

## ARBITRATION: NORTH ATLANTIC COAST FISHERIES

*Special agreement signed at Washington January 27, 1909; exchanges of notes at Washington January 27, February 21, and March 4, 1909*

*Senate advice and consent to ratification, with an understanding, February 18, 1909*<sup>1</sup>

*Confirmed by exchange of notes at Washington March 4, 1909*

*Entered into force March 5, 1909*

*Award rendered by Permanent Court of Arbitration September 7, 1910*<sup>2</sup>

*Terminated by agreement of July 20, 1912*<sup>3</sup>

36 Stat. 2141; Treaty Series 521

### SPECIAL AGREEMENT FOR THE SUBMISSION OF QUESTIONS RELATING TO FISHERIES ON THE NORTH ATLANTIC COAST UNDER THE GENERAL TREATY OF ARBITRATION CONCLUDED BETWEEN THE UNITED STATES AND GREAT BRITAIN ON THE 4TH DAY OF APRIL, 1908

#### ARTICLE I

Whereas, by Article I of the Convention signed at London on the 20th day of October, 1818,<sup>4</sup> between the United States and Great Britain, it was agreed as follows:

“Whereas differences have arisen respecting the Liberty claimed by the United States for the Inhabitants thereof, to take, dry and cure Fish on Cer-

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<sup>1</sup> The U.S. understanding reads as follows: “. . . it is agreed by the United States and Great Britain that question 5 of the series submitted, namely, ‘from where must be measured the three marine miles of any of the coasts, bays, creeks or harbors referred to in said Article?’ does not include any question as to the Bay of Fundy, considered as a whole apart from its bays or creeks, or as to innocent passage through the Gut of Canso, and that the respective views or contentions of the United States and Great Britain on either subject shall be in no wise prejudiced by anything in the present arbitration, and that this agreement on the part of the United States will be mentioned in the ratification of the special agreement and will, in effect, form part of this special agreement.”

<sup>2</sup> For text, see 1910 For. Rel. 544.

<sup>3</sup> TS 572, *post*, p. 357.

<sup>4</sup> TS 112, *ante*, p. 57.

tain Coasts, Bays, Harbours and Creeks of His Britannic Majesty's Dominions in America, it is agreed between the High Contracting Parties, that the Inhabitants of the said United States shall have forever, in common with the Subjects of His Britannic Majesty, the Liberty to take Fish of every kind on that part of the Southern Coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the Western and Northern Coast of Newfoundland, from the said Cape Ray to the Quirpon Islands on the shores of the Magdalen Islands, and also on the Coasts, Bays, Harbours, and Creeks from Mount Joly on the Southern Coast of Labrador, to and through the Straits of Belleisle and thence Northwardly indefinitely along the Coast, without prejudice however, to any of the exclusive Rights of the Hudson Bay Company; and that the American Fishermen shall also have liberty forever, to dry and cure Fish in any of the unsettled Bays, Harbours, and Creeks of the Southern part of the Coast of Newfoundland hereabove described, and of the Coast of Labrador; but so soon as the same, or any Portion thereof, shall be settled, it shall not be lawful for the said Fishermen to dry or cure Fish at such Portion so settled, without previous agreement for such purpose with the Inhabitants, Proprietors, or Possessors of the ground.— And the United States hereby renounce forever, any Liberty heretofore enjoyed or claimed by the Inhabitants thereof, to take, dry, or cure Fish on, or within three marine Miles of any of the Coasts, Bays, Creeks, or Harbours of His Britannic Majesty's Dominions in America not included within the above mentioned limits; provided, however, that the American Fishermen shall be admitted to enter such Bays or Harbours for the purpose of Shelter and of repairing Damages therein, of purchasing Wood, and of obtaining Water, and for no other purpose whatever. But they shall be under such Restrictions as may be necessary to prevent their taking, drying or curing Fish therein, or in any other manner whatever abusing the Privileges hereby reserved to them."

And, whereas, differences have arisen as to the scope and meaning of the said Article, and of the liberties therein referred to, and otherwise in respect of the rights and liberties which the inhabitants of the United States have or claim to have in the waters or on the shores therein referred to:

It is agreed that the following questions shall be submitted for decision to a tribunal of arbitration constituted as hereinafter provided:

*Question 1.* To what extent are the following contentions or either of them justified?

