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Mixed Claims Commission (Sweden and Norway-Venezuela)

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MIXED CLAIMS COMMISSION
SWEDEN AND NORWAY - VENEZUELA
CONSTITUTED UNDER THE PROTOCOL OF
10 MARCH 1903

REPORT: Jackson H. Ralston-W. T. Sherman Doyle, *Venezuelan Arbitrations of 1903*, including Protocols, personnel and Rules of Commission, Opinions, and Summary of Awards, etc., published as Senate Document No. 316, Fifty-eighth Congress, second session, Washington, Government Printing Office, 1904, pp. 945-954.

PROTOCOL, MARCH 10, 1903¹

Protocol of an Agreement between the Plenipotentiary of the Republic of Venezuela and the Envoy Extraordinary and Minister Plenipotentiary of Sweden and Norway at Washington, for submission to arbitration of all unsettled claims of citizens of Sweden and Norway against the Republic of Venezuela.

The Republic of Venezuela, Sweden and Norway through their representatives, Herbert W. Bowen, Plenipotentiary of the Republic of Venezuela, and A. Grip, Envoy Extraordinary and Minister Plenipotentiary of Sweden and Norway at Washington, have agreed upon and signed the following Protocol:

ARTICLE I

All claims owned by citizens of Sweden and Norway against the Republic of Venezuela which have been settled by diplomatic agreement or by arbitration between the Governments and which shall have been presented to the commission hereinafter named by the Counsel General of Sweden and Norway at Caracas, shall be examined and decided by a mixed commission, which shall sit at Caracas, and which shall consist of two members, one of whom is to be appointed by the President of Venezuela and the other by His Majesty the King of Sweden and Norway.

It is agreed that an umpire may be named by His Majesty the King of Spain. If either of said commissioners or the umpire should fail or cease to act, his successor shall be appointed forthwith in the same manner as his predecessor. Said commissioners and umpire are to be appointed before the first day of May, 1903.

The commissioners and the umpire shall meet in the city of Caracas on the first day of June, 1903. The umpire shall preside over their deliberations, and shall be competent to decide any question on which the commissioners disagree.

Before assuming the functions of their office the commissioners and the umpire shall take solemn oath, careful to examine and impartially decide, according to justice and the provisions of this convention, all claims submitted to them, and such oaths shall be entered on the record of their proceedings.

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 the provisions of local legislation.

The decisions of the commission, and in the events of their disagreement, those of the umpire, shall be final and conclusive. They shall be in writing. All awards shall be made payable in United States gold or its equivalent in silver.

ARTICLE II

The commissioners, or umpire, as the case may be, shall investigate and

¹ For the Spanish text see the original Report referred to on page 761.

decide said claims upon such evidence or information only as shall be furnished by or on behalf of the respective Governments.

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 respective Governments in support of or in answer to any claim, and to hear oral or written arguments made by the agent of each Government on every claim. In case of their failure to agree in opinion upon any individual claim, the umpire shall decide.

Every claim shall be formally presented to the commissioners within thirty days from the date of their first meeting, unless the commissioners or the umpire in any case extend the period for presenting the claim not exceeding three months longer. The commissioners shall be bound to examine and decide upon every claim within six months from the date of its first formal presentation, and in case of their disagreement the umpire shall examine and decide within a corresponding period from the date of such disagreement.

ARTICLE III

The commissioners and the umpire shall keep an accurate record of their proceedings.

For that purpose each commissioner shall appoint a secretary versed in the language of both countries to assist them in the transaction of the business of the commission.

Except as herein stipulated all questions of procedure shall be left to the determination of the commission, or in case of their disagreement, to the umpire.

ARTICLE IV

Reasonable compensation to the commissioners and to the umpire for their services and expenses and the other expenses of said arbitration, are to be paid in equal moieties by the contracting parties.

ARTICLE V

In order to pay the total amount of the claims to be adjudicated as aforesaid, and other claims of citizens or subjects of other nations, the Government of Venezuela shall set apart for this purpose and alienate to no other purpose, beginning with the month of March 1903, thirty per cent in monthly payments of the customs revenues of La Guaira and Puerto Cabello, and the payments thus set aside shall be divided and distributed in conformity with the decision of The Hague Tribunal.

In case of the failure to carry out the above agreement, Belgian officials shall be placed in charge of the customs of the two ports and shall administer them until the liabilities of the Venezuelan Government in respect to the above claims have been discharged. The reference of the question above stated to The Hague Tribunal will be the subject of a separate protocol.

