REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

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PART IX

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Effects of neutrality—proclamation of neutrality entails rights and duties—obligation of due diligence in the performance of neutral obligations—entitlement of a party prejudiced by a violation of neutrality to be indemnified.

Neutral obligations—construction, equipment and armament of a vessel, as well as free admission of vessels in ports of colonies, viewed as a violation of neutrality—admission of a war vessel in the port resulting in an augmentation of the force on board viewed as a breach of the duties of neutrality—insufficient legal means cannot justify failure of due diligence.

Privileges and immunities—extraterritoriality of war vessels not an absolute right under the law of nations, but a proceeding founded on the principle of courtesy—tenders or auxiliary vessels to be viewed as accessories that must follow the lot of their principals and be submitted to the same decisions.

Costs of pursuit of enemy's vessels viewed as indistinguishable from the overall cost of war—no entitlement to be indemnified for such costs.

Equitable compensation for damages—necessity to set aside double claims for the same loss—allowing interest at a reasonable rate viewed as just and reasonable.

Effets de la neutralité—la déclaration de neutralité entraîne des droits et des devoirs—obligation de diligence dans l'exécution des obligations de neutralité—droit d'une partie lésée par la violation de la neutralité à être indemnisée.

Obligations de neutralité—la construction, l'équipement et l'armement d'un navire, ainsi que la libre admission de navires dans les ports coloniaux, sont considérés

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* Reprinted from John Bassett Moore (ed.), *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. I, Washington, 1898, Government Printing Office, p. 653.

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comme des violations de la neutralité—l'admission de navires de guerre dans un port entraînant l'accroissement de la force à bord est considérée comme une violation des devoirs de neutralité—l'insuffisance de moyens juridiques ne peut justifier le non-respect de l'obligation de diligence.

Privilèges et immunités—l'extraterritorialité des navires de guerre n'est pas un droit absolu en vertu du droit des gens, mais une procédure fondée sur le principe de courtoisie—ravitailleurs et embarcations auxiliaires doivent être considérés comme des accessoires qui suivent le sort de leur principal et doivent être soumis aux mêmes décisions.

Coûts de poursuite des navires ennemis considérés comme indissociables du coût total de la guerre—aucun droit à l'indemnisation de tels coûts.

Indemnisation équitable des dommages—nécessité d'écarter les doubles réclamations pour la même perte—octroi d'un intérêt à un taux raisonnable considéré comme juste et raisonnable.

* * * * *

The United States of America and Her Britannic Majesty having agreed by Article I of the treaty concluded and signed at Washington the 8th of May 1871, to refer all the claims "generically known as the Alabama claims" to a tribunal of arbitration to be composed of five arbitrators named:

One by the President of the United States,

One by Her Britannic Majesty,

One by His Majesty the King of Italy,

One by the President of the Swiss Confederation,

One by His Majesty the Emperor of Brazil;

And the President of the United States, Her Britannic Majesty, His Majesty the King of Italy, the President of the Swiss Confederation, and His Majesty the Emperor of Brazil having respectively named their arbitrators, to wit:

The President of the United States, Charles Francis Adams, esquire;

Her Britannic Majesty, Sir Alexander James Edmund Cockburn, baronet, a member of Her Majesty's privy council, lord chief justice of England;

His Majesty the King of Italy, His Excellency Count Frederick Sclopis, of Salerano, a knight of the Order of the Annunciata, minister of state, senator of the Kingdom of Italy;

The President of the Swiss Confederation, M. James Stämpfli;

His Majesty the Emperor of Brazil, His Excellency Marcos Antonio d'Araujó, Viscount d'ltajubá, a grandee of the Empire of Brazil, member of the council of H. M. the Emperor of Brazil, and his envoy extraordinary and minister plenipotentiary in France.

And the five arbitrators above named having assembled at Geneva (in Switzerland) in one of the chambers of the Hôtel de Ville on the 15th of December, 1871, in conformity with the terms of the second article of the Treaty of Washington, of the 8th of May of that year, and having proceeded to the inspection and verification of their respective powers, which were found duly authenticated, the tribunal of arbitration was declared duly organized.

The agents named by each of the high contracting parties, by virtue of the same Article II, to wit:

For the United States of America, John C. Bancroft Davis, esquire;

And for Her Britannic Majesty, Charles Stuart Aubrey, Lord Tenterden, a peer of the United Kingdom, companion of the Most Honorable Order of the Bath, assistant under-secretary of state for foreign affairs;

Whose powers were found likewise duly authenticated, then delivered to each of the arbitrators the printed case prepared by each of the two parties, accompanied by the documents, the official correspondence, and other evidence on which each relied, in conformity with the terms of the third article of the said treaty.

In virtue of the decision made by the tribunal at its first session, the counter-case and additional documents, correspondence, and evidence referred to in Article IV of the said treaty were delivered by the respective agents of the two parties to the secretary of the tribunal on the 15th of April, 1872, at the chamber of conference, at the Hôtel de Ville of Geneva.