It is contended on the part of Great Britain that the exercise of the liberty to take fish referred to in the said Article, which the inhabitants of the United States have forever in common with the subjects of His Britannic Majesty, is subject, without the consent of the United States, to reasonable regulation by Great Britain, Canada, or Newfoundland in the form of municipal laws,

ordinances, or rules, as, for example, to regulations in respect of (1) the hours, days, or seasons when fish may be taken on the treaty coasts; (2) the method, means, and implements to be used in the taking of fish or in the carrying on of fishing operations on such coasts; (3) any other matters of a similar character relating to fishing; such regulations being reasonable, as being, for instance—

(a) Appropriate or necessary for the protection and preservation of such fisheries and the exercise of the rights of British subjects therein and of the liberty which by the said Article I the inhabitants of the United States have therein in common with British subjects;

(b) Desirable on grounds of public order and morals;

(c) Equitable and fair as between local fishermen and the inhabitants of the United States exercising the said treaty liberty and not so framed as to give unfairly an advantage to the former over the latter class.

It is contended on the part of the United States that the exercise of such liberty is not subject to limitations or restraints by Great Britain, Canada, or Newfoundland in the form of municipal laws, ordinances, or regulations in respect of (1) the hours, days, or seasons when the inhabitants of the United States may take fish on the treaty coasts, or (2) the method, means, and implements used by them in taking fish or in carrying on fishing operations on such coasts, or (3) any other limitations or restraints of similar character—

(a) Unless they are appropriate and necessary for the protection and preservation of the common rights in such fisheries and the exercise thereof; and

(b) Unless they are reasonable in themselves and fair as between local fishermen and fishermen coming from the United States, and not so framed as to give an advantage to the former over the latter class; and

(c) Unless their appropriateness, necessity, reasonableness, and fairness be determined by the United States and Great Britain by common accord and the United States concurs in their enforcement.

*Question 2.* Have the inhabitants of the United States, while exercising the liberties referred to in said Article, a right to employ as members of the fishing crews of their vessels persons not inhabitants of the United States?

*Question 3.* Can the exercise by the inhabitants of the United States of the liberties referred to in the said Article be subjected, without the consent of the United States, to the requirements of entry or report at custom-houses or the payment of light or harbor or other dues, or to any other similar requirement or condition or exaction?

*Question 4.* Under the provision of the said Article that the American fishermen shall be admitted to enter certain bays or harbors for shelter, re-

pairs, wood, or water, and for no other purpose whatever, but that they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein or in any other manner whatever abusing the privileges thereby reserved to them, is it permissible to impose restrictions making the exercise of such privileges conditional upon the payment of light or harbor or other dues, or entering or reporting at custom-houses or any similar conditions?

*Question 5.* From where must be measured the "three marine miles of any of the coasts, bays, creeks, or harbors" referred to in the said Article?

*Question 6.* Have the inhabitants of the United States the liberty under the said Article or otherwise, to take fish in the bays, harbors, and creeks on that part of the southern coast of Newfoundland which extends from Cape Ray to Rameau Islands, or on the western and northern coasts of Newfoundland from Cape Ray to Quirpon Islands, or on the Magdalen Islands?

*Question 7.* Are the inhabitants of the United States whose vessels resort to the treaty coasts for the purpose of exercising the liberties referred to in Article I of the treaty of 1818 entitled to have for those vessels, when duly authorized by the United States in that behalf, the commercial privileges on the treaty coasts accorded by agreement or otherwise to United States trading vessels generally?

## ARTICLE II

Either Party may call the attention of the Tribunal to any legislative or executive act of the other Party, specified within three months of the exchange of notes enforcing this agreement, and which is claimed to be inconsistent with the true interpretation of the treaty of 1818; and may call upon the Tribunal to express in its award its opinion upon such acts, and to point out in what respects, if any, they are inconsistent with the principles laid down in the award in reply to the preceding questions; and each Party agrees to conform to such opinion.

