ARBITRATION OF 15 JANUARY 1898 IN CLAIMS MADE AGAINST THE GOVERNMENT OF GUATEMALA UNDER THE CONVENTION CONCLUDED BETWEEN GUATEMALA AND MEXICO ON 1 APRIL 1895 [1]

CLAIM NO. 1—POLICARPO VALENZUELA AND SONS

Policarpo Valenzuela and Sons, having proved their identity, and the identity of their attorney, submitted a claim for 936,654,14 pesos, for loss and damage sustained during the invasion and destruction of their ranch, "San Nicolás", carried out by Guatemalan forces on 29 June 1894 and 4 July 1894.

Guatemala did not deny the acts of invasion and destruction; the arbitrator, therefore, had merely to examine to what degree the damages alleged by the claimants were real, and what compensation should be paid. In support of their claim, P. Valenzuela and Sons presented several statements by witnesses, receipts for costs incurred and other similar evidence. The first witnesses called by the claimants to support their petition did not satisfy their hopes, since these witnesses all stated that they knew nothing of the facts about which they were questioned.

Valenzuela's attorney, therefore, interrupted the interrogation, and called a new series of witnesses, from whom he expected more satisfactory results. His hopes were not unsatisfied, since all of them, with almost complete unanimity, testified to the truth of whatever they were asked. Almost all these witnesses were farm labourers and workers, some of whom could not write nor, therefore, sign their names, yet they could reckon and state the possible cost of a road twenty leagues long or the cost of draining a river with the accessory works; and with a mere glance they could estimate the quantity and value of provisions and other effects stored on the "San

[1] *Boletín Oficial de la Secretaría de Relaciones Exteriores*, Mexico, 1897, t. V, p. 293. Translation by the Secretariat of the United Nations.

Nicolás" ranch. The questions asked of these witnesses during the examination prepared by Valenzuela's attorney invariably began with the phrase: "As it is true, let the witness say that, etc." The arbitrator does not know whether this form of questioning is allowed in Mexican and Guatemalan courts, but he does know that it is rejected in others, since, particularly in dealing with ignorant persons, as in this case, it is almost always conducive to affirmative answers. The arbitrator had, therefore, to attach only relative value and credence to the greater part of the statements contained in this file of the proceedings.

The evidence in defence submitted by Guatemala was no better. Some of Guatemala's witnesses were the same individuals who had carried out the destructive acts which are the cause of these claims—men such as Miles Rock, Manuel S. Otero and their accomplices, whose statements were obviously not admissible, and deserved no credence whatsoever, especially when they assessed damages which they themselves had caused. Others were employees of the Jamet household, and, to a certain degree, were in the same position; since an examination of their testimony showed that although the invasions were not, in part, intended to benefit that household, their result doubtless was to afford it considerable advantages.

These deficiencies in the quality of the evidence introduced considerably increased the difficulty of the arbitrator's work, for the arbitrator must find in the testimony clear facts to help him reach a decision.

The claimants divided the total amount of their claim into several items, which the arbitrator had to examine one by one before rendering his decision.

The first item, for 4,150 pesos, referred to installation costs at the "San Nicolás" ranch, including employees' and workers' salaries for three months. The account did not say which three months these were. But apart from the fact that one of the Valenzuela's own witnesses found these salaries to be exaggerated, it must be kept in mind that, as the testimony revealed, the "San Nicolás" ranch had been in existence at least since the year 1892; the invasion by Guatemalan forces did not take place until June 1894. No reason could be seen, therefore, to compensate costs and salaries paid at least two years before the invasion, and duly recovered by the owners of the ranch. The arbitrator, therefore, did not allow this part.

The second item, for 26,100 pesos, was also for salaries and work performed during the same installation and was rejected for the same reasons.

In the third item, for 25,750 pesos, the salaries and costs which had been disallowed in the previous parts appeared again; but in this part, there were two sections deserving of more careful consideration. These referred to thirty-eight two-room houses, estimated, according to the account, at 100 pesos each; and a main house, with doors, windows, furnishings and store-rooms, estimated at 1,950 pesos. These houses were set on fire by the Guatemalan forces, according to the witnesses' unanimous testimony; Guatemala did not deny the fact. The owners, then, are entitled to compensation, even if the value attributed in the account might seem out of proportion; the value attributed to them by Guatemala—10 pesos—was no less exaggerated in the opposite sense. Having examined the photographs of similar houses, submitted by Guatemala in its brief for the defence, and the descriptions of them appearing in these documents, the arbitrator considered that 25 pesos might be a fair price for each house, and 500 pesos for the main house; therefore, he decided that Guatemala must pay Policarpo Valenzuela and Sons the amount of 1,450 Mexican silver pesos for these items.

