

VENEZUELA.

File No. 831.032/1.

MESSAGE OF THE CONSTITUTIONAL PRESIDENT TO THE CONGRESS MAY 10, 1911.

[Extracts.]

In spite of our cordial relations, which are daily growing closer with the United States of North America, it was not possible to accede to the suggestion made by their Government to establish a consular agent at Guanoco. Our laws are definite on this and do not permit such officers in ports where there is no customhouse. This was explained to the representative of that friendly nation, who did not hesitate to recognize this obvious reason.

On the inauguration of my administration in 1908, I secured the arrangement of the diplomatic questions which my predecessor had embittered and made difficult; and after prolonged and laborious conferences between our chancellery and the special representative of the United States, an agreement was reached honorable to both nations, in harmony with the provisions of international law. All the claims were terminated by negotiation except that of the Orinoco Steamship Co. which was submitted to The Hague Tribunal, which declared void the sentence of Superarbitrer Barge and condemned Venezuela to pay \$46,867.42, a sum already paid by my Government in spite of our not finding the judgment justly made.

AWARD OF THE TRIBUNAL OF ARBITRATION IN THE CASE OF THE ORINOCO STEAMSHIP COMPANY vs. VENEZUELA, UNDER THE AGREEMENT OF FEBRUARY 13, 1909, BETWEEN THE UNITED STATES AND VENEZUELA.¹

File No. 431.11 Or 4/159.

The Secretary of the American Agency to the Secretary of State.

THE HAGUE, *October 26, 1910.*

SIR: I have the honor to inclose herewith 10 copies of the award of the Special Tribunal of the Permanent Court of Arbitration in the Orinoco Steamship Co. case. The official French text is accompanied by an official English translation.

I have, etc.,

W. CLAYTON CARPENTER.

[Inclosure.]

AWARD OF THE TRIBUNAL OF ARBITRATION, CONSTITUTED UNDER AN AGREEMENT SIGNED AT CARACAS FEBRUARY 13, 1909, BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED STATES OF VENEZUELA.

By an agreement, signed at Caracas the 13th of February, 1909, the United States of America and of Venezuela have agreed to submit to a tribunal of arbitration, composed of three arbitrators, chosen from the Permanent Court

¹ See Foreign Relations, 1909, p. 617.

of Arbitration, a claim of the United States of America against the United States of Venezuela;

This agreement states:

The arbitral tribunal shall first decide whether the decision of *Umpire Barge*, in this case, in view of all the circumstances and under the principles of international law, is not void, and whether it must be considered to be so conclusive as to preclude a re-examination of the case on its merits. If the arbitral tribunal decides that said decision must be considered final, the case will be considered by the United States of America as closed; but, on the other hand, if the arbitral tribunal decides that said decision of *Umpire Barge* should not be considered as final, the said tribunal shall then hear, examine, and determine the case and render its decisions on its merits.

In virtue of said agreement, the two Governments, respectively, have named as arbitrators the following members of the Permanent Court of Arbitration:

His Excellency Gonzalo de Quesada, envoy extraordinary and minister plenipotentiary of Cuba at Berlin, etc.;

His Excellency A. Beernaert, minister of state, member of the Chamber of Representatives of Belgium, etc.;

And the arbitrators so designated, in virtue of said agreement, have named as umpire:

Mr. H. Lammasch, professor in the University of Vienna, member of the Upper House of the Austrian Parliament, etc.;

The cases, countercases, and conclusions have been duly submitted to the arbitrators and communicated to the parties;

The parties have both pleaded and replied, both having pleaded the merits of the case, as well as the previous question, and the discussion was declared closed on October 19, 1910;

Upon which the tribunal, after mature deliberation, pronounces as follows:

Whereas by the terms of an agreement, dated February 17, 1903, a mixed commission was charged with the decision of all claims owned (*poseidas*) by citizens of the United States of America against the Republic of Venezuela which shall not have been settled by a diplomatic agreement or by arbitration between the two Governments and which shall have been presented by the United States of America; an umpire, to be named by Her Majesty the Queen of the Netherlands, was eventually to give his final and conclusive decision (*definitiva y concluyente*) on any question upon which the commissioners might not have been able to agree;

Whereas the umpire thus appointed, Mr. Barge, has pronounced on the said claims on the 22d of February, 1904;

Whereas it is assuredly in the interest of peace and the development of the institution of international arbitration, so essential to the well-being of nations, that on principle such a decision be accepted, respected and carried out by the parties without any reservation, as it is laid down in article 81 of the Convention for the Pacific Settlement of International Disputes of October 18, 1907; and besides no jurisdiction whatever has been instituted for reconsidering similar decisions;

