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**Italian-Venezuelan Commission: Reception of evidence and Claims (questions of  
procedure)**

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future indemnity. So far as this Commission is concerned the answer must be that they will be excluded. It would be beyond the jurisdiction of this Commission or its umpire to make any more comprehensive ruling as to effect of the protocol upon claims not presented to it.

In view of the foregoing, the following order may be entered upon the minutes:

*Ordered:* That the order of June 18, 1903, relating to the presentation of claims be enlarged as of that date so as to read as follows:

*Ordered.* That the period for the presentation of claims before the Italian and Venezuelan Commission be extended to and including August 10, 1903: *Provided, however,* That the royal Italian legation shall be at liberty after that date and before November 1, 1903, to present formally and fully, with all supporting evidence, any claim official knowledge of the existence of which shall be brought to the Commission on or before August 10, but with relation to which, for lack of data, the royal Italian legation shall not then have been able to submit a formal claim, but with further leave to said legation to bring to the official knowledge of the Commission the names of 30 claimants at Ciudad Bolívar and whatever claimants may exist at Altigracia (de Orituco), Nutrias, Tovar (2), Betijoque, Sebruico, S. Diego, Caripe, Amparo (2), Mitón, Yaritagua, Mendoza, S. Simón, Monte Carmela, Libertad, S. José (de Sucre), Upata, Soledad, Escuque, Turmero, Rubio, Quibor, Río Caribe, Caicara, Socorro, Carajal, Jabón, Aragua (2), Paraguaipoa, Cocorote, Guasipati, Cumarebo, and Tacarigua, San Fernando de Apure, Guama, Sta. Ipire, Colonia Bolívar, and Palmira, on or before September 21, presenting their claims formally and fully, with all supporting evidence, before November 1, 1903.

#### RECEPTION OF EVIDENCE AND CLAIMS

(By the Umpire:)

Additional evidence in support of reclamations may be received after the time for filing claims has expired.

Where within the time limited for the filing of claims nothing more has been presented than a statement (unsupported by proof) that a claim exists, no evidence in substantiation is thereafter receivable.

A "claim" must at least be sufficient to inform the respondent of the right claimed or the wrong inflicted.

AGNOLI, *Commissioner* (claim referred to umpire):

Regarding the question of admitting claims, lacking documents, to-day presented to the Commission by the royal Italian legation, the Italian Commissioner remarks as follows:

It would seem that there can be no doubt except as regards claims not accompanied by a statement of damages, because claims having only said statement have been admitted and even favorably considered in other commissions. A simple written or even verbal demand may have sufficient evidence of veracity to enable the Commission, which is a tribunal of absolute equity, to take it into consideration and pass upon it. In any case the declarations of a claimant constitute a proof which should be studied and weighed by the Commission. Such declaration may even assume the character of an absolute proof, if supported by the sworn statement of the claimant. In practice this principle has been admitted by this Commission in two instances of claims received. The Commission would judge, therefore, said claims when both Commissioners within the limits of the protocol of May 7, 1903, find it proper to pronounce thereon.

It can not be admitted in justice and equity that the Venezuelan Commis-

sioner should have six months from the date of presentation of claims to adduce counterproofs without the legation having an equal right in favor of the claimants.

There now remain only the Ciudad Bolívar and a few other claims in which the legation has not so far been able to produce the formal demand of the claimants nor state precisely the sum claimed. Regarding the demand of the claimant, that seems to be adequately substituted by that of the legation or consular agent who legally represents the claimants. As to the statement of the sum claimed, this does not seem essential, inasmuch as the Commission has the right to determine the amount of the award on a simple statement of the facts in the case, showing that the claimant has actually suffered damages or violence, even though no definite sum be claimed.

The Commission has considered a number of claims in which, perhaps from a sense of delicacy in regard to injury to the person, or illegal incarceration, claimants abstained from fixing their own indemnity, leaving the same to be determined by the Commission.

These reasons would appear sufficient to cause the admission of the claims this day presented to the Commission by the royal legation, whatever be the condition of their documentation.

But other motions, based on special circumstances, support this view.

The legation, giving undoubted proof of respect for and confidence in the integrity of local tribunals, had advised all claimants to rely upon them for the compilation of the necessary evidence. The consequence of this has been that while in other commissions many claims were received based on proof prepared in the respective consulates, this Commission has not done so. Recourse to the consulates would have facilitated in all respects, but principally in the economy of fees, and hastened the presentation of claims; whereas local tribunals, lately closed for considerable periods or but recently reestablished in others, as in the case of Ciudad Bolívar, where the revolution lasted longer than elsewhere and operated with extreme slowness, have been the cause of delays and postponements which it would hardly be fair to saddle on the claimants.