ARTICLE VI

All existing unspecified awards in favor of Sweden and Norway shall be promptly paid according to the terms of the respective awards.

Done in duplicate at Washington this tenth day of March, 1903.

H. W. BOWEN [SEAL]
A. GRIP [SEAL]

PERSONNEL OF SWEDISH-VENEZUELAN MIXED COMMISSION¹

Umpire. — Ramón Gaytán de Ayala.
Swedish and Norwegian Commissioner. — Guillermo Valentiner.
Venezuelan Commissioner. — F. A. Guzmán Alfaro.
Venezuelan Agent. — F. Arroyo-Parejo.
Swedish and Norwegian Secretary. — Ch. Piton.
Venezuelan Secretary. — Luis Julio Blanco.

OPINIONS IN THE SWEDISH-VENEZUELAN COMMISSION

THE CHRISTINA CASE

Claim referred to umpire on question of the allowance of interest, the Commissioners having agreed upon the amount of the principal of the indemnity. Interest at 5 per cent allowed on the principal award for damages from the date that claimants were proved to have been in their right.

GAYTÁN DE AYALA, *Umpire*:²

The writer, umpire of the Swedish-Norwegian-Venezuelan Mixed Commission, constituted by virtue of the protocol signed at Washington on March 10, 1903, and named by His Majesty, the King of Spain, at the request of the Government of Sweden and Norway, states:

That the record filed to prove the validity and amount of the claim in question having been examined;

That the arguments presented in defense of the rights of their respective constituents by the commissioners of Sweden and Norway and Venezuela, and their opinions relating to the demand for the payment of interest on the amount allowed on the claim which the commissioner of Sweden and Norway presents;

Whereas it appears from the opinion of the Venezuelan commissioner:

That neither the diplomatic nor consular representatives of Sweden and Norway in presenting the *Christina* claim to the commission demanded interest on the sum claimed;

That the creditor has no right to interest for default, except when there has been a delay in payment chargeable to the debtor, and in the present case the delay which has transpired can not be charged to Venezuela, since the Government of the Republic has given notice that it was willing to satisfy the claim, provided it was reduced to a just amount;

That the Government of Venezuela was right in refusing to acknowledge as just the estimate of the damages and injuries made by the owner of the bark *Christina*, as is seen from the award of the commission, by virtue whereof only the fifth part of such claim has been allowed;

That the persistence on the part of the claimants in demanding excessive damages — more than has been agreed were their due — should be considered as the sole cause of delay; and therefore it is neither just nor equitable that Venezuela should be liable for the losses caused by the rash pretensions of said claimants;

That the Venezuelan commissioner calls the attention of the umpire to the rate of interest that is demanded in favor of the claimants, and to the date

¹ No rules of procedure were formulated in this Commission.

² For a French translation see Descamps-Renault *Recueil international des traités du XX^{ème} siècle 1903*, p. 889.

from which said interest should run, alleging with respect to the first point that the rate of 6 per cent per annum is very much too high, and with respect to the second that the claim was not officially presented to Venezuela until the month of September, 1895.

And whereas it appears from the opinion of the commissioner of Sweden and Norway:

That the fundamental spirit of all the protocols signed in Washington is to decide all the claims upon a basis of absolute equity, and that equity has no criterion of making satisfaction for damages and injuries except to reinstate the injured person in the same condition in which he would have been had the damages and injuries not occurred.

That in support of the foregoing doctrine he cites the general rules as to the payment of the claims approved by mutual agreement of all the representatives of the interested powers after and on account of the Boxer uprising at Peking, which rules provided, in Article I, section 5: ¹

Persons who may have suffered damages and injuries as a consequence of the Boxer movement shall be restored to the situation in which they would have been had not the aforesaid uprising taken place.