But whereas in the present case, it having been argued that the decision is void, the parties have entered into a new agreement, under date of the 13th of February, 1909, according to which, without considering the conclusive character of the first decision, this tribunal is called upon to decide whether the decision of *Umpire Barge*, in virtue of the circumstances and in accordance with the principles of international law, be not void, and whether it must be considered so conclusive as to preclude a reexamination of the case on its merits;

Whereas by the agreement of February 13, 1909, both parties have at least implicitly admitted, as vices involving the nullity of an arbitral decision, excessive exercise of jurisdiction and essential error in the judgment (*exceso de poder y error esencial en fallo*);

Whereas the plaintiff party alleges excessive exercise of jurisdiction and numerous errors in law and fact equivalent to essential error;

Whereas, following the principles of equity in accordance with law, when an arbitral award embraces several independent claims, and consequently several decisions, the nullity of one is without influence on any of the others, more especially when, as in the present case, the integrity and the good faith of the arbitrator are not questioned; this being ground for pronouncing separately on each of the points at issue;

I. AS REGARDS THE \$1,209,701.04.

Whereas this tribunal is in the first place called upon to decide whether the award of the umpire is void and whether it must be considered conclusive; and whereas this tribunal would have to decide on the merits of the case only if the umpire's award be declared void;

Whereas it is alleged that the umpire deviated from the terms of the agreement by giving an inexact account of the Grell contract and the claim based on it, and in consequence thereof fell into an essential error; but since the award reproduces said contract textually and in its entire tenor;

Whereas it is scarcely admissible that the umpire should have misunderstood the text and should have exceeded his authority by pronouncing on a claim which had not been submitted to him, by failing to appreciate the connection between the concession in question and exterior navigation, the umpire having decided in terminis that "the permission to navigate these channels was only annexed to the permission to call at Trinidad";

Whereas the appreciation of the facts of the case and the interpretation of the documents were within the competence of the umpire, and as his decisions, when based on such interpretation, are not subject to revision by this tribunal, whose duty it is, not to say if the case has been well or ill judged, but whether the award must be annulled; that if an arbitral decision could be disputed on the ground of erroneous appreciation, appeal, and revision, which the conventions of The Hague of 1899 and 1907 made it their object to avert, would be the general rule;

Whereas the point of view from which the umpire considered the claim of \$513,000 (afterwards reduced in the conclusions of the United States of America to \$335,000, and being part of the said sum of \$1,209,701.04), is the consequence of his interpretation of the contract of May 10, 1900, and of the relation between this contract and the decree of the same date;

Whereas the circumstance that the umpire, not content to have based his award on his interpretation of the contracts, which of itself should be deemed sufficient, has invoked other subsidiary reasons, of a rather more technical character, can not vitiate his decision;

II. AS REGARDS THE \$19,200 (100,000 BOLIVARES).

Whereas the agreement of February 17, 1903, did not invest the arbitrators with discretionary powers, but obliged them to give their decision on a basis of absolute equity without regard to objections of a technical nature, or to the provisions of local legislation (con arreglo absoluto á la equidad, sin reparar en objeciones técnicas, ni en las disposiciones de la legislación local);

Whereas excessive exercise of power may consist not only in deciding a question not submitted to the arbitrators, but also in misinterpreting the express provisions of the agreement in respect of the way in which they are to reach their decisions, notably with regard to the legislation or the principles of law to be applied;

Whereas the only motives for the rejection of the claim for 19,200 dollars are: 1st, the absence of all appeal to the Venezuelan courts of justice, and, 2d, the omission of any previous notification of cession to the debtor, it being evident that "the circumstance that the question might be asked if on the day this claim was filed this indebtedness was proved compellable," could not serve as a justification of rejection;

Whereas it follows from the agreements of 1903 and 1909—on which the present arbitration is based—that the United States of Venezuela had by convention renounced invoking the provisions of article 14 of the Grell contract and of article 4 of the contract of May 10, 1900, and as at the date of said agreements it was, in fact, certain that no lawsuit between the parties had been brought before the Venezuelan courts; and as the maintenance of Venezuelan jurisdiction with regard to these claims would have been incompatible and irreconcilable with the arbitration which had been instituted;

Whereas there is question not of the cession of a concession but of the cession of a debt, and as the omission to notify previously the cession of a debt constitutes but a failure to observe a prescription of local legislation, though a similar prescription also exists in other legislations, it cannot be considered as required by absolute equity, at least when the debtor actually possessed knowledge of the cession and has paid neither the assignor nor the assignee;

