

DECISION GIVEN BY HIS MAJESTY OSCAR II, KING OF SWEDEN AND NORWAY, AS ARBITRATOR UNDER CONVENTION OF 7 NOVEMBER 1899, BETWEEN GERMANY, GREAT BRITAIN AND THE UNITED STATES OF AMERICA, RELATING TO CLAIMS ON ACCOUNT OF MILITARY OPERATIONS CONDUCTED IN SAMOA IN 1899, GIVEN AT STOCKHOLM. 14 OCTOBER 1902 <sup>1</sup>

WE, OSCAR, BY THE GRACE OF GOD KING OF SWEDEN AND NORWAY,

HAVING BEEN REQUESTED by His Majesty the German Emperor, King of Prussia, in the name of the German Empire, by Her Majesty the late Queen of the United Kingdom of Great Britain and Ireland, and by the President of the United States of America to act as Arbitrator in the differences existing between them with regard to certain claims of residents in the Samoan Islands on account of military operations conducted there in the year 1899, and having accepted the office of Arbitrator;

HAVING RECEIVED from the Imperial German Government, His Britannic Majesty's Government, and the Government of the United States of America their respective Cases accompanied by the documents, the official correspondence, and other evidence on which each Government relies, as well as, after due communication hereof, their respective Counter-Cases and additional documents, correspondence, and other evidence, and having thereupon received from the Imperial German Government their Reply to the Counter-Cases and additional documents, correspondence, and other evidence presented by the two other Governments;

HAVING SINCE fully taken into Our consideration the Convention concluded and signed at Washington the 7th of November 1899 for the settlement of the aforesaid claims by means of Arbitration, and also the Cases, Counter-Cases, Reply, and evidence presented by the respective Parties to the said Convention up to the 2nd of April 1902, and having impartially and carefully examined the same:

WHEREAS by Article I of the said Convention of the 7th of November 1899 His Majesty the German Emperor, Her Britannic Majesty, and the President of the United States of America have agreed that all claims put forward by Germans, or British subjects, or American citizens, respectively, for compensation on account of losses which they allege having suffered in consequence of unwarranted military action, if this be shown to have occurred, on the part of German, British, or American officers between the 1st of January 1899 and the 13th of May following, date of the arrival in Samoa of the Joint Commission of the Powers, should be decided by the present Arbitration in conformity with the principles of international law or consideration of equity;

AND WHEREAS by Article III of the said Convention it is provided that either of the three Governments may, with the consent of the others, previously obtained in every case, submit to the Arbitrator similar claims of persons not

<sup>1</sup> Descamps-Renault, *Recueil des traités du XX<sup>e</sup> siècle*, année 1902, p. 636.

being natives, who are under the protection of that Government, and who are not included in the above mentioned categories;

AND WHEREAS, by a subsequent arrangement made by the Signatory Powers, with Our sanction, the provisions of the Arbitration Convention have been extended to claims presented by other Powers on behalf of their subjects or citizens;

AND WHEREAS the German Government contend that the military action undertaken by British and American officers at the time aforesaid was wholly unwarranted and that, therefore, the British and United States Governments are responsible for losses caused by said military action to Germans and to persons under German protection;

AND WHEREAS, on the other hand, the British Government and the United States' Government argue that the military action in question was not unwarranted but, on the contrary, was in every respect necessary and justifiable, and that, therefore, no claims are entitled to consideration by the Arbitrator, and no further proceedings under the aforesaid Convention necessary or admissible, while reserving to themselves the right to examine in detail the particular claims, should it later on become necessary to do so;

AND WHEREAS under Article I of the said Convention no other claims are to be decided by the present Arbitration than those for losses suffered in consequence of unwarranted military action, and thus the primary question to be determined by Us is whether the military action undertaken in Samoa at the time aforesaid by British and American officers was, or was not, unwarranted;

AND WHEREAS it is proper to settle this preliminary point at the present stage, and thus determine generally whether or not the British and United States' Governments ought to be considered responsible for losses caused by that action, before ordering any proceedings with respect to the particular claims presented;

HAVE RESOLVED to confine Our attention, for the present, to those considerations only which have a distinct bearing on the said issue, and on that question have arrived at the following Decision:

