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**The Venezuelan Preferential Case (Germany, Great Britain, Italy, Venezuela et  
al)**

22 February 1904

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**THE VENEZUELAN PREFERENTIAL CASE**

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**PARTIES: Germany, Great Britain, Italy, Venezuela et al.**

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**COMPROMIS: Protocols signed at Washington, 7 May, 1903.**

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**ARBITRATORS: Permanent Court of Arbitration: N. Mourawieff,  
H. Lammasch, Fr. Martens.**

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**AWARD: 22 February, 1904.**

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Right to preferential treatment in the matter of claims held by certain Powers  
against Venezuela—Jurisdiction of the Tribunal—Good faith—Acquired rights

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SYLLABUS <sup>1</sup>

The arbitration had its origin in a controversy which arose over certain pecuniary claims of the subjects of Great Britain, Germany and Italy against the Republic of Venezuela. A solution not having been reached by the diplomatic negotiations, the controversy culminated on December 11, 1902, in the ordering by Great Britain of a blockade of the ports of Venezuela. Two days afterward Venezuela offered to submit the controversy to arbitration. This offer was ignored and seven days later the blockade of the Venezuelan ports was declared by the British, German and Italian Governments.

At the same time the United States, Mexico, Spain, France, Belgium, the Netherlands, and Sweden and Norway also held claims against Venezuela, which had been the subject of diplomatic negotiations, but no forcible measures had been employed by these Governments to secure the adjustment of their claims.

After the blockade had been put into effect, Venezuela sent a representative to Washington with full powers to negotiate with the representatives of the creditor Powers a settlement of all the matters in controversy. The negotiations took place during the winter and spring of 1903. In the course of the negotiations the Venezuelan representative proposed that the claims of all the countries above-mentioned against Venezuela be paid out of the customs receipts of the ports of La Guaira and Puerto Cabello, thirty per cent of the receipts of which would be set aside each month for that purpose. The proposal was accepted by the claimant nations and an assignment of the revenues mentioned was made in their favor; but Great Britain, Germany and Italy, the blockading Powers, took the position that their claims should not rank with the claims of the other Powers for compensation, but should be given priority of payment. Venezuela declined to accept this view and the question was submitted by agreements signed May 7, 1903, for determination by the Hague tribunal. The other creditor Powers were joined as parties to the arbitration.<sup>2</sup>

Pursuant to the provisions of the protocols the Czar of Russia named three members of the panel of the Permanent Court of Arbitration as arbitrators, no one of whom was a citizen or subject of any of the signatory or creditor Powers, as follows: Nicolas V. Mourawieff, and Fr. Martens of Russia, and Heinrich Lammasch of Austria-Hungary. The sessions of the tribunal began October 1, 1903, and ended November 13, 1903. The decision, which was rendered on February 22, 1904, held that:

1. Germany, Great Britain and Italy have a right to preferential treatment for the payment of their claims against Venezuela;

<sup>1</sup> *The Hague Court Report*, edited by J. B. Scott, Carnegie Endowment for International Peace, New York, 1st Series, 1916, p. 55.

<sup>2</sup> The respective claims of all the creditor Powers were submitted to mixed commissions consisting of one national each of Venezuela and the claimant nation, with a neutral as umpire, which met at Caracas and subsequently reported their awards (see *infra*, p. 155).

2. Venezuela having consented to put aside thirty per cent of the revenues of the customs of La Guaira and Puerto Cabello for the payment of the claims of all nations against Venezuela, the three above-named Powers have a right to preference in the payment of their claims by means of these thirty per cent of the receipts of the two Venezuelan ports above mentioned;

3. Each party to the litigation shall bear its own costs and an equal share of the costs of the tribunal.

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PROTOCOL BETWEEN GERMANY AND VENEZUELA FOR THE  
REFERENCE OF CERTAIN QUESTIONS TO THE PERMANENT  
COURT OF ARBITRATION AT THE HAGUE.

SIGNED AT WASHINGTON, MAY 7, 1903<sup>1, 2</sup>

WHEREAS Protocols have been signed between Germany, Great Britain, Italy, the United States of America, France, Spain, Belgium, The Netherlands, Sweden and Norway, and Mexico on the one hand, and Venezuela on the other hand, containing certain conditions agreed upon for the settlement of claims against the Venezuelan Government;

AND WHEREAS certain further questions arising out of the action taken by the Governments of Germany, Great Britain and Italy, in connection with the settlement of their claims, have not proved to be susceptible of settlement by ordinary diplomatic methods;

AND WHEREAS the Powers interested are resolved to determine these questions by reference to arbitration in accordance with the provisions of the Convention for the Pacific Settlement of International Disputes, signed at The Hague on the 29 July, 1899;

Venezuela and Germany have, with a view to carry out that Resolution, authorized their Representatives, that is to say:

Mr. Herbert W. Bowen as plenipotentiary of the Government of Venezuela, and

The Imperial German Minister. Baron Speck von Sternburg, as representative of the Imperial German Government to conclude the following Agreement:

ARTICLE I

The question as to whether or not Germany, Great Britain, and Italy are entitled to preferential or separate treatment in the payment of their claims against Venezuela shall be submitted for final decision to the Tribunal at The Hague.