## ARTICLE III

If any question arises in the arbitration regarding the reasonableness of any regulation or otherwise which requires an examination of the practical effect of any provisions in relation to the conditions surrounding the exercise of the liberty of fishery enjoyed by the inhabitants of the United States, or which requires expert information about the fisheries themselves, the Tribunal may, in that case, refer such question to a commission of three expert specialists in such matters; one to be designated by each of the Parties hereto, and the third, who shall not be a national of either Party, to be designated by the Tribunal. This Commission shall examine into and report their conclusions on any question or questions so referred to it by the Tribunal and such report shall be considered by the Tribunal and shall, if incorporated by them in the award, be accepted as a part thereof.

Pending the report of the Commission upon the question or questions so referred and without awaiting such report, the Tribunal may make a separate award upon all or any other questions before it, and such separate award, if made, shall become immediately effective, provided that the report aforesaid shall not be incorporated in the award until it has been considered by the Tribunal. The expenses of such Commission shall be borne in equal moieties by the Parties hereto.

#### ARTICLE IV

The Tribunal shall recommend for the consideration of the High Contracting Parties rules and a method of procedure under which all questions which may arise in the future regarding the exercise of the liberties above referred to may be determined in accordance with the principles laid down in the award. If the High Contracting Parties shall not adopt the rules and method of procedure so recommended, or if they shall not, subsequently to the delivery of the award, agree upon such rules and methods, then any differences which may arise in the future between the High Contracting Parties relating to the interpretation of the treaty of 1818 or to the effect and application of the award of the Tribunal shall be referred informally to the Permanent Court at The Hague for decision by the summary procedure provided in Chapter IV of The Hague Convention of the 18th of October, 1907.<sup>5</sup>

#### ARTICLE V

The Tribunal of Arbitration provided for herein shall be chosen from the general list of members of the Permanent Court at The Hague, in accordance with the provisions of Article XLV of the Convention for the Settlement of International Disputes, concluded at the Second Peace Conference at The Hague on the 18th of October, 1907. The provisions of said Convention, so far as applicable and not inconsistent herewith, and excepting Articles LIII and LIV, shall govern the proceedings under the submission herein provided for.

The time allowed for the direct agreement of the President of the United States and His Britannic Majesty on the composition of such Tribunal shall be three months.

#### ARTICLE VI

The pleadings shall be communicated in the order and within the time following:

As soon as may be and within a period not exceeding seven months from the date of the exchange of notes making this agreement binding the printed case of each of the Parties hereto, accompanied by printed copies of the

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<sup>5</sup> TS 536, *ante*, vol. 1, p. 601.

documents, the official correspondence, and all other evidence on which each Party relies, shall be delivered in duplicate (with such additional copies as may be agreed upon) to the agent of the other Party. It shall be sufficient for this purpose if such case is delivered at the British Embassy at Washington or at the American Embassy at London, as the case may be, for transmission to the agent for its Government.

Within fifteen days thereafter such printed case and accompanying evidence of each of the Parties shall be delivered in duplicate to each member of the Tribunal, and such delivery may be made by depositing within the stated period the necessary number of copies with the International Bureau at The Hague for transmission to the Arbitrators.

After the delivery on both sides of such printed case, either Party may, in like manner, and within four months after the expiration of the period above fixed for the delivery to the agents of the case, deliver to the agent of the other Party (with such additional copies as may be agreed upon), a printed counter-case accompanied by printed copies of additional documents, correspondence, and other evidence in reply to the case, documents, correspondence, and other evidence so presented by the other Party, and within fifteen days thereafter such Party shall, in like manner as above provided, deliver in duplicate such counter-case and accompanying evidence to each of the Arbitrators.

The foregoing provisions shall not prevent the Tribunal from permitting either Party to rely at the hearing upon documentary or other evidence which is shown to have become open to its investigation or examination or available for use too late to be submitted within the period hereinabove fixed for the delivery of copies of evidence, but in case any such evidence is to be presented, printed copies of it, as soon as possible after it is secured, must be delivered, in like manner as provided for the delivery of copies of other evidence, to each of the Arbitrators and to the agent of the other Party. The admission of any such additional evidence, however, shall be subject to such conditions as the Tribunal may impose, and the other Party shall have a reasonable opportunity to offer additional evidence in rebuttal.