The fourth item claimed the amount of 4,787 pesos for provisions, utensils and goods stored on the ranch, which were destroyed during the fire. No doubt, on ranches situated far from towns, it is imperative to have a stock of provisions and utensils; and it must be deduced, therefore, that at the time of the fire there were such provisions at "San Nicolás"; but it is difficult to estimate the quantity. The first witnesses called by the claimants stated that they did not know anything, whereas the second group stated that they were in agreement with the leading questions put to them and stated that they knew all about the provisions, which had been appraised correctly. Some of them certainly might have known of the existence on the ranch of these provisions; but without a detailed examination, which they would have had no reason to make, and in any case did not claim to have made, they could not have known the amount of the provisions. The arbitrator, therefore, lacked precise information to enable him to estimate the quantity; bearing in mind that it had been proved that before the fire the invaders had given time for part of the stores to be removed, and also obvious and conspicuous exaggeration in all the statements submitted by the claimant, finally reduced the amount to 1,500 Mexican silver pesos, which Guatemala is required to pay.

The fifth item claimed 3,800 pesos for a stockyard which was ruined because of the invasion, and for livestock scattered and lost as a result. The same observations made in the previous part also apply to this one, with the additional observation that it did not seem likely that at least some of the scattered livestock could not have been recovered. It seemed fair, then to award to this part the amount of 1,000 Mexican silver pesos, which Guatemala must pay.

The sixth item claimed 3,500 pesos for the cost and maintenance of forty-seven families, whose work was stopped as a result of the invasion. This file contained no evidence of any kind that the number of families residing at "San Nicolás" was forty-seven. It was stated elsewhere that the number of two-room houses was thirty-eight. Supposing—and this supposition is highly favourable to the claimants—that in each of these thirty-eight families there were two persons earning a wage, which the arbitrator estimated at one peso per day; granting that seven days would have been more than sufficient time for these families to move to a settled area; and making the venturesome supposition, for it was unsupported by any evidence, that the claimants paid wages during those seven days, the cost would have amounted to 532 Mexican silver pesos, which is what the arbitrator awarded to this file.

The seventh item claimed 148,235.29 pesos for 2,250 tons of mahogany, seized by the Guatemalan forces. The claimant estimated this timber at the price which, it was said, it would have fetched in Europe: that is, seven pounds sterling per ton. The European price has nothing to do with the subject of these documents; the arbitrator, therefore, had to determine what the price of this wood would be in the place where it was seized. Elsewhere in these proceedings, it was said that the usual price was 25 pesos per ton; but from all these claims, in each of which the price repeatedly had to be determined, it was deduced with some certainty that the price was usually 20 pesos per ton. Elsewhere in this case, it was revealed that the Government of Guatemala, in December 1894, offered to return the seized timber to the claimants; and although the claimants did not say whether they accepted the offer, their very silence seemed to indicate that they took advantage of it. The quantity of timber could give rise to some doubt; but, since this doubt was not removed by evidence offered by

Guatemala in defence, the arbitrator had no choice but to accept the figure indicated by the claimant. All that remained for him to do was to estimate the loss which the claimants might have suffered, either through the retention of the timber from June to December, or through the deterioration which the timber might have undergone; and it seemed that the claimants would be amply compensated if they were awarded one-half of its value. The arbitrator decided, therefore, that for this item Guatemala must pay the claimants 22,500 Mexican silver pesos.

The eighth item, for 79,843.13 pesos, was for 200 tons of timber on which the claimants would have been able to work had the invasion not taken place. This type of damages is of the kind called loss of earnings (*lucro cesante*); it was not, therefore, included in the damages referred to in article 2 of the Convention of 1 April 1895, which specifies that the Convention applies only to direct damages. This part, therefore, was rejected.

The ninth item claimed 5,200 pesos for lay-days and demurrage paid to various ships which could not load as a result of the invasion of "San Nicolás". In support of the claim, the claimants submitted seven receipts from as many masters of vessels, for a total of 6,138 pesos; the amount was then, without any explanation, reduced by 938 pesos. The truth is that the reduction should have been much greater. Some of the witnesses called by Guatemala stated—and in this case their statements were reasonable enough—that ships are not called to load timber until it is in storage; that whether the ship is in the dockyard or is afloat, its arrival would depend upon the level of rivers and streams, and upon other contingencies; and that it would be contrary to the ordinary rules of prudence followed in all commercial operations to keep ships waiting in advance. In spite of all that, and in spite of the fact that the invasion of "San Nicolás" took place during the month of June, 1894, the claimants nevertheless submitted charges for lay-days during the month of May, 1895. This is inadmissible; all that the arbitrator could agree to was that lay-days incurred until the end of October, 1894, should be compensated. That period included only three of the seven ships cited: *Chocolate Girl*, *Mercur* and *Elisa*, lay-days for which amounted in all to 1,300 Mexican silver pesos. That is what the arbitrator awarded to this part.