III. AS REGARDS THE \$147,638.79.

Whereas with regard to the \$1,053 for the transport of passengers and merchandise in 1900 and the \$25,845.20 for the hire of the steamers *Delta*, *Socorro*, *Masparro*, *Guanare*, *Heroe* from July, 1900, to April, 1902, the award of the umpire is based only on the omission of previous notification of the cession to the Government of Venezuela or of the acceptance by it. this means of defense being eliminated by the agreement, as mentioned before;

Whereas the same might be said of the claim for \$19,571.34 for the restitution of national taxes, said to have been collected contrary to law, and of that of \$3,509.22, on account of the retention of the *Bolivar*; but as it has not been proved, on the one hand, that the taxes here under discussion belonged to those from which the Orinoco Shipping & Trading Co. was exempt and, on the other hand, that the fact objected to proceeded from abuse of authority on the part of the Venezuelan consul; and as both claims must therefore be rejected on their merits, though on other grounds, the annulment of the award on this point would be without interest;

Whereas the decision of the umpire, allowing \$27,692.31 instead of \$28,461.53 for the retention and hire of the *Masparro* and *Socorro* from March 21 to September 18, 1902, as regards the \$769.22 disallowed, is based here also only on the omission of notification of the cession of the debt;

Whereas the umpire's decision with regard to the other claims included under this head for the period after April 1, 1902, is based on a consideration of facts and on an interpretation of legal principles, which are subject neither to reexamination nor to revision. by this tribunal, the decisions awarded on these points not being void;

IV. AS REGARDS THE \$25,000.

Whereas the claim for \$25,000 for counsel fees and expenses of litigation has been disallowed by the umpire in consequence of the rejection of the greater part of the claims of the United States of America, and as by the present award some of these claims having been admitted, it seems equitable to allow part of this sum, which the tribunal fixes ex aequo et bono at \$7,000;

Whereas the Venezuelan law fixes the legal interest at 3 per cent, and as, under these conditions, the tribunal, though aware of the insufficiency of this percentage, can not allow more;

For these reasons:

The tribunal declares void the award of Umpire Barge, dated February 22, 1904, on the four following points:

1. As regards the \$19,200;
2. As regards the \$1,053;
3. As regards the \$25,845.20;
4. As regards the \$769.22 deducted from the claim for \$28,461.53 for the retention and hire of the *Masparro* and *Socorro*;

And deciding, in consequence of the nullity thus recognized and by reason of the elements submitted to its appreciation:

Declares these claims founded and allows to the United States of America, besides the sums allowed by the award of the umpire of February 22, 1904, the sums of: (1) \$19,200; (2) \$1,053; (3) \$25,845.20; (4) \$769.22, the whole with interest at 3 per cent from the date of the claim (June 16, 1903), the whole to be paid within two months after the date of the present award;

Allows besides for the indemnification of counsel fees and expenses of litigation \$7,000;

Rejects the claim for the surplus, the award of Umpire Barge of February 22, 1904, preserving, save for the above points, its full and entire effect.

Done at The Hague in the Permanent Court of Arbitration in triplicate original. October 25, 1910.

The President:

LAMMASCH.

The Secretary General:

MICHIELS VAN VERDUYNEN.

File No. 431.11 Or 4/172

The American Chargé d'Affaires to the Secretary of State.

No. 640.]

AMERICAN LEGATION,
Caracas, December 20, 1910.

SIR: I have the honor to inclose herewith a check, drawn on Messrs. G. Amsinck & Co., New York, by the Bank of Venezuela, for sixty-four thousand four hundred and twelve dollars fifty-nine cents (\$64,412.59) in payment of the award of The Hague Tribunal in the *Orinoco* steamship case.

I have, etc.,

SHELDON WHITEHOUSE.

CELEBRATION OF THE FIRST CENTENARY OF THE INDEPENDENCE
OF VENEZUELA.¹

File No. 831.415 A/6.

*The Secretary of State to the Minister for Foreign Relations of
Venezuela.*DEPARTMENT OF STATE,
Washington, February 27, 1911.

EXCELLENCY: I have the honor to acknowledge the receipt of your note of November 3, 1910, in which you advise the Department that the Government of Venezuela will, during the first week of July next, celebrate the first centennial of the independence of the United States of Venezuela, and that your Government would be highly gratified should the President and the Government of the United States be represented at the festivities which will then take place.

I have the honor to say in reply that your communication has been laid before the President and that he has expressed his intention to be specially represented on the occasion of those festivities in which the Government and people of the United States will feel the most sympathetic interest.