Venezuela having agreed to set aside thirty per cent of the Customs Revenues of La Guayra and Puerto Cabello for the payment of the claims of all nations against Venezuela, the Tribunal at The Hague shall decide how the said revenues shall be divided between the Blockading Powers, on the one hand, and the other Creditor Powers, on the other hand, and its decision shall be final.

<sup>1</sup> Bureau international de la Cour Permanente d'Arbitrage, *Recueil des Actes et protocoles concernant le litige entre l'Allemagne, l'Angleterre et l'Italie d'une part et le Venezuela d'autre part. Tribunal d'Arbitrage constitué en vertu des protocoles signés à Washington, le 7 mai 1903, entre les Puissances susmentionnées*, La Haye, Van Langenhuisen Frères, 1904, p. 17.

<sup>2</sup> Identical protocols were signed on the same date by Venezuela with Great Britain and Italy respectively. Belgium, Mexico, the Netherlands, Sweden and Norway, and the United States signed as adherents. Spain, though not signatory, also adhered and was represented by Counsel before the Tribunal (see *The Hague Court Report*, edited by J. B. Scott, etc., pp. 62-64; W. M. Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements between the United States of America and other Powers, 1776-1909*, Vol. II, p. 1876).

If preferential or separate treatment is not given to the Blockading Powers, the Tribunal shall decide how the said revenue shall be distributed among all the Creditor Powers, and the parties hereto agree that the Tribunal, in that case, shall consider, in connection with the payment of the claims out of the 30 per cent., any preference or pledges of revenue enjoyed by any of the Creditor Powers, and shall accordingly decide the question of distribution, so that no Power shall obtain preferential treatment, and its decision shall be final.

#### ARTICLE II

The facts on which shall depend the decision of the questions stated in Article I shall be ascertained in such manner as the Tribunal may determine.

#### ARTICLE III

The Emperor of Russia shall be invited to name and appoint from the Members of the Permanent Court of The Hague three arbitrators to constitute the Tribunal which is to determine and settle the questions submitted to it under and by virtue of this Agreement.

None of the Arbitrators so appointed shall be a subject or citizen of any of the Signatory or Creditor Powers.

This Tribunal shall meet on the first day of September, 1903, and shall render its decision within six months thereafter.

#### ARTICLE IV

The proceedings shall be carried on in the English language, but arguments may, with the permission of the Tribunal, be made in any other language also.

Except as herein otherwise stipulated, the procedure shall be regulated by the Convention of The Hague of July 29th, 1899.

#### ARTICLE V

The Tribunal shall, subject to the general provision laid down in Article 57 of the International Convention of July 29th, 1899, also decide how, when, and by whom the costs of this arbitration shall be paid.

#### ARTICLE VI

Any nation having claims against Venezuela may join as a party in the Arbitration provided for by this Agreement.

DONE in duplicate at Washington, this seventh day of May, one thousand nine hundred and three.

*(Signed)* Herbert W. BOWEN

*(Signed)* STERNBURG

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AWARD OF THE TRIBUNAL OF ARBITRATION CONSTITUTED  
IN VIRTUE OF THE PROTOCOLS SIGNED AT WASHINGTON ON  
7 MAY 1903 BETWEEN GERMANY, GREAT BRITAIN, AND ITALY  
ON THE ONE HAND AND VENEZUELA ON THE OTHER HAND,  
DONE AT THE HAGUE, IN THE PERMANENT COURT OF  
ARBITRATION, 22 FEBRUARY 1904<sup>1</sup>

THE TRIBUNAL OF ARBITRATION, constituted in virtue of the Protocols signed at Washington on May 7th 1903 between Germany, Great Britain and Italy on the one hand and Venezuela on the other hand;

WHEREAS other Protocols were signed to the same effect by Belgium, France, Mexico, the Netherlands, Spain, Sweden and Norway and the United States of America on the one hand and Venezuela on the other hand;

WHEREAS all these Protocols declare the agreement of all the contracting Parties with reference to the settlement of the claims against the Venezuelan Government;

WHEREAS certain further questions, arising out of the action of the Governments of Germany, Great Britain and Italy concerning the settlement of their claims, were not susceptible of solution by the ordinary diplomatic methods;