The legation has, besides, proofs of frequent nontransmission or missing of both mail and telegraphic communications, all of which not chargeable to and by no fault of claimants would have the effect of prejudicing their interests in the exercise of their legitimate rights should the Commission rigidly and with severity interpret the clauses of the protocol and precedent decisions of the umpire in this regard.

It is proper to note that if the claims presented October 31 are not admitted, giving sufficient time for the presentation of necessary proof, the legation would be compelled to withdraw them, thus leaving open many questions which it is the common wish and interest to have settled and which the Commission, according to its high mandate of peace and justice, is morally bound to solve, leaving, as far as possible, only unencumbered ground behind it.

Now, as regards more especially the proofs and counter proofs, the reciprocal faculties of the Commissioners (of which, however, the legation and the Italian Commissioner intend to make only the most moderate use as regards the time limit) are determined by Article III of the protocol and can not well be the object of any restrictions or decisions whatsoever, as the honorable umpire is pleased to note in his elaborate decision of June 18 last.

No opinion by the Venezuelan Commissioner.

RALSTON, *Umpire*:

Upon disagreement between the honorable Commissioners for Italy and

Venezuela, two questions are presented to the umpire, which may be summarized as follows:

1. May additional evidence be received on behalf of Italian claimants in cases where formal claims have been filed?

2. May evidence be received in cases where nothing more has been filed than a statement that a certain person, located at a given place (as Ciudad Bolívar), has a claim, but has been delayed in the presentation of his proof because of inadequate mail facilities or judicial delay in taking proof?

The provisions in the protocol of May 7, 1903, bearing upon the matter read as follows:

ARTICLE III. The claims shall be presented to the Commissioners by the royal Italian legation at Caracas before the first day of July, 1903. A reasonable extension of the term may eventually be granted by the Commission. The commissioners shall be bound to decide upon every claim within six months from the day of its presentation, and, in case of disagreement of the Italian and Venezuelan Commissioners, the umpire shall give his decision within six months after having been called upon.

The commissioners shall be bound, before reaching a decision, to receive and carefully examine all evidence presented to them by the royal Italian legation at Caracas and the Government of Venezuela, as well as oral or written arguments submitted by the agent of the legation or of the Government.

The umpire has already passed two orders touching the general subject: The first of June 18, extending the time for the presentation of claims to and including August 9, but permitting the royal Italian legation, after that date and before November 1, to present any claim official knowledge of the existence of which should be brought to the Commission on or before August 9, but with relation to which, for lack of data, the legation had not then been able to submit a formal claim, and further permitting an enlargement for cause shown, as of date of June 18.

Cause being shown on August 10, the umpire enlarged the time within which knowledge of the existence of claimants located in certain places could be brought to the Commission to September 21, the claims to be presented "formally and fully" before November 1, such extension again applying only after September 21 to such of the cases indicated as for lack of data the legation should not have been able to submit a "formal claim."

With regard to the first proposition submitted, the umpire is, on full consideration, disposed to believe that additional evidence may be received by the Commissioners, if not by the umpire, at any time before the final decision. The power so to do is found in the paragraph of Article III, prescribing that —

the commissioners shall be bound before reaching a decision to receive and carefully examine all evidence presented to them by the royal Italian legation at Caracas and the Government of Venezuela, etc.

No restriction as to time of presentation of evidence (save that necessarily involved in the limitation of time for the consideration of claims by the Commission) is contained in the protocol, and the umpire does not feel that he can now make any, or can so construe his prior orders as to create such limitation. The first question will therefore be answered in the affirmative.

The second question is somewhat different. The protocol limits the time for the presentation of claims, with power in the Commission to extend the period. Within the time named by the orders of extension the legation, as above stated, has presented what is termed a "promemoria," but which in the cases under consideration contains absolutely no information relative to the claim save the name of the claimant and his locality. The fundamental question

is whether this constitutes the presentation of a claim, for if it does, then, as above indicated, statements and supporting evidence may yet be received.

Webster's Dictionary defines "claim" as follows:

Claim: 1. A demand of a right or supposed right; a calling for something due or supposed to be due; an assertion of a right or fact.

2. A right to claim or demand something; a title to any debt, privilege, or other thing in possession of another; also a title to anything which another should give or concede to or confer on the claimant. "A bar to all claims upon land." Hallam.

3. The thing claimed or demanded; that (as land) to which anyone intends to establish a right; as a settler's claim, a miner's claim.

It appears to the umpire that the "pro-memorias" referred to contain none of the elements of a claim within the natural application of the definition. They are not the demand of a right or supposed right, for they do not inform us of the amount or nature of the right claimed or the wrong inflicted. They assert nothing save that the legation is informed that a certain man claims something unknown against Venezuela; in other words, that he is a claimant. Before Venezuela can be expected to answer to a claim or demand she must be informed of its nature. This information is not furnished.