The tribunal, in accordance with the vote of adjournment, passed at their second session, held on the 16th of December, 1871, re-assembled at Geneva on the 15th of June, 1872; and the agent of each of the parties duly delivered to each of the arbitrators, and to the agent of the other party, the printed argument referred to in Article V of the said treaty.

The tribunal having since fully taken into their consideration the treaty, and also the cases, counter-cases, documents, evidence, and arguments, and likewise all other communications made to them by the two parties during the progress of their sittings, and having impartially and carefully examined the same,

Has arrived at the decision embodied in the present award:

Whereas, having regard to the VIth and VIIth articles of the said treaty, the arbitrators are bound under the terms of the said VIth article, "in deciding the matters submitted to them, to be governed by the three rules therein specified and by such principles of international law, not inconsistent therewith, as the arbitrators shall determine to have been applicable to the case;"

And whereas the "due diligence" referred to in the first and third of the said rules ought to be exercised by neutral governments in exact proportion to the risks to which either of the belligerents may be exposed, from a failure to fulfil the obligations of neutrality on their part;

And whereas the circumstances out of which the facts constituting the subject-matter of the present controversy arose were of a nature to call for the exercise on the part of Her Britannic Majesty's government of all possible solicitude for the observance of the rights and the duties involved in the proclamation of neutrality issued by Her Majesty on the 13th day of May, 1861;

And whereas the effects of a violation of neutrality committed by means of the construction, equipment, and armament of a vessel are not done away with by any commission which the government of the belligerent power, benefited by the violation of neutrality, may afterwards have granted to that vessel; and the ultimate step, by which the offense is completed, cannot be admissible as a ground for the absolution of the offender, nor can the consummation of his fraud become the means of establishing his innocence;

And whereas the privilege of exterritoriality accorded to vessels of war has been admitted into the law of nations, not as an absolute right, but solely as a proceeding founded on the principle of courtesy and mutual deference between different nations, and therefore can never be appealed to for the protection of acts done in violation of neutrality;

And whereas the absence of a previous notice can not be regarded as a failure in any consideration required by the law of nations, in those cases in which a vessel carries with it its own condemnation;

And whereas, in order to impart to any supplies of coal a character inconsistent with the second rule, prohibiting the use of neutral ports or waters, as a base of naval operations for a belligerent, it is necessary that the said supplies should be connected with special circumstances of time, of persons, or of place, which may combine to give them such character;

And whereas, with respect to the vessel called the Alabama, it clearly results from all the facts relative to the construction of the ship at first designated by the number "290" in the port of Liverpool, and its equipment and armament in the vicinity of Terceira through the agency of the vessels called the "Agrippina" and the "Bahama," dispatched from Great Britain to that end, that the British government failed to use due diligence in the performance of its neutral obligations; and especially that it omitted, notwithstanding the warnings and official representations made by the diplomatic agents of the United States during the construction of the said number "290," to take in due time any effective measures of prevention, and that those orders which it did give at last, for the detention of the vessel, were issued so late that their execution was not practicable;

And whereas, after the escape of that vessel, the measures taken for its pursuit and arrest were so imperfect as to lead to no result, and therefore cannot be considered sufficient to release Great Britain from the responsibility already incurred;

And whereas, in despite of the violations of the neutrality of Great Britain committed by the "290," this same vessel, later known as the confederate

cruiser Alabama, was on several occasions freely admitted into the ports of colonies of Great Britain, instead of being proceeded against as it ought to have been in any and every port within British jurisdiction in which it might have been found;

And whereas the government of Her Britannic Majesty cannot justify itself for a failure in due diligence on the plea of insufficiency of the legal means of action which it possessed:

Four of the arbitrators, for the reasons above assigned, and the fifth for reasons separately assigned by him,

Are of opinion—

That Great Britain has in this case failed, by omission, to fulfill the duties prescribed in the first and the third of the rules established by the Vlth article of the Treaty of Washington.

And whereas, with respect to the vessel called the "Florida", it results from all the facts relative to the construction of the "Oreto" in the port of Liverpool, and to its issue therefrom, which facts failed to induce the authorities in Great Britain to resort to measures adequate to prevent the violation of the neutrality of that nation, notwithstanding the warnings and repeated representations of the agents of the United States, that Her Majesty's government has failed to use due diligence to fulfil the duties of neutrality;

And whereas it likewise results from all the facts relative to the stay of the "Oreto" at Nassau, to her issue from that port, to her enlistment of men, to her supplies, and to her armament, with the co-operation of the British vessel "Prince Alfred," at Green Cay, that there was negligence on the part of the British colonial authorities;

And whereas, notwithstanding the violation of the neutrality of Great Britain committed by the Oreto, this same vessel, later known as the confederate cruiser Florida, was nevertheless on several occasions freely admitted into the ports of British colonies;

And whereas the judicial acquittal of the Oreto at Nassau cannot relieve Great Britain from the responsibility incurred by her under the principles of international law; nor can the fact of the entry of the Florida into the confederate port of Mobile, and of its stay there during four months, extinguish the responsibility previously to that time incurred by Great Britain:

For these reasons,

The tribunal, by a majority of four voices to one, is of opinion—

That Great Britain has in this case failed, by omission, to fulfil the duties prescribed in the first, in the second, and in the third of the rules established by Article VI of the treaty of Washington.