WHEREAS the Powers interested decided to solve these questions by submitting them to arbitration, in conformity with the dispositions of the Convention, signed at The Hague on July 29th 1899, for the pacific settlement of international disputes;

WHEREAS in virtue of Article III of the Protocols of Washington of May 7th 1903, His Majesty the Emperor of Russia was requested by all the interested Powers to name and appoint from among the members of the Permanent Court of Arbitration of The Hague three Arbitrators who shall form the Tribunal of Arbitration charged with the solution and settlement of the questions which shall be submitted to it in virtue of the above named Protocols;

WHEREAS none of the Arbitrators thus named could be a citizen or subject of any one of the signatory or creditor Powers and whereas the Tribunal was to meet at The Hague on September 1st 1903 and render its award within a term of six months;

His Majesty the Emperor of Russia, conforming to the request of all the signatory Powers of the above-named Protocols of Washington of May 7th 1903, graciously named as Arbitrators the following members of the Permanent Court of Arbitration:

His Excellency Mr. N. V. Mourawieff, Secretary of State of His Majesty the Emperor of Russia, Actual Privy Councillor, Minister of Justice and Procurator General of the Russian Empire,

<sup>1</sup> Bureau international de la Cour Permanente d'Arbitrage, *Recueil des Actes et protocoles concernant le litige entre l'Allemagne, l'Angleterre et l'Italie d'une part et le Venezuela d'autre part. Tribunal d'Arbitrage constitué en vertu des protocoles signés à Washington, le 7 mai 1903, entre les Puissances susmentionnées*, La Haye, Van Langenhuysen Frères, 1904, p. 122.

Mr. H. Lammasch, Professor of Criminal and of International Law at the University of Vienna, Member of the Upper House of the Austrian Parliament, and

His Excellency Mr. F. de Martens, Doctor of Law, Privy Councillor, Permanent Member of the Council of the Russian Ministry of Foreign Affairs, Member of the "Institut de France";

WHEREAS by unforeseen circumstances the Tribunal of Arbitration could not be definitely constituted till October 1st 1903, the Arbitrators, at their first meeting on that day proceeding in conformity with Article XXXIV of the Convention of July 29th 1899 to the nomination of the President of the Tribunal, elected as such His Excellency Mr. Mourawieff, Minister of Justice;

AND WHEREAS in virtue of the Protocols of Washington of May 7th 1903, the above named Arbitrators, forming the legally constituted Tribunal of Arbitration, had to decide, in conformity with Article I of the Protocols of Washington of May 7th 1903, the following points: "The question as to whether or not Germany, Great Britain and Italy are entitled to preferential or separate treatment of their claims against Venezuela, and its decision shall be final.

"Venezuela having agreed to set aside 30 per cent of the Customs Revenues of La Guayra and Puerto Cabello for the payment of the claims of all nations against Venezuela, the Tribunal at The Hague shall decide how the said revenues shall be divided between the Blockading Powers on the one hand and the other Creditor Powers on the other hand, and its decision shall be final.

"If preferential or separate treatment is not given to the Blockading Powers, the Tribunal shall decide how the said revenue shall be distributed among all the Creditor Powers, and the Parties hereto agree that the Tribunal, in that case, shall consider, in connection with the payment of the claims out of the 30 per cent, any preference or pledges of revenues enjoyed by any of the Creditor Powers, and shall accordingly decide the question of distribution, so that no Power shall obtain preferential treatment, and its decision shall be final."

WHEREAS the above named Arbitrators, having examined with impartiality and care all the documents and acts presented to the Tribunal of Arbitration by the Agents of the Powers interested in this litigation, and having listened with the greatest attention to the oral pleadings delivered before the Tribunal by the Agents and Counsel of the Parties to the litigation;

WHEREAS the Tribunal, in its examination of the present litigation, had to be guided by the principles of International Law and the maxims of justice;

WHEREAS the various Protocols signed at Washington since February 13th 1903 and particularly the Protocols of May 7th 1903, the obligatory force of which is beyond all doubt, form the legal basis for the arbitral award;

WHEREAS the Tribunal has no competence at all either to contest the jurisdiction of the Mixed Commissions of Arbitration established at Caracas, nor to judge their action;

WHEREAS the Tribunal considers itself absolutely incompetent to give a decision as to the character or the nature of the military operations undertaken by Germany, Great Britain and Italy against Venezuela;

WHEREAS also the Tribunal of Arbitration was not called upon to decide whether the three Blockading Powers had exhausted all pacific methods in their dispute with Venezuela in order to prevent the employment of force;

And it can only state the fact that since 1901 the Government of Venezuela categorically refused to submit its dispute with Germany and Great Britain to

arbitration which was proposed several times and especially by the Note of the German Government of July 16th 1901.<sup>1</sup>

