect.

BOLÍVAR RAILWAY COMPANY CASE

A nation is responsible for the acts of a successful revolution from the time such revolution began.[1]

PLUMLEY, *Umpire*:

When this claim came to the umpire on the disagreement of the honorable commissioners, as to parts thereof there had been agreed to and allowed by the commissioners the following amounts:

---

[1] See also *Supra*, p. 119.