The tenth item claimed 27,000 pesos, the cost of timber which had to be bought at 40 pesos per ton in order to carry out the contracts entered into by the claimants. The claimants did not say how much wood was bought, and so gave no explanation for the figure mentioned above; nor did they explain why they had paid 40 pesos when as they had said the usual price was 25 pesos. Nor did the file contain any evidence of this purchase, except for a vague statement by one of the witnesses, who said, without giving any details, that he had taken part in the transaction. Since, however, if such a substantial transaction had taken place, a receipt of some sort would have to exist, and since the file did not contain a receipt, the arbitrator rejected this part.

The arbitrator also rejected the eleventh and twelfth items, which claimed 2,500 pesos and 500 pesos, respectively. The first amount was for freight charges paid to the steamer *Tres Hermanos*, for conveying a report of the invasion, and the second was for the cost of mail sent to the "Limón" estate for the same purpose. The file contained no evidence of these expenses worth taking into account.

Finally, the thirteenth item claimed the enormous amount of 600,000 pesos for the impairment of the claimants' credit as a result of their inability to carry out their contracts. They said, in the tenth part of this remarkable

account, that in order to fulfil their obligations, they had bought timber at an exorbitant price; but probably they had not succeeded in their purpose. This part did not merit discussion either, and the arbitrator confined himself to stating that he rejected it, because the damages were not included in the direct damages which are the subject of article 2 of the Convention of 1 April 1895.

Therefore, in view of the considerations expressed in the various items of this claim, the arbitrator reached a decision, and decides that Guatemala must pay Policarpo Valenzuela and Sons the amount of 28,352 Mexican silver pesos.

Mexico City, 15 January 1898.

THE DUKE OF ARCOS

CLAIM NO. 2 - NABOR CÓRDOBA MANZANILLA

Nabor Córdoba Manzanilla submitted a claim for 8,000 Mexican pesos, stating that, finding himself in front of the ranch called "La Constancia", the property of Messrs. Romano and Company, Successors, he was apprehended by Guatemalan government forces, held for five days at La Constancia, and afterwards taken on foot from Tzendales to Lacanjá, where he was set free, but abandoned without provisions; and that he remained in that condition for three days. As evidence of his statements, the claimant presented the testimony of three workers, who stated that they were in Tzendales when he was taken prisoner.

The arbitrator has no need to demonstrate the absolute inadequacy of the evidence submitted by the claimant; his claim must be judged by other considerations.

The origin and basis of this arbitration, and the rules governing it, are found in article 2 of the Convention concluded between Guatemala and Mexico on 1 April 1895. This Convention says ". . . the Government of Guatemala agrees from a sense of justice to indemnify those who were injured by its agents, for the value of the property occupied or destroyed, and for the damages that may have been directly caused to them by such occupation or destruction . . .".

The terms of the article quoted appeared clear and conclusive to the arbitrator. They expressed the desire of the two High Contracting Parties that damages done to property, and direct loss caused by the occupation or destruction of such property, should be compensated. In that article, no

reference was made to personal damages; and it is impossible to believe that had it been the intention of the Contracting Parties to include personal damages in the damages to be compensated by Guatemala, they would not have made a clear and direct reference thereto.

The arbitrator, therefore considered this kind of claim to be outside his jurisdiction, and therefore decides to reject and does reject the claim of Nabor Córdoba Manzanilla.

Mexico City, 15 January 1898.

THE DUKE OF ARCOS

CLAIM NO. 3—ROMANO AND COMPANY, SUCCESSORS

Romano and Company, Successors, having duly proved their identity, and the identity of their attorneys, submitted a claim for 371,771.38 pesos, for the burning and destruction of their ranches "La Constancia" and "San Rafael", carried out by Guatemalan forces in the beginning of the month of June, 1894.

Guatemala did not deny that the acts of burning and destruction took place, and it was, therefore, the arbitrator's duty to determine the amount of damages caused by those acts, and to fix the amount for which Guatemala is liable in this respect.

In support of their claim, Romano and Company, Successors, submitted a very complete brief together with numerous witnesses, a great deal of evidence and many documents. But the arbitrator must protest once again against the form taken by the questioning of witnesses. The questions invariably began with the phrase: "As it is true, let the witness say that, etc.", thus indicating what answer was expected. It does not seem that judges should allow this form, especially when dealing with ignorant persons, and when there is no lawyer on the opposing side to make a cross-examination. In the arbitrator's opinion, it deprives the witnesses' statements of value and effect, and considerably lessens the amount of information on which he may base his decision.