WHEREAS, with respect to the military action complained of, it results from the declarations of the Parties and from all the documents of the case that on the 15th of March 1899 the U.S. ship *Philadelphia* and H.B.M. ships *Porpoise* and *Royalist* opened fire across the town of Apia and on the land situate in the rear of said town, the fire being directed against the forces of the High Chief Mataafa, that the greater part of the adherents of the newly appointed King of Samoa, Malietoa Tammafili, having in those days been brought to Apia from different parts of the Samoan Islands by the British and American Naval Commanders, landed at Mulinuu and supplied by them with arms and ammunition, active hostilities thereupon ensued between the Malietoans and the Mataafa party, that from the said 15th of March up to 25th of April following the said ships, in support of the Malietoa party, frequently proceeded to bombard the rear of Apia as well as various other localities on the Island of Upolu and to destroy villages by landing parties, assisted therein from the 24th of March by H.B.M. ship *Tauranga*, that from the said 15th of March up to the said 25th of April frequent expeditions into the interior took place by combined forces of sailors and marines from the ships of war and natives of the Malietoa party commanded by officers from the ships, for the purpose of fighting the Mataafans, or in order to procure food, and that in Apia a severe control of the street traffic was established by the British and American military authorities through the posting

of sentries with orders to allow only bearers of passports issued by said authorities to pass:

WHEREAS — with respect to the contention of the British and United States' Governments that, under the terms of the General Act signed at Berlin the 14th of June 1889,<sup>1</sup> any one of the Signatory Powers was fully authorized to enforce by every means the decision of the 31st of December 1898 of the Chief Justice of Samoa declaring Malietoa Tammafili King of Samoa, which decision had been rejected by the Mataafa party, and that, therefore, the military action, if taken for that purpose, was not unwarranted — We have found nothing in the said General Act, or any subsequent Agreement, which authorizes one of the Signatory Powers, or a majority of them, to take action to enforce the provisions of the Act, or the decisions of the Chief Justice binding on the Powers:

WHEREAS, on the contrary by Article I of the General Act it is expressly provided that "neither of the Powers shall exercise any separate control over the islands or the Government thereof" and, taking into consideration the nature and extent of the operations at the time aforesaid conducted in Samoa by the British and American military authorities, the military action in question undoubtedly had the character of a serious control over the Samoan Islands and the Government thereof:

AND WHEREAS, moreover, the Protocols of the Berlin Conference clearly show that, in framing the General Act, the Plenipotentiaries of the Powers wished to establish the principle that, in their dealings with Samoa, the Powers only could proceed by common accord, and as this very principle has been sanctioned by the Powers not only in subsequent Agreements supplementary to the General Act made between them in 1892 and 1896, by which it was agreed that under certain circumstances their ships of war might be used to support the Supreme Court of Samoa and ammunition served out to the Samoan Government, though in both cases only with the unanimous consent of the Representatives of the Powers, but also in the instructions issued for the Joint Commission sent to Samoa in 1899, the actions of which should be valid only if acceded to by all three Commissioners;

WHEREAS, furthermore, by proclamation issued on the 4th of January 1899, the Consular Representatives of the Treaty Powers in Samoa, owing to the then disturbed state of affairs and to the urgent necessity to establish a strong Provisional Government, recognized the Mataafa party represented by the High Chief Mataafa and thirteen of his Chiefs to be the Provisional Government of Samoa pending instructions from the three Treaty Powers and thus those Powers were bound upon principles of international good faith to maintain the situation thereby created until by common accord they had otherwise decided;

AND WHEREAS, that being so, the military action in question undertaken by the British and American military authorities before the arrival of the instructions mentioned in the proclamation, and tending to overthrow the Provisional Government thereby established, was contrary to the aforesaid obligation and cannot be justified on the plea neither of the invalidity *ab initio* of the said Provisional Government nor of its establishment under a species of *force majeure*;

WHEREAS — with respect to the objection of the British and United States' Governments to the refusal of the German Consul to sign the proclamation proposed by the other Consuls to be issued immediately after the Chief Justice had given his decision on the 31st of December 1898, and their contention that,

<sup>1</sup> For the text of this Act, see de Martens, *Nouveau Recueil général de traités*, 2<sup>e</sup> série, t. XV, p. 571. *British and Foreign State Papers*, vol. LXXXI, p. 1058.

