



PERMANENT COURT OF ARBITRATION

THE MANOUBA CASE

FRANCE

v.

ITALY

AWARD OF THE TRIBUNAL

Unofficial English Translation

Arbitrators:

K. H. L. de Hammarskjöld

G. Fusinato

M. Kriege

L. Renault

M. de Taube

The Hague, May 6, 1913

**Award Rendered May 6, 1913,
by the Arbitral Tribunal
in the case of the French Mail Steamer “Manouba”^[1]**

Whereas by an agreement dated January 26, 1912, and by a *compromis* dated March 6 following, the Government of the French Republic and the Royal Italian Government agreed to submit to an Arbitral Tribunal composed of five members the decision of the following questions:

1. Were the Italian naval authorities, in general and according to the special circumstances under which the action was taken, within their rights in proceeding, as they did, to the capture and temporary seizure of the French mail steamer “Manouba”, as well as to the arrest of twenty-nine Ottoman passengers who were on board?
2. What should be the pecuniary or other consequences resulting from the decision of the preceding question?

Whereas in fulfillment of this *compromis* the two Governments have chosen, by mutual consent, the following members of the Permanent Court of Arbitration to constitute the Arbitral Tribunal:

His Excellency GUIDO FUSINATO, Doctor of Law, Minister of State, former Minister of Public Instruction, Honorary Professor of International Law at the University of Turin, Deputy, Counselor of State;

Mr. KNUT HJALMAR LÉONARD DE HAMMARSKJÖLD, Doctor of Law, former Minister of Justice, former Minister of Public Worship and Instruction, former Envoy Extraordinary and Minister Plenipotentiary at Copenhagen, former President of the Court of Appeals of Jönköping, former Professor in the Faculty of Law of Upsala, Governor of the Province of Upsala;

Mr. KRIEGE, Doctor of Law, at present Privy Counselor of Legation and Director in the Department of Foreign Affairs, Plenipotentiary in the German Federal Council;

Mr. LOUIS RENAULT, Minister Plenipotentiary, member of the Institute, Professor in the Faculty of Law of the University of Paris and of the *Ecole Libre des Sciences Politiques*, Jurisconsult of the Ministry of Foreign Affairs;

His Excellency BARON MICHEL DE TAUBE, Doctor of Law, Assistant to the Minister of Public Instruction of Russia, at present Counselor of State;

That the two Governments have, at the same time, designated Mr. DE HAMMARSKJÖLD to perform the duties of President.

Whereas, in accordance with the *compromis* of March 6, 1912, the memorials and counter-memorials have been duly exchanged by the Parties and transmitted to the

¹ Translated from French into English, based on the version in GEORGE GRAFTON WILSON, THE HAGUE ARBITRATION CASES (1915).

Arbitrators;

Whereas the Tribunal, constituted as stated above, met at The Hague on March 31, 1913;

That the two Governments, respectively, have appointed as Agents and Counsel,

The Government of the French Republic:

Mr. HENRI FROMAGEOT, Advocate in the Court of Appeal of Paris, Assistant Jurisconsult in the Ministry of Foreign Affairs, Counselor in International Law of the Navy Department, Agent;

Mr. ANDRÉ HESSE, Advocate in the Court of Appeal of Paris, Member of the Chamber of Deputies, Counsel;

The Royal Italian Government:

Mr. ARTURO RICCI-BUSATTI, Envoy Extraordinary and Minister Plenipotentiary, Chief of the Bureau of Claims and of Legislation of the Royal Ministry of Foreign Affairs, Agent;

Mr. DIONISIO ANZILOTTI, Professor of International Law in the University of Rome, Counsel.

Whereas the Agents of the Parties have presented to the Tribunal the following demands, to wit,

The Agent of the Government of the French Republic:

MAY IT PLEASE THE TRIBUNAL,

As to the first question raised by the *compromis*,

To say and decide that the Italian naval authorities were not, in general and according to the special circumstances under which the action was taken, within their rights in proceeding, as they did, to the capture and temporary seizure of the French mail steamer "Manouba", as well as to the arrest of twenty-nine Ottoman passengers who were on board.