The claimants divided their account into two main items: the first, for 95,271.38 pesos, included costs incurred and losses suffered; whereas the second, for 276,500 pesos, referred to the profit which would have been produced by the cutting down and working of 2,000 trees, operations which had been prevented by the Guatemalan invasion. The arbitrator will now consider this second section.

The damage referred to was not positive and direct, since there was no destruction or retention of goods. The damages were of the kind called loss of earnings (*lucro cesante*). The claimants attempted to prove, in their allegation of 29 December 1897, that the word "damages", which appears in article 2 of the Convention of 1 April 1895, applies precisely to this kind of loss. That part of the article which deals with is referred to here says ". . . the Government of Guatemala agrees from a sense of justice to indemnify those who were injured by its agents for the value of property occupied or destroyed, and for the damages that may have been directly caused to them by such occupation or destruction". Loss of earnings (*lucro cesante*) is certainly a damage caused to the claimant by the occupation; but the allegation mentioned above did not succeed in convincing the arbitrator that such damages are the direct damages to which article 2 applies. The arbitrator had to bear in mind that if the High Contracting Parties, in drawing up their Convention, had wished to include in it indirect or secondary effects, they would have had to express that clearly, in such a way as not to give rise to any doubt. Since they did not do so, the arbitrator had to attribute to the expressions used a strict sense, thus following established precedents in the many arbitral decisions before him. He also had to take into account that in this case, as the claimants acknowledged in their submission, and as Mexico acknowledged in signing the Convention, it was a matter of one who caused damage, but acted in good faith, in the belief that he was exercising acts of jurisdiction in his own territory. It must not be forgotten either that the damage concerning us here may have been temporary instead of permanent, since after the Guatemalan forces were withdrawn, the claimants could have returned to their work, recovering many of the costs incurred, such as surveys, road building and others. It must also be taken into account that in the section under examination—that is, the possible cutting down of trees—no cost, either in labour or in expenses, was incurred. The claimants will see later to what kind of damages the arbitrator considers that the word "damages" in article 2 can apply. In view of the foregoing, the arbitrator rejected that part of the claim appearing in section 2 of the account.

The first item included all real expenses incurred and losses sustained, and was made up of several parts. One of them specified costs connected with three prospecting expeditions, carried out before the "La Constancia" and "San Rafael" ranches were established, and even before the claimants requested permission to cut down the trees.

The claimants say, and rightly so, that such expeditions are necessary before making an application for the land since the existence and the quality of the trees must first be determined; but it must also be recognized that, according to their own conditions, such costs must be subject to many different contingencies. Among others, the expedition might be unsuccessful; no suitable place might be found for the establishment of the ranch, thus entailing the loss of the money spent. Three expeditions were mentioned in this account, but the claimants did not say why there were three instead of one. In any case, the work of prospecting was carried out; and if complete advantage could not be taken of its result in the year 1894, it could have been taken since; and indeed it was taken, as the same claimants said in connexion with work now being done on their house. The arbitrator, therefore, must also reject this part.

The next item deals with the expense of making the application. The claimants paid 3,000 pesos to the Finance Department of the State of Chiapas for permission to cut down 2,000 trees, at the cost of 1.50 pesos

per tree. This operation could and should be considered to be a purchase operation in which after the price was paid, the object sold was not delivered to the buyer owing to Guatemala's interference. Permission was, of course, renewed once free of charge, because the claimants were not yet ready to begin their work. It might be supposed that it could, in the same way, have been renewed a second time; but the claimants assert that this was not so; that after the invasion, they made another expensive arrangement with the Department of Finance, because their former outlay had been lost. This was, then, a real and positive expense, lost directly and immediately owing to an act of the invaders; and the arbitrator considered this counted as damage directly caused by occupation, referred to in article 2 of the Convention. In this connexion, Guatemala claims that expenses incurred prior to the invasion could not be considered consequences of the invasion. Of course, the money was paid before the invasion, but it is also true that it was lost after the invasion, and the arbitrator, therefore, considered the claimants to be entitled to be indemnified for the 3,000 pesos which they had spent for that purpose.

The other item, concerning installation, claimed 84,186.38 pesos; it included, on the one hand, the cost of a road 50 leagues long from "La Reforma" to "La Constancia", and on the other hand, the value of the houses, crops and effects destroyed by the invasion. In support both of this and of other parts of the claim, the claimants presented an authenticated copy of the account books of their firm. Other claimants should have followed their example, since the books of a ranch as respectable as is the claimants' are authentic; so long as no evidence of fraud was presented, the arbitrator could not reject the figures appearing in them. He refused therefore to take into consideration the supposition made by Guatemala in its submission that these figures were not correct; but, of the many expenses contained in these books, covering the years 1891-1894, it was possible to decide which, within the spirit of the Convention, merited compensation, and which did not. Costs incurred in building the road, in the arbitrators' opinion, did not merit compensation. Not only was the road not destroyed or damaged by the invading forces, but it has served, and now continues to serve, the Romano household. There was, then, no reason to demand compensation for its cost.