WHEREAS after the war between Germany, Great Britain and Italy on the one hand and Venezuela on the other hand no formal treaty of peace was concluded between the belligerent Powers;

WHEREAS the Protocols, signed at Washington on February 13th 1903, had not settled all the questions in dispute between the belligerent Parties, leaving open in particular the question of the distribution of the receipts of the Customs of La Guayra and Puerto Cabello;

WHEREAS the belligerent Powers in submitting the question of preferential treatment in the matter of these receipts to the judgment of the Tribunal of Arbitration, agreed that the arbitral award should serve to fill up this void and to ensure the definite re-establishment of peace between them;

WHEREAS on the other hand the warlike operations of the three great European Powers against Venezuela ceased before they had received satisfaction on all their claims, and on the other hand the question of preferential treatment was submitted to arbitration, the Tribunal must recognize in these facts precious evidence in favour of the great principle of arbitration in all phases of international disputes;

WHEREAS the Blockading Powers, in admitting the adhesion to the stipulations of the Protocols of February 13th 1903 of the other Powers which had claims against Venezuela, could evidently not have the intention of renouncing either their acquired rights or their actual privileged position;

WHEREAS the Government of Venezuela in the Protocols of February 13th 1903 (Article I) itself recognizes "in principle the justice of the claims" presented to it by the Governments of Germany, Great Britain and Italy;

WHILE in the Protocol signed between Venezuela and the so-called neutral or pacific Powers the justice of the claims of these latter was not recognized in principle;

WHEREAS the Government of Venezuela until the end of January 1903 in no way protested against the pretention of the Blockading Powers to insist on special securities for the settlement of their claims;

WHEREAS Venezuela itself during the diplomatic negotiations always made a formal distinction between "the allied Powers" and "the neutral or pacific Powers";

WHEREAS the neutral Powers, who now claim before the Tribunal of Arbitration equality in the distribution of the 30 per cent of the Customs receipts of La Guayra and Puerto Cabello, did not protest against the pretentions of the Blockading Powers to a preferential treatment either at the moment of the cessation of the war against Venezuela or immediately after the signature of the Protocols of February 13th 1903;

WHEREAS it appears from the negotiations which resulted in the signature of the Protocols of February 13th and May 7th 1903 that the German and British Governments constantly insisted on their being given guarantees for "a sufficient and punctual discharge of the obligations" (British Memorandum of December 23rd 1902, communicated to the Government of the United States of America);<sup>2</sup>

WHEREAS the plenipotentiary of the Government of Venezuela accepted this reservation on the part of the allied Powers without the least protest;

<sup>1</sup> *Ibid.*, Annex II, p. 155.

<sup>2</sup> *Ibid.*, Annex III, p. 157.

WHEREAS the Government of Venezuela engaged, with respect to the allied Powers alone, to offer special guarantees for the accomplishment of its engagements;

WHEREAS the good faith which ought to govern international relations imposes the duty of stating that the words "all claims" used by the Representative of the Government of Venezuela in his conferences with the Representatives of the allied Powers (Statement left in the hands of Sir Michael Herbert by Mr. H. Bowen of January 23rd 1903),<sup>1</sup> could only mean the claims of these latter and could only refer to them;

WHEREAS the neutral Powers, having taken no part in the warlike operations against Venezuela, could in some respects profit by the circumstances created by those operations, but without acquiring any new rights;

WHEREAS the rights acquired by the neutral or pacific Powers with regard to Venezuela remain in the future absolutely intact and guaranteed by respective international arrangements;

WHEREAS in virtue of Article V of the Protocols of May 7th 1903, signed at Washington, the Tribunal "shall also decide, subject to the general provisions laid down in Article LVII of the International Convention of July 29th 1899, how, when and by whom the costs of this arbitration shall be paid";

FOR THESE REASONS, the Tribunal of Arbitration decides and pronounces unanimously that:

1. Germany, Great Britain and Italy have a right to preferential treatment for the payment of their claims against Venezuela;

2. Venezuela having consented to put aside 30 per cent of the revenues of the Customs of La Guayra and Puerto Cabello for the payment of the claims of all nations against Venezuela, the three above named Powers have a right to preference in the payment of their claims by means of these 30 per cent of the receipts of the two Venezuelan Ports above mentioned;

3. Each Party to the litigation shall bear its own costs and an equal share of the costs of the Tribunal.

The Government of the United States of America is charged with seeing to the execution of this latter clause within a term of three months.

DONE at The Hague, in the Permanent Court of Arbitration, February 22nd 1904.

(Signed) N. MOURAWIEFF

(Signed) H. LAMMASCH

(Signed) MARTENS

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<sup>1</sup> *Ibid.*, Annex IV, p. 159