As to the second question raised by the *compromis*,

To say that the Royal Italian Government shall be obliged to pay to the Government of the French Republic the sum of one franc compensation, as moral reparation for the offense against the honor of the French flag;

To say that the Royal Italian Government shall be obliged to pay to the Government of the French Republic the sum of one hundred thousand francs, as penalty and reparation for the political and moral injury resulting from the violation by the Royal Italian Government of its general and special conventional obligations, particularly the Convention of The Hague of October 18, 1907, *relative to certain restrictions on the right of capture in maritime warfare*, Article 2; the Geneva Convention of July 6, 1906, *for the amelioration of the condition of the wounded and sick in armies in the field*, Article 9; and the verbal agreement between the two Governments of January 17, 1912, relating to the control of the passengers on board the steamer "Manouba";

To say that the said sum will be paid to the Government of the Republic for the benefit of such work or institution of international interest as it shall please the Tribunal to designate;

To say that the Royal Italian Government shall be obliged to pay to the Government of the French Republic the sum of one hundred and eight thousand, six hundred and one francs, seventy centimes, the amount of the indemnities claimed by the private individuals interested in either the steamer "Manouba" or in its voyage;

Further, and in case the Tribunal does not consider itself sufficiently informed upon this last count,

To say, before coming to a decision, that one or more of its members, whom it shall assign for that purpose, shall proceed, in the chamber where its deliberations take place, to examine the different claims of the private individuals so interested;

In any case, and by the application of Article 9 of the *compromis*,

To say that, upon the expiration of a period of three months from the date of the award, the sums charged against the Royal Italian Government and not yet paid shall bear interest at the rate of four per cent per annum.

And the Agent of the Royal Italian Government:

MAY IT PLEASE THE TRIBUNAL,

As to the first question raised by the *compromis*,

To say and decide that the Italian naval authorities were entirely within their rights in proceeding as they did to the capture and temporary seizure of the French mail steamer "Manouba", as well as to the arrest of the twenty-nine Ottoman passengers who were suspected of being soldiers and whose true character the Italian Government had the right to verify.

In consequence and as to the second question,

To say and decide that no pecuniary or other consequence should be imposed upon the Italian Government for the capture and temporary seizure of the French mail steamer "Manouba";

To say and decide that the French Government has wrongfully claimed that the Ottoman passengers who legally fell into the hands of the Italian authorities should be surrendered to it;

To say that the Government of the Republic shall be obliged to pay to the Royal Government the sum of one hundred thousand francs as a penalty and reparation for the material and moral injury resulting from the violation of international law, especially in so far as the right of the belligerent to verify the character of individuals suspected of being soldiers of the enemy, when found on board neutral commercial vessels, is concerned;

To say that the said sum shall be paid to the Royal Italian Government for such work or such institution of international interest as it shall please the Tribunal to indicate;

Further and in case the Tribunal should consider that this kind of penalty should not be permitted,

To say that the Government of the Republic shall be obliged to make amends for the wrong done to the Royal Italian Government in such manner as it shall please the

Tribunal to indicate;

In any case,

To say that the Government of the Republic shall be obliged to pay to the Royal Italian Government the sum of four hundred and fourteen francs, forty-five centimes, the sum of the expenses incurred on account of the seizure of the “Manouba”;

To say that upon the expiration of a period of three months from the date of the award, the sums charged against the Government of the Republic and not yet paid shall bear interest at the rate of four per cent per annum.

Whereas after the Tribunal had heard the oral statements of the Agents of the Parties and the explanations which they furnished at its request, the arguments were duly declared closed.