Accept, etc.,

P. C. KNOX.

File No. 831.415 A/15.

The American Minister to the Secretary of State.

No. 35.]

AMERICAN LEGATION,
Caracas, May 29, 1911.

SIR: I have the honor to inclose herewith the program² of the festivities arranged in celebration of Venezuela's centenary. I beg leave especially to call attention to the intention of the President of Venezuela to place a wreath on the statue of Washington on the 4th of July.

¹ See Foreign Relations, 1910, p. 864.² Not printed.

Washington is the only foreigner, at least the only citizen of a non-Bolivian country, to whom a statue has been erected in Caracas, and this very graceful act of the President in personally honoring his memory on our independence day is, I feel sure, another mark of Gen. Gómez' friendship toward our country.

I respectfully and very strongly suggest that instructions be given to the representative of the United States at the centenary to place a wreath, in the name of the President and people of the United States, on the statue of Bolívar—the "Washington of South America"—on the 5th day of July—Venezuela's independence day—or on such other day as may be found, perhaps, to be more convenient after proper consultation with the Venezuelan Government.

It would be appropriate, if this suggestion meets with your approval, and that of the President, if some words in honor of Bolívar could be used on this occasion as coming directly from the President of the United States.

I have, etc.,

JOHN W. GARRETT.

File No. 831.415 A/11.

The Acting Secretary of State to the American Minister.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, June 12, 1911.

The President has decided to send a special ambassador, accompanied by a secretary and military and naval attachés, to the centenary of Venezuelan independence. Mr. Thomas C. Dawson is named special ambassador and Capt. Marsh, United States Navy, commanding the U. S. S. *North Carolina*, will be naval attaché to the special mission. The above named vessel will carry the mission to La Guaira, Venezuela. The names of the secretary and military attaché to the mission will be sent later.

WILSON.

File No. 831.415 A/18.

The Secretary of State to the American Minister.

[Telegram—Paraphrase.]

DEPARTMENT OF STATE,
Washington, June 16, 1911.

The ambassador will reside at the house reserved by the Venezuelan Government. Instructs to accept the offer with appropriate expressions of thanks. Mr. Hugh S. Knox, of the Department of State, will be secretary of the special mission, and Capt. Frank Parker, United States Army, military attaché. The *North Carolina*, which carries the special mission, will arrive at La Guaira in the evening of the 29th instant.

A luncheon followed by a reception will be given by the ambassador on the *North Carolina* on July 4 to the President of Venezuela and his Cabinet. The ambassador also desires to give an official dinner at the temporary embassy on such date as may be found convenient. The cruiser will remain at La Guaira until the 9th. Informally extend invitations to the President and the Cabinet to the luncheon

on the cruiser at the earliest opportunity. The formal invitations will be brought by Mr. Dawson.

The ambassador will place a wreath on the statue of Bolívar on the 5th.

KNOX.

File No. 831.415 A/22.

The American Minister to the Secretary of State.

[Telegram—Paraphrase.]

AMERICAN LEGATION,
Caracas, June 20, 1911.

The President received the invitation to the ambassador's luncheon aboard the *North Carolina* with pleasure, but finds that it will be quite impossible for him to leave Caracas on July 4 or 5. He will gladly accept the invitation to lunch aboard for any day after the 5th. I suggest the following: Reception at the legation July 4, ambassador's dinner at the temporary embassy July 6, luncheon aboard the *North Carolina* July 8.

As the program is overcrowded it is advisable to issue invitations to the ambassador's dinner as early as possible.

GARRETT.

File No. 831.415 A/28b.

The President to the President of Venezuela.

[Telegram.]

THE WHITE HOUSE,
Washington, July 5, 1911.

Permit me to add to the messages of cordial friendship which are being conveyed to Your Excellency and the Government and people of Venezuela by the special embassy of the United States, my most sincere congratulations and those of the Government of the United States on this memorable occasion when the people of your country are celebrating the centennial anniversary of their independence, and to wish for your country continued prosperity. I also offer Your Excellency personally the assurance of my high regard and best wishes.

WM. H. TAFT.

File No. 831.415 A/31.

The President of Venezuela to the President.

[Telegram—Translation.]

CARACAS, July 6, 1911.

In the name of the people of Venezuela and in my own I thankfully acknowledge the felicitations Your Excellency sends me on the occasion of the celebration of the first centennial of our independence. Accept my best wishes for the growing prosperity of the great American Nation and Your Excellency's personal happiness.

JUAN VICENTE GÓMEZ.