in determining the responsibility for the subsequent events, it should be taken into consideration that the attitude of the German Consul was a direct violation of the provisions of the Berlin General Act — it cannot be considered to have been the duty of the German Consul to take part in the issuing of said proclamation, and it has not been proved that with regard to said decision any steps were taken by him contrary to the General Act, and therefore no responsibility attaches for the attitude taken up by him in this respect;

WHEREAS — with respect to the contention of the British and United States' Governments that, whether or not there was authority to insist by force on the acceptance of the provisions of the Berlin General Act, the military action was not unwarranted, because it was necessary for the protection of lives and property which it was the duty of the British and American officers to safeguard, and because the opening of fire on the 15th of March was necessitated by the Mataafan warriors making a rush on the British and the United States' Consulates and by a threatened attack by several war canoes on Mulinuu, where a detachment from the British and American ships was stationed. — We have found nothing in the evidence before Us to show that the general condition of affairs was such as to render the military action necessary for the protection of lives and property, and, as to the said two attacks alleged to have taken place on the 15th of March, it results from all the facts relative thereto that the rush was not, and never was meant to be, an attack on the Consulates but simply was directed against some fleeing women of the Malietoa party, that no attack was intended on Mulinuu by the canoes, which by the garrison there were seen putting out from the opposite shore of the Vaiusu bay and which were ordered by Mataafa to go along the coast to the west and, in fact, were going in that direction and not towards Mulinuu when the firing began, and that, on account of the state of the tide, it was not even possible at the time to pass the bay in canoes;

AND WHEREAS it is established not only that, on the arrival of the *Philadelphia* on the 6th of March, the Malietoans were completely defeated, and deported to distant places, and deprived of their arms, and unable to offer any resistance whatever to the victorious Mataafans, but also that in the last days before the beginning of the bombardment Mataafa was ordered away from Mulinuu by the United States' Admiral, and that the Malietoans were brought back there by the British and United States' military authorities, that a considerable quantity of arms was returned to the Malietoans, which arms in the beginning of January 1899 had been surrendered by them to the Commander of the *Porpoise* when, defeated by the Mataafans, they had taken refuge under the guns of that ship, that ammunition was distributed to the Malietoans from the reserve stock which, according to the Arrangement in 1896 between the Treaty Powers, was to be kept for the use of the Samoan Government and served out to the natives only by the unanimous request of the three Consuls, and that such distribution was made by the British and American authorities without the consent of the German Consul;

AND WHEREAS it ought to have been foreseen that the said actions on the part of the British and American authorities, which cannot be considered to have been justified by any threatening attitude of the Mataafans, should exasperate these latter and greatly endanger the peace of the country and the situation created by the surrender of the Malietoans on the 2nd of January and by the establishment of the Provisional Government, and, therefore, the British and United States' authorities ought to have abstained from such proceedings;

WHEREAS, with respect to the stopping of the street traffic, the measures relative thereto were in themselves contrary, as far as Germans were concerned, to the provisions of the Berlin General Act guaranteeing them the same rights of residence, trade, and personal protection as subjects and citizens of the two other Powers, and as, at all events, those measures constituting only a detail of the military operations at the time, the question whether or not they were unwarranted under the circumstances depends on the same considerations as those which concern the military action in general;

WHEREAS the above considerations apply equally to all the claims before Us, whether presented under the Arbitration Convention itself or under the subsequent Arrangement;

FOR THESE REASONS,

WE ARE OF OPINION:

THAT the military action in question, viz. the bringing back of the Malietoans and the distribution to them of arms and ammunition, the bombardment, the military operations on shore, and the stopping of the street traffic, cannot be considered as having been warranted;

AND THAT, therefore, His Britannic Majesty's Government and the United States' Government are responsible under the Convention of the 7th of November 1899 for losses caused by said military action;

WHILE reserving for a future Decision the question as to the extent to which the two Governments, or each of them, may be considered responsible for such losses.

IN TESTIMONY WHEREOF We have signed this present Decision and have ordered Our Royal Seal to be affixed hereunto. Done in triplicate at Our Royal Palace at Stockholm on the fourteenth day of October in the year of Our Lord one thousand nine hundred and two.

[L. S.] OSCAR