AS TO FACT:

Whereas in the course of a regular voyage between Marseilles and Tunis, the French mail steamer “Manouba”, of the *Compagnie de Navigation Mixte*, was stopped by the torpedo destroyer “Agordat” of the Royal Italian Navy in the waters of the Island of San Pietro on January 18, 1912, at about eight o’clock in the morning;

Whereas, after ascertaining the presence on board the said steamer of twenty-nine Turkish passengers who were suspected of belonging to the Ottoman army, the “Manouba” was, under capture, conducted to Cagliari;

Whereas, having arrived at this port on the same day, at about five o’clock in the evening, the captain of the “Manouba” was summoned to deliver the above-mentioned twenty-nine passengers to the Italian authorities and, upon his refusal, these authorities proceeded to seize the steamer;

Whereas, finally, upon the request of the Vice-Consul of France at Cagliari, the twenty-nine Turkish passengers were delivered to the Italian authorities on January 19 at 4:30 p.m., and the “Manouba”, then released, resumed its trip to Tunis on the same day at 7:20 p.m.

AS TO LAW:

Whereas, if the French Government believed, given the circumstances under which the presence of Ottoman passengers on board the “Manouba” was described to it, that in consideration of the promise that the character of the said passengers would be verified, the “Manouba” was exempted from the right of visit or coercion on the part of the Italian naval authorities, it is established that the Italian Government did not, in good faith, understand the matter in that way;

That consequently, in the absence of a special agreement between the two Governments, the Italian naval authorities were justified in acting according to the common law;

Whereas, according to the terms of the *compromis*, the action taken by the Italian naval authorities includes three successive phases, to wit: the capture, the temporary seizure of the “Manouba”, and the arrest of the twenty-nine Ottoman passengers who were on board;

That it is fitting to examine in the first place the legality of each of these three phases, considered as separate acts and independent of the above-mentioned action as a whole;

In this order of subjects,

Whereas the Italian naval authorities had, at the time of the capture of the “Manouba”, sufficient reason to believe that the Ottoman passengers who were on board were, at least in part, soldiers enlisted in the enemy’s army;

That, consequently, these authorities had the right to compel the surrender of these passengers to them;

Whereas they might to this end summon the captain to deliver them, as well as take, in case of his refusal, the measures necessary to compel him to do so, or themselves take possession of these passengers;

Whereas, on the other hand, even admitting that there might have been grounds for believing that the Ottoman passengers formed a military troop or a detachment, nothing warranted calling in question the entire good faith of the owner and of the captain of the “Manouba”;

Whereas under these circumstances, the Italian naval authorities were not within their rights in capturing the “Manouba” and compelling it to leave its course and follow the “Agordat” to Cagliari, unless it were for the purpose of arrest after the captain had refused to obey a summons to surrender the Ottoman passengers;

That, no summons of that kind having been made before the capture, the act of capturing the “Manouba” and taking it to Cagliari was not legal;

Whereas the summons made at Cagliari having been without immediate effect, the Italian naval authorities had the right to take the necessary measures of compulsion, and specifically, to detain the “Manouba” until the Ottoman passengers were surrendered;

That the seizure effected was legal only to the extent of a temporary and conditional sequestration;

Whereas, finally, the Italian naval authorities had the right to compel the surrender of the Ottoman passengers and to arrest them.

As to the action as a whole,

Whereas the three phases of which the single action provided for by the *compromis* is composed should be judged by themselves, without the illegality of any one of them having influence, in this case, on the regularity of the others;

That the illegality in capturing and taking the “Manouba” to Cagliari did not vitiate the successive phases of the action;

Whereas the capture, moreover, could not be legalized by the regularity, relative or absolute, of these last phases considered separately.