As for the considerable quantity of provisions, medicaments and effects which seemingly existed at "La Constancia" at the time of the fire, and which were presumed destroyed, the arbitrator must observe that on a ranch such as that, separated by long distances from any settlement, there must necessarily be a stock of provisions. But in the accounts, on the one hand, a part of the provisions was included which certainly was not at "La Constancia"; another part must have been consumed before the time of the invasion; and on the other hand, the arbitrator also observed that the manager of that ranch, Nabor Córdoba Manzanilla, in one of his statements, said that he requested and received from the Guatemalan Commission a period of ten days to remove all his many workers gradually from the ranch. He had at his disposal a substantial number of men and animals; it might, then, be affirmed that he removed from the ranch all the movable effects which were situated there. The arbitrator, therefore, did not consider this part of the claim to be just.

That was not the case with the destruction of houses and sheds. There were, according to the arbitrator's count, thirteen of these; and according to the ample descriptions of their sizes and quality, they apparently must have been worth more than the ordinary type of ranch buildings. The

arbitrator bore in mind that many of Guatemala's witnesses had said that there were only three houses at "La Constancia"; but the testimony of Miles Rock, Otero and others was refuted by an engineer, T. Molina, called, also by Guatemala, on 14 September 1897, who said he had seen twelve houses. The arbitrator, therefore, considered that for these items the claimants should be paid the amount of 650 pesos.

Finally, claims were made for thirty-two maize fields, and other fields under cultivation, destroyed by the invading forces. The claimants calculated that these maize fields and other fields under cultivation, which were almost ripe for harvesting, were going to yield in all 2,376 *zontles* of maize; they valued each *zontle* at 28 pesos. Without taking any account whatsoever of statements made on this subject by some of the witnesses called by Guatemala, such as the aforementioned Miles Rock and Manuel S. Otero, who, being the perpetrators of the destruction, lacked any kind of authority to make statements, the arbitrator did, however, have some observations to make on the point in question. The number of *zontles* about to be harvested could be deduced only by calculation, which, especially on the part of the interested party, would be subject to error. It should, then, have been reduced somewhat and it surely would not seem excessive if the arbitrator set the number at 2,000. As for the price, the arbitrator could not accept it either. Of course, the claimants had given irrefutable proof that, since the price of maize at "La Reforma" was five pesos per *zontle*, and since the price of transport from "La Reforma" to "La Constancia" was 23.60 pesos, the *zontle* must have been worth 28.60 pesos in Tzendales. The claimants had then reduced the price by 60 centavos per *zontle*. But that was not the estimate which the arbitrator made. The maize in question had not come from "La Reforma". It had been sown in Tzendales, precisely so as not to have to pay the exorbitant price of transport. It had been sown for the consumption of the people there, and, in that wilderness, there was no buyer to whom they could have sold it for that or any other price. Nevertheless, the arbitrator agreed to attribute to the maize a price much higher than the price in a settled area, and, basing this price on half that proposed by the claimants, he considered that he had arrived at a just and equitable settlement. He estimated 2,000 *zontles* at 14 pesos each, and decided that the claimants should, for that item, receive 28,000 pesos. The arbitrator, therefore, decides that for the total claim Guatemala must pay Romano and Company, Successors, the amount of 31,650 Mexican silver pesos.

Mexico City, 15 January 1898.

THE DUKE OF ARCOS

CLAIM NO. 4—TRÁNSITO MEJENES

Tránsito Mejenes, the manager of the "San Nicolás" ranch, the property of P. Valenzuela and Sons, having proved his identity, and the identity of his attorney, submitted a claim for 10,000 pesos. This amount was divided into two parts: one, for 4,000 pesos, was his claim for having been imprisoned and ill-treated by the Guatemalan forces; the other, for 6,000 pesos, was for not having collected the 2½ per cent interest due to him on 1,200 tons of mahogany worth 20 pesos a ton, which could not be worked.

The submission in support of this claim was contained in six statements, including the statement of the claimant himself, and a copy of a letter written by Mr. Manuel S. Otero. Of the five witnesses, only two mentioned Tránsito Mejenes' detention, and did not say how long it lasted; and it can be inferred from only one of them that it did not last more than one day. It was also inferred from these statements, and from the interested party's statement, that there was no imprisonment at all, as the lawyers' memorandum had asserted, but only detention. The three other witnesses did not refer to Mejenes at all, and one cannot understand why their statements were included in this file. Moreover, be that as it may, the arbitrator considered that in accordance with the considerations he expressed in refusing to award Claim No. 2, made by Nabor Córdoba Manzanilla, it would be outside his competence to award any compensation for personal damages, according to the terms of article 2 of the Convention concluded between Guatemala and Mexico on 1 April 1895; for that reason, he rejects this part of Tránsito Mejenes' claim.

