

CLAIMS: ARREST AND SEIZURE OF VESSELS

Protocol signed at St. Petersburg September 8, 1900

Entered into force September 8, 1900

*Terminated on fulfillment of its terms*¹

1900 For. Rel. 885

To the Honorable Arbitrator, Mr. T. M. C. ASSER,

Counselor of the Ministry for Foreign Affairs of the Kingdom of the Netherlands, etc., in the arbitration agreed in the notes exchanged between the representatives of the two high contracting powers, duly authorized to that effect, dated September 8, 1900, to adjust the differences between the Government of the United States of America, party claimant, and the Imperial Government of Russia, party defendant, relative to the arrest and seizure of the American vessels the "Cape Horn Pigeon," the "James Hamilton Lewis," the "C. H. White," and the "Kate and Anna."

PROTOCOL

The Government of the United States of America and the Imperial Government of Russia, having agreed to invite Mr. Asser, Member of the Council of State of the Netherlands to act as Arbitrator in connection with the claim of the schooners "James Hamilton Lewis," "C. H. White," "Kate and Anna," their charterers, owners, officers and crews, arising out of their detention or seizure by Russian cruisers on the charge of having been illegally engaged in fur-seal fishing and the claim of the whaling bark "Cape Horn Pigeon," her charterers, owners, officers and crew arising out of her detention or seizure by a Russian vessel, the undersigned Chargé d'Affaires of the United States of America, having been duly authorized thereto, has the honor to make hereby the following declaration, in exchange with a similar declaration upon the part of the Imperial Government of Russia.

The arbitrator shall take cognizance of the claims for indemnity which have been presented to the Imperial Government of Russia by the Government of the United States on behalf of the parties in interest.

It is understood and agreed that this provision is to be construed as per-

¹ The arbitrator returned awards in favor of the claimants on Nov. 29, 1902 (TS 416; not printed here).

mitting the introduction, on both sides, into the testimony submitted to the arbitrator, of any and all evidence which may have already been presented or appeared in the correspondence between the official Representatives of the two high contracting Powers, as well as all evidence relating to the questions in litigation.

The Party claimant shall present to the arbitrator, within three months from the date of exchange of the present note with an identical one of the Imperial Government of Russia, a memorandum in support of its claim, and shall hand immediately a copy thereof to the Party Defendant.

Within three months from the date of the receipt of the said copy, the Party defendant shall present to the arbitrator a contra-memorandum, of which it shall hand immediately a copy to the Party claimant.

Within three months after the receipt of such contra-memorandum, the Party claimant may, if it sees fit to do so, present to the arbitrator a new memorandum, of which it shall hand immediately a copy to the Party defendant, and the latter may also, within three months from the receipt thereof, present to the arbitrator a new contra-memorandum, of which it shall hand immediately a copy to the Party claimant.

The arbitrator shall be authorized, at the request of either of the Parties, to extend for a period of not longer than thirty days any of the intervals of time hereinabove provided for.

After the exchange of memoranda as hereinabove said no communication, either written or verbal, shall be addressed to the arbitrator, unless he shall request from the Parties, or either of them, supplementary information to be given in writing.

The Party so giving information to the arbitrator shall hand immediately a copy of its communication to the opponent, who may if he thinks fit to do so present in writing to the arbitrator, within one month from the date of his receipt thereof, comments relating to the subject matter of the said communication, and a copy of such comments shall be sent immediately to the Party opponent.

The arbitrator shall have authority to decide all questions that may arise in regard to procedure in the course of the arbitration.

The arbitrator shall render his decisions in all the cases within six months from the date of the delivery to him of the last memorandum or contra-memorandum provided for in this agreement.

In his decision, which shall be communicated by him to each of the two Governments interested, the arbitrator following the general principles of international law and the spirit of international agreements applicable to the subject, shall determine as to each claim brought against the Imperial Government of Russia, whether such claim is well founded; and, if he decides affirmatively, whether the facts upon which each of the said claims is based have been proven.

It is understood and agreed that this stipulation shall have no retroactive force, and that the arbitrator shall apply to the cases now in litigation the principles of international law and of international agreements which were in force and binding upon the Parties to this litigation at the moment when the seizures aforementioned took place.

The arbitrator shall fix the amount of any indemnity to be paid by the Russian Government in respect to the claims presented by the parties in interest.

If he wishes to do so, without, however, lessening the obligation incumbent upon the Party claimant to prove the damage suffered, the arbitrator may invite each Government to appoint a Commercial expert to aid him, in this capacity, in fixing the amount of the indemnity.

The Government of the United States declares itself ready, in exchange with a similar agreement upon the part of the Imperial Government of Russia, to assume all expenses which may or shall be incurred in the presentation of its side of the case in this matter and to pay one-half of the compensation of the arbitrator for his services, also to accept as a final judgment the decision pronounced by the arbitrator within the limits of the present agreement, and to submit thereto without any reservation whatsoever.

Any amount awarded by the arbitrator in favor of the claimants, or either of them, shall be paid by the Imperial Government of Russia to the Government of the United States within one year from the date of the award.

French being recognized as the official language of the arbitration the decision of the arbitrator should be rendered in that language.

Done at St. Petersburg in four copies the 26th day of August (8 September), 1900.

HERBERT H. D. PEIRCE
LAMSDORFF