Upon the request that the Royal Italian Government be condemned to pay as compensation:

1. The sum of *one franc* for the offense against the French flag;
2. The sum of one hundred thousand francs as reparation for the moral and political injury resulting from the failure to observe the international common law and the

conventions reciprocally binding upon Italy and upon France,

And upon the request to the effect that the Government of the French Republic be condemned to pay the sum of one hundred thousand francs as a penalty and reparation for the material and moral injury resulting from the violation of international law, especially in so far as concerns the right of the belligerent to verify the character of individuals suspected of being soldiers of the enemy, when found on board neutral commercial vessels,

Whereas, in case a Power has failed to fulfil its obligations, whether general or special, to another Power, the statement of this fact, particularly in an arbitral award, constitutes in itself a severe penalty;

That this penalty is increased, if there be occasion, by the payment of compensation for material losses;

That generally and excluding special circumstances, these penalties appear to be sufficient;

That, also as a general rule, the imposition of further pecuniary penalty appears to be superfluous and to go beyond the objects of international jurisdiction;

Whereas by the application of what has been said, the circumstances of the present case would not justify such a supplementary penalty; as, without further examination, there is no reason for complying with the above-mentioned requests.

Upon the request of the French Agent to the effect that the Royal Italian Government be compelled to pay to the Government of the French Republic the sum of one hundred and eight thousand, six hundred and one francs, seventy centimes, the amount of the indemnities claimed by individuals interested in either the steamer "Manouba" or in its voyage;

Whereas an indemnity is due for the delay occasioned to the "Manouba" by its unwarranted capture and its taking in to Cagliari, but account should be taken of the delay caused by the illegal refusal of the captain to surrender the twenty-nine Turkish passengers at Cagliari, as well as the fact that the vessel was not taken entirely off its course to Tunis;

Whereas if the Italian naval authorities effected the seizure of the "Manouba" at the place of its temporary and conditional sequestration, which was legal, it appears that, to this degree, the interested parties have not suffered loss and damages;

Whereas, taking account of these circumstances and also of the expense incurred by the Italian Government in guarding the detained vessel, the Tribunal, after having heard the concurring explanations of two of its members charged by it to proceed to the investigation of the said claims, has fixed at four thousand francs the amount due to all those interested in the vessel and its voyage.

FOR THESE REASONS

The Arbitral Tribunal

Declares and pronounces as follows:

As regards the action as a whole, covered by the first question raised by the compromis,

The different phases of this action ought not be considered as connected with each other in the sense that the character of any one, in this case, should affect the character of the others.

As to the various phases of the said action considered separately,

The Italian naval authorities were not, in general and according to the special circumstances under which the action was taken, within their rights in proceeding, as they did, to the capture of the French mail steamer "Manouba" and in taking it to Cagliari;

When once the "Manouba" was captured and brought into Cagliari, the Italian naval authorities were, in general and according to the special circumstances under which the action was taken, within their rights in proceeding, as they did, to the momentary seizure of the "Manouba" to the extent that this seizure did not pass beyond the limits of a temporary and conditional sequestration in order to compel the captain of the "Manouba" to deliver the twenty-nine Ottoman passengers who were on board.

When the "Manouba" was captured, brought into Cagliari and seized, the Italian naval authorities were, in general and according to the special circumstances under which the action was taken, within their rights in proceeding as they did to the arrest of the twenty-nine Ottoman passengers who were on board.

As regards the second question raised by the compromis,

The Royal Italian Government shall be obliged, within three months from the present award, to pay to the Government of the French Republic the sum of four thousand francs which, after deduction of the amount due to the Italian Government for custody of the "Manouba", is the amount of the losses and damages sustained by the individuals interested in the vessel and its voyage, by reason of the capture of the "Manouba" and in taking it to Cagliari.

There is no reason to grant the other claims contained in the demands of the two Parties.

Done at The Hague, in the building of the Permanent Court of Arbitration, May 6, 1913.

<i>President:</i>	HJ. L. HAMMARSKJÖLD
<i>Secretary General:</i>	MICHIELS VAN VERDUYNEN
<i>Secretary:</i>	RÖELL