The second amount, 6,000 pesos, was based on the statement made by the claimants' attorney that the claimant was entitled to 2½ per cent of the value of 1,200 tons of mahogany, belonging to Policarpo Valenzuela and Sons, and priced at 20 pesos per ton, which was not worked because of the invasion by Guatemalan forces. These amounts were repeated by the attorney, both in figures and in letters, in his two memoranda, dated 25 February 1896 and 23 April 1897. The arbitrator could not reconcile the facts presented with the conclusion submitted by the attorney. One thousand two hundred tons at 20 pesos each would be worth 24,000 pesos; and 2½ per cent of that amount would be 600 pesos, not 6,000, as Mejenes' attorney asserted. It is hard to believe that this enormous difference was the result of a slip of the pen; for it was repeated, as I have said, in figures and in letters, in the two memoranda, drawn up on different and separate dates. On that difference was founded the total claim of 10,000 pesos, which, according to the claimant's evidence, should only have been 4,000 and 600. As for evidence of the claimant's right to the 2½ per cent mentioned, not only did none appear in the file, but there was no document in the file containing the slightest allusion to it. It is true that the attorney said in his memoranda that the evidence was to be found in the claim submitted by Policarpo Valenzuela and Sons, but the attorney did not consider that in drawing up a claim for a

substantial amount, it was his duty to take the trouble to copy this evidence and attach it to the file, thus making it complete.

Despite the fact that this part of the claim, based as it was on the fact, attested to by the various memoranda, that inability to work the 1,200 tons of mahogany constituted a loss of earnings (*lucro cesante*), and consequently was not included in the direct damages referred to in article 2 of the Convention of 1 April 1895, for which reason the claim could be immediately rejected; and despite the obvious carelessness and negligence with which this claim was prepared and submitted, the arbitrator wished to exhaust every possible means of forming a fair judgement; he re-read Policarpo Valenzuela's claim, seeking evidence favourable to Tránsito Mejenes' claim. But his work was in vain, since not only was no evidence found in P. Valenzuela's claim fot the claimant's assertions, but no reference whatsoever was made to them.

Therefore, this claim is rejected.

Mexico City, 15 January 1898.

THE DUKE OF ARCOS

CLAIM NO. 5—MIGUEL TORRUCO (EGIPTO RANCH)

Miguel Torruco, having proved his identity, and the identity of his attorney, submitted a claim for 92,272.05 pesos for personal damages and damages and loss sustained as a result of the invasion and destruction of his ranch, "Egipto", by Guatemalan forces during the month of July, 1892.

The largest of all the entries making up this claim was one for 75,000 pesos, which Torruco claimed as compensation for having been detained on his ranch, taken to Flores, Department of Petén, and held there in prison for fourteen days. The arbitrator has already had occasion to demonstrate that he does not believe personal damages to be included among those referred to in article 2 of the Convention of 1 April 1895 or that the expression "damages that may have been directly caused" means precisely that kind of damages, as one of the claimants had tried to prove without, however, succeeding in convincing the arbitrator. The arbitrator cannot believe that a factor so important as compensation for personal damages would not have been defined and expressed by the High Contracting Parties sufficiently explicitly and clearly so as not to give rise to any doubt whatsoever. Since that was not the case, the arbitrator must conclude that that sort of damages is not within his competence, and that he must reject this part of this claim, which he did. But those damages,

which the arbitrator recognized that he was powerless to compensate, gave rise immediately, and in a direct way, to others, which, in his opinion, are included in the damages directly caused by Guatemala's acts. The good faith in which Guatemala acted, as acknowledged by Mexico at the signing of the Convention, cannot relieve Guatemala of having to compensate for direct damages; and the arbitrator decided, therefore, that Guatemala must return to Miguel Torruco the 930 pesos which he had to pay in order to get out of prison, as was proved by the account books of the administration of Finance of Ciudad Flores; the 72.80 pesos which were also demanded of him for taxes, acknowledged as received by the Administration of Finance of Petén; and the 550 pesos which, according to a certificate of the Petén Prefecture of Police, he paid in costs and fines for the cutting of trees on his ranch. Guatemala alleged, to no purpose, that Torruco was being prosecuted for the offence of smuggling, and that Guatemala had arrested him for this reason, in the belief that it was thus exercising an act of jurisdiction in its own territory. That is precisely what was defined in the Convention of 1 April 1895, in which Guatemala undertook to indemnify for damages directly caused in the exercise of "acts of sovereignty", as article 1 of the Convention says, "under the conviction of making use of its rights". Neither could it be believed that setting fire to a ranch would be included in judicial proceedings instituted for the offence of smuggling.

