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There is no evidence that the Eastern Extension Company can avail itself of a similar plea. The French case is a good example of the payment of compensation, on grounds of equity and comity. which did not exist in the British case.

From these considerations it does not appear that the contention of the British Government on this point is in any way justified.

As to the contention of the British Government that, in the absence of any rule governing the matter of cable cutting, it is the duty of this Tribunal to frame a new rule, we desire to say:

First, the duty of this Tribunal, in our opinion, under article 7 of the Special Agreement, is not to lay down new rules. Such rules could not have retroactive effect, nor could they be considered as being anything more than a personal expression of opinion by members of a particular Tribunal, deriving its authority from only two Governments;

Secondly, in any case this Tribunal, as has been already stated, is of opinion that the principles of international law, applicable to maritime warfare, existing in 1898, are sufficient to enable us to decide this case.

Now, therefore:

The Tribunal decides that the claim of His Britannic Majesty's Government be disallowed.

CUBA SUBMARINE TELEGRAPH COMPANY, LIMITED (GREAT BRITAIN) *v.* UNITED STATES

(November 9, 1923. Pages 82-84.)

SEA WARFARE.—DESTRUCTION OF PRIVATE PROPERTY IN TIME OF WAR.—SUBMARINE CABLES, INTERNATIONAL CONVENTION FOR THE PROTECTION OF—, GENERAL PRINCIPLE OF INTERNATIONAL LAW.—NECESSARY WAR LOSSES.—DISCRIMINATION BETWEEN: (1) ALIENS, (2) OWN NATIONALS AND ALIENS.—APPLICABLE LAW, FRAMING OF NEW RULES BY TRIBUNAL. Destruction by United States naval authorities on May 11 and July 11, 1898, at the entrance of Cienfuegos Harbour and in San Juan Channel, Cuba, during Spanish-American War. of submarine cables, and of cable house on land. Reference made to decision in Eastern Extension case, see p. 112 *supra.*

NEUTRALITY AND PUBLIC SERVICE, EQUITY, AWARENESS OF RISK. Character of Company as Spanish public service more apparent than in Eastern Extension case. *Held* that destruction was fully justified and that equity was on the side of the United States in its refusal to pay damages.

Cross-reference: Am. J. Int. Law, vol. 18 (1924), pp. 842-844.

Bibliography: Nielsen, pp. 40-72.

This is a claim presented by His Britannic Majesty's Government on behalf of the Cuba Submarine Telegraph Company Limited, a British corporation, for a sum of £ 8,174. 17s. 9d., being the amount which this Company had to expend upon the restoration of the submarine cables, connecting various places on the island of Cuba, which had been cut by the United States naval authorities during the Spanish-American war of 1898.

The facts are as follows:

Under concessions granted by the Spanish Government and respectively dated December 31, 1869, and September 29/30, 1895, the Cuba Submarine

Telegraph Company was operating in 1898 certain submarine telegraph cables connecting La Habana, Santiago de Cuba, Cienfuegos, Manzanillo and various other places in the island of Cuba.

In April, 1898, war broke out between the United States and Spain. At the very beginning of the war a proclamation of the President of the United States, dated April 22, 1898, declared a blockade of the north coast of Cuba, including all ports on that coast between Cárdenas and Bahía Honda and the port of Cienfuegos on the south coast of Cuba. That blockade was maintained from that time by the United States naval forces.

On May 11, 1898, by command of the United States superior naval officer, the cables on the eastern side of Colorado Point at the entrance to Cienfuegos Harbour were cut and the cable house on land was destroyed by the American naval forces under heavy fire and in circumstances of considerable difficulty. All communication by ocean cable with Cienfuegos was thus interrupted. On July 11, 1898, the cable connecting Santa Cruz del Sur, Trinidad, Cienfuegos and La Habana with the stronghold of Manzanillo on the east of Cuba was similarly cut in the San Juan Channel; this cutting not only prevented telegraphic communication between the above-mentioned points but, according to the report addressed to the American commanding officer, was to have the great moral effect of checking the inland traffic with Manzanillo and certainly to prevent the calling of reinforcements then in the west to resist the ultimate American attack and the capture of Manzanillo. It may be observed that all these cuttings took place inside enemy territorial waters.

These facts are not contested, nor, from the point of view of the successful conduct of operations by the United States naval and military forces in Cuba, is the importance of interrupting the telegraphic communications between enemy ports denied.