But it is said that there is sufficient basis to permit the furnishing of the information at a later time. Let us see. If this position be correct, carrying it to its ultimate, the lacking data may be furnished six months off, on the last day left for the consideration of claims, and Venezuela left without opportunity for defense. It is not for a moment to be supposed that such a course would be pursued; but an interpretation which would permit it must be erroneous.

To now admit that the "pro-memorias" in question are sufficient would be to nullify the effect of the orders of June 18 and August 10, above referred to. The "pro-memorias," when analyzed, simply contain the name and address of the claimants, with an excuse for the lack of other data. By the orders referred to this information (at least as to the important thing — the name) was to have been furnished on or before August 9 and September 21, respectively. When lack of data existed by those dates for the presentation of a "formal claim," such claim could be presented before November 1. But names and places were known before the dates mentioned and were then given, but no "formal claim" was presented for "lack of data." To say to-day that these words practically mean nothing, and that what are truly to be called claims may be presented within the next six months, would expand the time for the presentation of claims far beyond the clear intent of the orders given, and infinitely beyond the practice of other commissions working under similar protocols.

The umpire gives full attention to the suggestion that the present Commission should grant all possible opportunity to claimants to present themselves, to the end that all grievances may be adjusted. He himself has been so far influenced by this feeling that he has heretofore, in fixing November 1 as the final date, given the numerous Italian claimants one month more time than that enjoyed by claimants of other nationalities. But all things must come to an end, and if claimants in Ciudad Bolívar, for instance, having enjoyed one hundred days since the taking of that city by Government troops, have failed to furnish the royal Italian legation with more than their names when, even if it were not possible to supply all needed evidence, they could easily have given it the data required by the orders heretofore referred to, their loss must now be attributed solely to their own remissness. The umpire can not accept either irregularity of mails or vacation of tribunals as a justification for such neglect on the part of individuals. Meanwhile all power he possesses, either directly

or by indirection, to extend the time for the presentation of claims has been exhausted.

The second question must therefore be answered in the negative.

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BURELLI CASE

(By the Umpire:)

Claim not having been presented within the time limited by orders of the umpire, and this delay having been occasioned by default of telegraphic officials of respondent Government, claim must be dismissed, but without prejudice to diplomatic action or judicial remedies.

AGNOLI, *Commissioner* (claim referred to umpire):

The royal Italian legation on December 23 last has presented to the Mixed Commission the unannounced claim of Giuseppe Antonio Burelli, residing at La Puerta, District of Valera, whereby, because of requisitions of merchandise and other supplies, an indemnity of 15,500 bolivars is demanded.

The writer, because of the reasons which he has the honor to mention in the course of this statement, was of opinion that the claim ought to be examined, but the honorable Venezuelan Commissioner at the session of the Commission on the 9th of the present month, declared that he could not accept it, because it was presented too late. In consequence of this difference of opinion the decision of the honorable umpire is asked.

From the documents contained in the record of the claim it is shown:

1. That Giuseppe Antonio Burelli, on August 3 last, caused to be delivered to the Venezuelan telegraphic agent of Escuque a telegram addressed to the royal Italian legation at Caracas, which ought to have received it at the latest on the following day, on account of which he would have announced the existence of his claim, the proofs of which were at that time being made before the competent judicial authority.

2. That said telegram did not reach the royal legation, through no fault of the claimant, either on August 4 or afterwards, wherefore the existence of the claim could not be announced to the Commission prior to the 9th of said month, the final date fixed for that purpose by the award of the honorable umpire of June 18.

3. That the complete documents supporting the claim for indemnity reached the royal legation on the 20th of October last past; that is to say, in due time, according to the above-mentioned award of the honorable umpire, for their transmission to the arbitral tribunal, to which in fact they were not presented prior to the 1st of November, because the announcement of the existence of the claim being wanting at the proper time the presentation of the documents in relation thereto for that reason alone was delayed.

The mere statement of these circumstances is sufficient, in the opinion of the Italian Commissioner, to justify the request of the royal legation that the Burelli claim be admitted.

There has been no negligence whatever on the part of the claimant, and it would be entirely contrary to equity that he should suffer the consequences of the irregularity of the telegraphic agent of Escuque; that is to say, of a governmental act of Venezuela, which is solely responsible for the nonarrival of the announcement and of the delayed presentation of the claim. It is true that this does not operate in every way as a bar, but the delay in its liquidation would prejudice the claimant; and our duty is to do him prompt justice, protecting him against the injurious consequences of the fault of another.