And whereas, with respect to the vessel called the "Shenandoah," it results from all the facts relative to the departure from London of the merchant-vessel the "Sea King," and to the transformation of that ship into a confederate

cruiser under the name of the Shenandoah, near the island of Madeira, that the government of Her Britannic Majesty is not chargeable with any failure, down to that date, in the use of due diligence to fulfil the duties of neutrality;

But whereas it results from all the facts connected with the stay of the Shenandoah at Melbourne, and especially with the augmentation which the British government itself admits to have been clandestinely effected of her force, by the enlistment of men within that port, that there was negligence on the part of the authorities at that place:

For these reasons,

The tribunal is unanimously of opinion—

That Great Britain has not failed, by any act or omission, "to fulfil any of the duties prescribed by the three rules of Article VI in the treaty of Washington, or by the principles of international law not inconsistent therewith," in respect to the vessel called the Shenandoah, during the period of time anterior to her entry into the port of Melbourne;

And by a majority of three to two voices, the tribunal decides that Great Britain has failed, by omission, to fulfil the duties prescribed by the second and third of the rules aforesaid, in the case of this same vessel, from and after her entry into Hobson's Bay, and is therefore responsible for all acts committed by that vessel after her departure from Melbourne, on the 18th day of February 1865.

And so far as relates to the vessels called—

The Tuscaloosa, (tender to the "Alabama",)

The Clarence,

The Tacony, and

The Archer, (tenders to the Florida,)

The tribunal is unanimously of opinion—

That such tenders or auxiliary vessels, being properly regarded as accessories, must necessarily follow the lot of their principals, and be submitted to the same decision which applies to them respectively.

And so far as relates to the vessel called Retribution,

The tribunal, by a majority of three to two voices, is of opinion—

That Great Britain has not failed by any act or omission to fulfil any of the duties prescribed by the three rules of Article VI in the treaty of Washington, or by the principles of international law not inconsistent therewith.

And so far as relates to the vessels called—

The Georgia,

The Sumter,

The Nashville,

The Tallahassee, and

The Chickamauga, respectively,

The tribunal is unanimously of opinion—

That Great Britain has not failed, by any act or omission, to fulfil any of the duties prescribed by the three rules of Article VI in the treaty of Washington, or by the principles of international law not inconsistent therewith.

And so far as relates to the vessels called—

The Sallie,

The Jefferson Davis,

The Music,

The Boston, and

The V. H. Joy, respectively,

The tribunal is unanimously of opinion—

That they ought to be excluded from consideration for want of evidence.

And whereas, so far as relates to the particulars of the indemnity claimed by the United States, the costs of pursuit of the confederate cruisers are not, in the judgment of the tribunal, properly distinguishable from the general expenses of the war carried on by the United States:

The tribunal is, therefore, of opinion, by a majority of three to two voices—

That there is no ground for awarding to the United States any sum by way of indemnity under this head.

And whereas prospective earnings cannot properly be made the subject of compensation, inasmuch as they depend in their nature upon future and uncertain contingencies:

The tribunal is unanimously of opinion—

That there is no ground for awarding to the United States any sum by way of indemnity under this head.

And whereas, in order to arrive at an equitable compensation for the damages which have been sustained, it is necessary to set aside all double claims for the same losses, and all claims for "gross freights," so far as they exceed "net freights";

And whereas it is just and reasonable to allow interest at a reasonable rate;

And whereas, in accordance with the spirit and letter of the Treaty of Washington, it is preferable to adopt the form of adjudication of a sum in gross, rather than to refer the subject of compensation for further discussion and deliberation to a board of assessors, as provided by Article X of the said treaty:

The tribunal, making use of the authority conferred upon it by Article VII of the said treaty by a majority of four voices to one, awards to the United States

a sum of $15,500,000 in gold, as the indemnity to be paid by Great Britain to the United States, for the satisfaction of all the claims referred to the consideration of the tribunal, conformably to the provisions contained in Article VII of the aforesaid treaty.

And, in accordance with the terms of Article XI of the said treaty, the tribunal declares that "all the claims referred to in the treaty as submitted to the tribunal are hereby fully, perfectly, and finally settled."

Furthermore it declares, that "each and every one of the said claims, whether the same may or may not have been presented to the notice of, or made, preferred, or laid before the tribunal, shall henceforth be considered and treated as finally settled, barred, and inadmissible."

In testimony whereof this present decision and award has been made in duplicate, and signed by the arbitrators who have given their assent thereto, the whole being in exact conformity with the provisions of Article VII of the said treaty of Washington.

Made and concluded at the Hôtel de Ville of Geneva, in Switzerland, the 14th day of the month of September, in the year of our Lord one thousand eight hundred and seventy-two.

Charles Francis Adams

Frederick Sclopis

Stämpfli

Vicomte D'Itajubá