As in the case of the Eastern Extension, Australasia and China Telegraph Company, the question is whether or not the United States Government is bound to pay as damages to the Cuba Company the cost of repairing the said cables and appurtenances.

The contentions of the British Government and of the United States Government are practically the same in both cases, and it would be superfluous to repeat all that has been said in this Tribunal's decision relating to the Eastern Extension Company's claim as to the application of international law, equity, the treatment afforded by the United States Government to the French cable company and the alleged duty of this Tribunal to frame some new rule of international law on this subject. It seems to be sufficient to refer to that decision.

Some particular remarks may, however, be made.

In this case the character of the Company's enterprise as a Spanish public service having a military and strategic interest is more clearly apparent. The transmission of the official correspondence of the Spanish Government was obligatory and gratuitous, the managers and directors being appointed by that Government (Schedule of 1869, articles 4 and 11); inspection of any kind of the contents of the official communications was prohibited; Spanish authorities had the right to inspect every description of correspondence and to refuse to allow the forwarding of despatches prejudicial to the security of the State; all ciphers or secret keys were excluded from all private correspondence *(ibidem* article 12*)*, but, going further still, the service and preservation of the line within the Spanish dominions were reserved to the Spanish authorities and when, in 1895, some new cables were conceded to the Cuba Company, it was expressly explained in the report presented on September 27, 1895, to Her Majesty the Queen Regent of Spain by the Spanish Minister of Colonies, that the cables were to be laid in order to remove some military difficulties presented

by the existing land lines and specified by the Spanish military superior authorities. It was, therefore, according to that report, "indispensable to meet this necessity by replacing the land telegraph lines by submarine cables, which will permit the maintenance at all times of connexion and communication between the strategic points of the island"; and among them, those situated on the south coast between Cienfuegos and Santiago de Cuba were mentioned as being not of less need and importance.

In these circumstances the right of the United States to take measures of admittedly legitimate defense against these means of enemy communication was fully justified; if some compensation was due to the Company for the damage done to the cable, it was for the Spanish Government to make it, always supposing that such compensation had not been already considered in the terms agreed upon under the concessions. In our opinion, not only is there no ground of equity upon which an award should be made against the United States, but equity appears to us to be on the side of the United States in their refusal to pay the damages claimed.

Now, therefore:

The Tribunal decides that the claim be disallowed.

ROBERT E. BROWN (UNITED STATES) *v.* GREAT BRITAIN

(November 23, 1923. Pages 187-202.)

INTERPRETATION OF MUNICIPAL LAW BY INTERNATIONAL TRIBUNAL, DENIAL OF JUSTICE, EXHAUSTION OF LOCAL REMEDIES, EQUITY. Proclamation issued on June 18, 1895, by President of South African Republic designating certain tract of land, called Witfontein, as public gold field beginning July 19, 1895. Suspension of proclamation on July 18, 1895, by Executive Council at Pretoria. Application for 1,200 prospecting licences, made under the proclamation by Mr. Robert E. Brown, United States citizen, on July 19, 1895. Licences refused on the ground of suspension of proclamation. Pegging out of 1,200 mining claims by Brown who, notwithstanding refusal of licences, asserted title. Second proclamation issued on July 20, 1895, by State President adjourning opening of Witfontein until August 2, 1895. Suit brought on July 22, 1895, before High Court of the South African Republic by Brown demanding licences to cover 1,200 claims already pegged off. Resolution adopted on July 26, 1895, by Second Volksraad approving withdrawal of first proclamation and issuance of second one, and declaring that no person who had suffered damage should be entitled to compensation. Third proclamation issued on July 31, 1895, by State President further adjourning opening until August 30, 1895. New government regulations for distributing mining claims by lot drawn up on August 15, 1895, and made applicable to Witfontein on August 20, 1895. Alternative claim for damages in the original action filed by Brown in October, 1895. Judgment in Brown's favour on January 22, 1897, the Court setting aside resolution of July 26, 1895, as unconstitutional, ordering issuance of licences, and inviting Brown to pursue alternative claim for damages by motion in the event of his being unable to peg off 1,200 mining claims. Licences for 1,200 mining claims of no practical value issued on February 9, 1897. Damages sought by Brown by motion, notice of which given on December 10, 1897. Chief Justice dismissed from