For the parts referred to, then, Guatemala must pay Miguel Torruco the amount of 1,552.80 pesos; the arbitrator did not consider other costs which, as a result of his being imprisoned, the claimant included in his account —for example, lawyer's fees, servants' travel expenses and other costs— since the arbitrator did not consider these to be direct damages or necessary expenses.

As positive and direct damages caused by the invasion, the claimant presented a claim for 1,400 pesos, for goods removed by the Guatemalan forces from the "Egipto" Ranch to Petén. It would be believable, of course —and some of his witnesses attested to this—that there was a stock of provision at the ranch, although no detailed description of it appeared in the submission; this was, besides, confirmed by the evidence submitted by Guatemala in defence; but the same Miguel Torruco, in a letter addressed to Rafael Cánovas on 22 July 1892, stated that the value of the goods taken was from 800 to 1,000 pesos. The arbitrator accepted the claimant's higher estimate, and declared that for this item, Guatemala must pay Torruco the amount of 1,000 pesos.

Under another item 1,400 pesos were claimed for nineteen houses burnt down by the invaders. An expert named by the court at Tenosique to appraise the value of the houses destroyed said that the few remains did not enable him to decide what materials they were made of; nevertheless, probably basing his estimate on the size of each house, he appraised their total value at 605 pesos. The arbitrator also accepted that figure, and decided that it must be paid to Torruco by Guatemala.

Finally, in these accounts, there is an item for 7,600 pesos, for failure to deliver to Federico Schindler 190 tons of wood. In support of this, there is in the file a copy of certain clauses in a contract concluded between the agents of Schindler and Torruco, for the delivery, in the course of the year, of 400 tons of wood. Of this quantity, it seemed that 190 tons had not been delivered. There was, besides, a statement by Mamerto Canto, Schindler's agent, who said that on 31 December he would debit Torruco's account with 7,600 pesos unless the remaining tons were delivered. But there was no

indication that the threat was carried out. It would seem that Torruco must have had enough wood to carry out his contracts, since in Flores he was obliged to pay 550 pesos for 105 trees which he had cut down; he has since been compensated for the expense.

On the one hand, Torruco said that a ton of mahogany was worth 20 pesos; which would reduce his debt to 3,800 pesos; on the other hand, Canto, without explaining why, said that for his client, a ton would be worth 40 pesos. All these calculations of damages and unlikely profits, combined with lack of evidence, cannot be taken into account by the arbitrator, who completely rejects this part.

In consideration of the above, the arbitrator decides that for the claim concerning the "Egipto" ranch, Guatemala must pay Torruco the amount of 3,157.80 Mexican silver pesos.

Mexico City, 15 January 1898.

THE DUKE OF ARCOS

CLAIM NO. 8—FEDERICO SCHINDLER

Federico Schindler, having proved his identity, but in no way the identity of the counsel who claimed to represent him, brought forward a claim for 388,100 pesos, based on damages of different kinds, sustained as a result of the invasion of the "Egipto" and "Agua Azul" ranches by Guatemalan forces, which had already appeared in claims numbers 5 and 6, made by Miguel Torruco. The memorandum and a document presenting evidence were signed by the party concerned, and the arbitrator confined himself to them, since he could not take into account those which bore only the signature of counsel who was not duly authorized to take part in these proceedings. These latter documents were, besides, very few, and would in no way have changed the final decision.

The substantial amount mentioned above was divided into the following items: (1) 75,000 pesos for having been unable to deliver to Rayner and Company, New York, 1,500 tons of mahogany which Torruco should have delivered according to a contract concluded between them; the loss sustained thereby was estimated at 50 pesos per ton; (2) 100,000 pesos for loss of security paid to the same Rayner and Company, New York; (3) 5,600 pesos as interest on 30,000 pesos lent to Torruco, which Torruco could not pay; (4) 3,000 pesos for employees' provisions and wages; (5) 4,500 pesos

for travel expenses, postal charges, stamps, documents, etc., etc.; and (6) 200,000 pesos for loss which his credit had suffered, and for the interruption of his business in general. The enormous sum claimed by Federico Schindler was made up of these items; in support of his claim, he presented the contract which he had signed with Miguel Torruco, who was to deliver to him 1,500 tons of mahogany; a few letters from Torruco; and statements by the claimant and his employees.

