

**AWARD OF THE TRIBUNAL OF ARBITRATION, CONSTITUTED  
UNDER AN AGREEMENT SIGNED AT CARACAS FEBRUARY 13TH  
1909 BETWEEN THE UNITED STATES OF AMERICA AND THE  
UNITED STATES OF VENEZUELA, 25 OCTOBER 1910<sup>1</sup>**

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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 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,<sup>2</sup> 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;

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<sup>1</sup> Bureau international de la Cour permanente d'Arbitrage, *Protocoles des séances du tribunal d'Arbitrage constitué en exécution du compromis signé entre les Etats-Unis d'Amérique et les Etats-Unis du Venezuela le 13 février 1909, Différend au sujet d'une réclamation de la Compagnie des bateaux à vapeur "Orinoco"*, La Haye, 1910, p. 64.

<sup>2</sup> For the text of this decision see: United Nations, *Reports of International Arbitral Awards*, vol. IX, p. 191.

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

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

WHEREAS by the terms of an Agreement dated February 17th 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 22nd 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 18th 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 re-examination of the case on its merits;

WHEREAS by the Agreement of February 13th 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 el 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 DOLLARS:

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 10th 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, cannot viciate his decision;

## II. AS REGARDS THE 19,200 DOLLARS (100,000 BOLIVARES):

WHEREAS the Agreement of February 17th 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 2nd. 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 10th 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 DOLLARS:

WHEREAS with regard to the 1,053 dollars for the transport of passengers and merchandise in 1900 and the 25,845.20 dollars 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 dollars for the restitution of national taxes, said to have been collected contrary to law, and of that of 3,509.22 dollars 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 and Trading Company 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 dollars instead of 28,461.53 dollars for the retention and hire of the Masparro and Socorro from March 21st to September 18th 1902, as regards the 769.22 dollars 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 1st 1902 is based on a consideration of facts and on an interpretation of legal principles which are subject neither to re-examination nor to revision by this Tribunal, the decisions awarded on these points not being void;

### IV. AS REGARDS THE 25,000 DOLLARS:

WHEREAS the claim for 25,000 dollars 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 7000 dollars;

WHEREAS the Venezuelan law fixes the legal interest at 3% and as, under these conditions, the Tribunal, though aware of the insufficiency of this percentage, cannot allow more;

### FOR THESE REASONS:

THE TRIBUNAL DECLARES void the Award of Umpire Barge dated February 22nd 1904 on the four following points:

- 1°. as regards the 19,200 dollars;
- 2°. as regards the 1,053 dollars;
- 3°. as regards the 25,845.20 dollars;

4°. as regards the 769,22 dollars deducted from the claim for 28.461,53 dollars 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 22nd 1904, the sums of:

- 1°. 19,200 dollars;
- 2°. 1,053 dollars;
- 3°. 25,845.20 dollars;
- 4°. 769.22 dollars;

the whole with interest at 3 per cent from the date of the claim (June 16th 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 7000 dollars;

REJECTS the claim for the surplus, the Award of Umpire Barge of February 22nd 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 25th, 1910.

*The President:* LAMMASCH

*The Secretary-general:* Michiels VAN VERDUYNEN