That said principle is especially applicable to the case of the *Christina*, and that because there is question of damages committed in the year 1892, which was not decided until 1903, when they were estimated at one thousand pounds sterling, this circumstance implies, as against the perpetrator thereof, the obligation to pay interest for the time elapsed;

That he determines 6 per cent per annum as the rate of interest, relying therefore upon the facts that in Venezuela 18 per cent per annum is frequently paid, and that the commercial rate is 12 per cent per annum, and that it is certain that the owners of the *Christina* earned in their business a rate much higher than the said 6 per cent;

The writer, bearing in mind the foregoing opinions of the interested parties, and

Considering that even though the fact alleged by the Venezuelan commissioner be true — that neither the minister nor the consul-general of Sweden and Norway demanded interest upon presenting the claim under consideration — the fact that they did not do so does not involve the express or implied waiver of interest upon claiming specifically, since those officials in demanding a cash indemnity for the damages and injuries caused to their constituents did not abandon the rights that might arise by lapse of time during negotiations of the claim;

Considering that the right to demand the payment of interest arises in the present case out of the length of time it has taken the representatives of the two parties to agree upon the proper amount of the claim, but that said delay can not be attributed exclusively to the negligence or ill will on the part of Sweden and Norway, since on several occasions propositions of settlement were proposed which the Government of Venezuela rejected, for reasons which do not enter into the subject-matter of the discussion before this commission;

Considering that it is a principle of justice universally recognized that the measure of damages should be made coextensive not only with the material direct damages suffered by the injured person, but also with the profits of which he has been deprived;

Considering that when there is question of ascertained sums of money the

¹ Examine Foreign Relations for 1901 (Appendix), p. 107 of the original Report referred to on the title page of the Swedish-Venezuelan Commission.

profits of which the injured party has been deprived are compensated for by the payment of interest which may be general or special, as the case and circumstances connected with the nature of the business in which the interested party devoted himself;

Considering that in cases like that of the *Christina* it is proper to allow interest at the rate generally adopted in the negotiations of owners of ships;

Considering that the legal interest of 3 per cent per annum urged by the commissioner of Venezuela is only applicable by virtue of specific stipulations, or in case of loans of money under absolute security, and not when there is question of industrial or commercial undertakings in which this requisite is necessarily lacking;

Considering that Venezuela pays its creditors interests varying in rate between 9, 6, 5, and 3 per cent per annum, according to the circumstances and sort of the debt;

Considering that the Venezuelan commissioner in calling the attention of the umpire to the rate of interest which the honorable commissioner of Sweden and Norway demands, shows secondarily how it is possible to allow interest in accordance with the principles of justice and equity which are to inspire this decision;

Considering that these very principles of equity and justice hold that interest should be allowed the injured party by reason of the damage suffered from the day when the party causing the injury incurred the inherent liability to pay the same, and that this liability should be considered as fixed in the case of the *Christina* from the day on which the owners and claimants herein proved their blamelessness for the act which gave rise to the detention of said bark;

Whereas Article II, paragraph 1, of the protocol signed at Washington by the representatives of Sweden and Norway and Venezuela on March 10, 1903, the commissioners of the two interested parties agreed upon the amount of the indemnity which ought to be allowed the claimants and fixed it at one thousand pounds, sterling;

Whereas by the disagreement of the commissioners with respect to the payment of interest on the one thousand pounds sterling agreed upon as the amount of the claim, and as a consequence thereof by the disagreement concerning the rate of said interest and concerning the time from which it should run, the writer is required to decide the foregoing disagreements, and bearing scrupulously in mind the provisions of Article I, paragraph 3, of the protocol above mentioned, which says:

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 the provisions of local legislation.

He decides —

1. That interest should be paid.
2. That the rate of interest shall be 5 per cent per annum, which is the rate that Venezuela pays commercial companies on her external debt.
3. That interest should begin to run from the day when the blamelessness of the claimants in the act which caused the detention of the *Christina* was proved; that is, from the 7th day of July, 1892, until the date of the present award.

In case of the commission of a crime in the territory of a State the State is bound, without being requested, to prosecute the criminals before the proper local authorities, and in case of failure of the country to prosecute the wrongdoers it will be held liable in damages to those who have suffered.

A State is responsible in damages committed by revolutionists where it subsequently appoints the participants and leaders of the revolution to office, thereby tacitly approving their conduct.

Where it is shown that documentary evidence can not be produced, the statements of witnesses will be accepted.

GAYTÁN DE AYALA, *Umpire*:

The writer, umpire of the Mixed Swedish and Norwegian Claims Commission, organized at Caracas by virtue of the protocol signed at Washington by the representatives of the two interested nations on March 10, 1903,

Requested by the commissioners of Sweden and Norway and Venezuela to render the award which equity and justice require concerning the claims of the Swedish and Norwegian subjects, Carl Bovallins, Henry Hedlund, and Edwin Bovallins, for the amounts and because of the reasons hereinafter expressed.