The arbitrator could reject some of the items immediately, without making a detailed examination of them. Such was the sixth, in which Schindler assessed at 200,000 pesos the damage he had sustained by the loss of his credit and by the interruption of his business. The arbitrator had no means whatsoever of assessing the claimant's credit; but that was unimportant, since such damage, if it existed, would not be included in the direct damage to property dealt with in article 2 of the Convention concluded between Guatemala and Mexico on 1 April 1895.

The amounts claimed under (4) and (5) were in no way justified or proved in this submission, since it contained only three accounts for travel and other expenses. These were not authenticated, and, compared with the claims, were of insignificant amounts. Further, no reason was given why any of these expenses could be presented in these claims, since there was nothing to show the relation they bore to the invasion by Guatemalan forces. The submission contained no evidence that Federico Schindler was a ranch owner; for although it was mentioned in passing, in the contract concluded with Torruco for the delivery of wood, that the ranch was to be established on Federico Schindler's land, it was stated elsewhere that the ranch belonged to Torruco, since Torruco had placed it, together with another ranch which he owned, called "Concepción", as collateral for the money which he owed to Schindler. Further, in several official and private documents included in the files concerning the "Egipto" and "Agua Azul" ranches, these were always mentioned as belonging to Torruco, in whose name, besides, the corresponding permits to cut wood were made out by the competent authorities. The result, then, was that Schindler's interest in Torruco's ranch consisted only in the fact that he was to recover, in the form of wood, the money which he had lent; therefore, the travel expenses, the expenses of his employees and still less the supply of provisions bore no direct relation to the action of the Guatemalan forces. The arbitrator, therefore, finds no basis for these two items of the claim referred to.

Item (3) claimed 5,600 pesos as interest on 30,000 pesos lent to Torruco. Torruco, for his part, recognized in the contract referred to above a debt of only 22,038 pesos; as for interest, nowhere in this file was it said that there was any, much less that the rate was 12 per cent, as asserted in the claimant's memorandum. Be that as it may, what the arbitrator has to consider is that he is dealing with a debt owed by Torruco to Schindler; that losses sustained by Torruco had been taken into consideration in examining his claims; and therefore, that Schindler should present claims for money owed to him to Torruco, not to the Government of Guatemala. This item, therefore, was altogether unfounded.

Item (2) claims 100,000 pesos which, so the claimant's memorandum says, constitutes security paid to Rayner and Co., New York, and lost because Schindler was unable to fulfil his contract. The file contained no evidence of the existence of that security or of its loss. Elsewhere, Schindler said that his contract required him to deliver to Rayner 3,500 tons of mahogany; and since he was to receive from Torruco only 1,500 tons, it was not the want of that quantity of timber which prevented him from fulfilling

his contract completely. He could not thereby have lost all his security. But above all, and the arbitrator confines himself to this, if this loss existed, and there is neither any proof nor any indication that it did, it would be a completely indirect damage, which would not be included among those considered by article 2 of the Convention of 1 April 1895.

Finally, item (1) claims 75,000 pesos for the 1,500 tons of mahogany which Schindler was supposed to receive from Torruco, according to the contract which they had concluded on 8 February 1893. The claimant asks for 50 pesos per ton; and since the price was 20 pesos per ton, as was repeatedly shown both in this and in other claims, it is to be supposed that the overcharge of 30 pesos per ton was intended to cover other indirect losses which the claimant may have sustained as a result of not receiving the timber according to contract. Since the claimant, however, has already, in the various parts of this claim already examined, submitted claims asking for substantial amounts for more or less remote and more or less indirect damages which he supposedly sustained, it can in no way be seen upon what basis he could set the enormous overcharge which he attributed to the unreceived wood, since the result of so doing would be to claim the same thing twice in two different parts. Therefore, having rejected this, it remains to be seen only whether the 1,500 tons of mahogany really belonged to Federico Schindler. There was no doubt, according to the documents appearing in the file, that they were intended to be delivered to him as payment for the money owed to him. But this, before the act of delivery, does not constitute ownership. Although the ranch might have been established on Federico Schindler's land—and that has not been proved—it was Miguel Torruco's property. It was so considered in all the documents, both in this claim and in Torruco's claims; it was so considered both in the examination and in the decisions relating to Torruco's claims. Certainly the property of a person generally constitutes a guarantee for his debts; but until it is delivered, it does not become the property of the creditor. Therefore, if the 1,500 tons of timber had been destroyed or seized by the Guatemalan forces, those forces would have destroyed or seized something which, although it was intended for a special purpose, was at that moment Torruco's property; Frderico Schindler can take action only against Torruco in order to recover his credit or to be indemnified, if there were any grounds, for the damages sustained.

In view of these considerations, the arbitrator decides to reject, and does reject, Federico Schindler's claim in every item.

Mexico City, 15 January 1898.

THE DUKE OF ARCOS