Carl Bovallins:	
For cash and articles paid for by him	£875
For injuries	10,000
	10,875
Henry Hedlund:	
For clothes, jewels, papers, etc	£130
For imprisonment and injuries	10,000
	10,130
Edwin Bovallins:	
For personal property, cash, and effects	£351 10s
For personal suffering	10,000
	10,351 10s

Having examined the documents produced to prove the validity and amount of these claims;

Having considered the arguments presented by the commissioners of Sweden and Norway and Venezuela in support of the rights and obligations of their respective constituents;

Having weighed the argument presented by the agent of Venezuela and the report of the commissioner, Dr. T. A. Guzmán Alfaro; and

Considering that the forcible attack by an armed force and other facts set forth by the claimants are proved;

Considering that if the opinion of the agent of Venezuela that the perpetrators of the violence were wrongdoers and sharpers be accepted, it would follow that the obligation of prosecuting and punishing the criminals rested on the competent local authorities, without its being necessary that any request be made by the injured parties for that purpose;¹

Considering that at the time when the acts complained of were committed, and since then, the delinquents have not been chastised or prosecuted, but, on the contrary, their principal leaders have occupied for some time official

¹ See Poggioli case, *supra*, p. 669.

positions, having been appointed by the present Government of Venezuela, and that they are cloaked with authority in the very region where the events took place;

Considering that this circumstance is sufficient in itself to show that the claimants have not been able to address themselves to the local authorities for the purpose of taking the testimony necessary to legally prove the damages and injuries suffered;

Considering that during the greater part of the time elapsed since the outrages occurred until to-day the region where they transpired has remained in a state of war;

Considering that all the acts perpetrated by the authors of the sackage, of which the Orinoco Shipping and Trading Company was the victim, induce one to characterize the bands of armed men in question as revolutionists;

Considering that the Government of Venezuela, by conferring various public offices in the government of the country upon the principals of the said revolutionary forces, tacitly approves their conduct, and according to the principles recognized by public law makes itself responsible for all the acts done by them;

Considering that the persons who assaulted the offices of said Orinoco Shipping and Trading Company, burned and destroyed all the books and documents belonging to the same and to its employees, depriving the latter of the means of producing written detailed proofs of the damages and injuries suffered;

Considering that the claimants have presented the only ones which they could obtain and that they concur in their respective statements sworn to before the competent consular authorities;

Considering that the agent of said company in that region, Carl Bovallins, was absent from Venezuela when the outrages complained of occurred, and that therefore he has no right to the indemnity with respect to the damages like those suffered by his brother, Edwin Bovallins, and by Henry Hedlund, which he demands in his complaint;

By reason of everything stated, and in the name of equity and justice, the umpire decides:

That the Government of Venezuela should pay —	
To Carl Bovallins for loss of cash and personal effects	£200
To Henry Hedlund for loss of money, clothes, jewels, and private documents	£130
For eight days in prison, for sickness contracted thereby, and loss of time	400
	<hr/>
	530
To Edwin Bovallins for the loss of money and personal effects	£240
For five days in prison, bodily sufferings, and loss of employment	400
	<hr/>
	640

NOTE. — In this commission Mr. Christian Anker, owner of the Norwegian bark *Christina*, made claim for £5,000, consisting of the following items:

For the maintenance of the captain and crew for four months during their detention	£1,000
For the use of the ship in transporting troops during this time	2,000
For the loss of an advantageous charter	1,000
For damages caused to the ship during the transportation of troops	1,000
	<hr/>
	5,000

The commissioners disagreed with reference to the allowance of interest from the date of the seizure of the vessel, but agreed in the allowance of £1,000 on the claim.

In the claim of Serine Meling, payment of 84,600 crowns was asked on account of the death of her husband, commander of the steamship *Jotun*, caused by the discharge of artillery upon the vessel at St. Felix on the 11th of June, 1902. The commissioners allowed on this claim the sum of 71,520 crowns.

The claim of the Ydun Life Insurance Company, because of the life-insurance policy which the company had paid to the widow of Captain Meling, was disallowed.

The claim of Messrs. Madsen and Jespersen, owners of the steamer *Jotun*, was for the sum of 4,379.31 crowns, on account of damages caused them by the death of Captain Meling, who commanded the ship. On this claim the sum of 1,244.61 crowns was allowed.