The Tribunal shall take into consideration all evidence which is offered by either Party.

#### ARTICLE VII

If in the case or counter-case (exclusive of the accompanying evidence) either Party shall have specified or referred to any documents, correspondence, or other evidence in its own exclusive possession without annexing a copy, such Party shall be bound, if the other Party shall demand it within thirty days after the delivery of the case or counter-case respectively, to furnish to the Party applying for it a copy thereof; and either Party may, within the like time, demand that the other shall furnish certified copies or produce

for inspection the originals of any documentary evidence adduced by the Party upon whom the demand is made. It shall be the duty of the Party upon whom any such demand is made to comply with it as soon as may be, and within a period not exceeding fifteen days after the demand has been received. The production for inspection or the furnishing to the other Party of official governmental publications, publishing, as authentic, copies of the documentary evidence referred to, shall be a sufficient compliance with such demand, if such governmental publications shall have been published prior to the 1st day of January, 1908. If the demand is not complied with, the reasons for the failure to comply must be stated to the Tribunal.

#### ARTICLE VIII

The Tribunal shall meet within six months after the expiration of the period above fixed for the delivery to the agents of the case, and upon the assembling of the Tribunal at its first session each Party, through its agent or counsel, shall deliver in duplicate to each of the Arbitrators and to the agent and counsel of the other party (with such additional copies as may be agreed upon) a printed argument showing the points and referring to the evidence upon which it relies.

The time fixed by this Agreement for the delivery of the case, counter-case, or argument, and for the meeting of the Tribunal, may be extended by mutual consent of the Parties.

#### ARTICLE IX

The decision of the Tribunal shall, if possible, be made within two months from the close of the arguments on both sides, unless on the request of the Tribunal the Parties shall agree to extend the period.

It shall be made in writing, and dated and signed by each member of the Tribunal, and shall be accompanied by a statement of reasons.

A member who may dissent from the decision may record his dissent when signing.

The language to be used throughout the proceedings shall be English.

#### ARTICLE X

Each Party reserves to itself the right to demand a revision of the award. Such demand shall contain a statement of the grounds on which it is made and shall be made within five days of the promulgation of the award, and shall be heard by the Tribunal within ten days thereafter. The Party making the demands shall serve a copy of the same on the opposite Party, and both Parties shall be heard in argument by the Tribunal on said demand. The demand can only be made on the discovery of some new fact or circumstance calculated to exercise a decisive influence upon the award and which was unknown to the Tribunal and to the Party demanding the revision at

the time the discussion was closed, or upon the ground that the said award does not fully and sufficiently, within the meaning of this Agreement, determine any question or questions submitted. If the Tribunal shall allow the demand for a revision, it shall afford such opportunity for further hearings and arguments as it shall deem necessary.

#### ARTICLE XI

The present Agreement shall be deemed to be binding only when confirmed by the two Governments by an exchange of notes.

In witness whereof this Agreement has been signed and sealed by the Secretary of State of the United States, Elihu Root, on behalf of the United States, and by His Britannic Majesty's Ambassador at Washington, The Right Honorable James Bryce, O.M., on behalf of Great Britain.

Done at Washington on the 27th day of January, one thousand nine hundred and nine.

ELIHU ROOT	[SEAL]
JAMES BRYCE	[SEAL]

#### EXCHANGES OF NOTES

##### *The Secretary of State to the British Ambassador*

DEPARTMENT OF STATE,  
Washington, January 27, 1909

EXCELLENCY: In order to place officially on record the understanding already arrived at by us in preparing the special agreement which we have signed today for the submission of questions relating to fisheries on the North Atlantic Coast under the general Treaty of Arbitration concluded between the United States and Great Britain on the fourth day of April, 1908,<sup>o</sup> I have the honor to declare on behalf of the Government of the United States that Question 5 of the series submitted, namely, "From where must be measured the 'three marine miles of any of the coasts, bays, creeks, or harbors' referred to in the said Article" is submitted in its present form with the agreed understanding that no question as to the Bay of Fundy, considered as a whole apart from its bays or creeks, or as to innocent passage through the Gut of Canso is included in this question as one to be raised in the present Arbitration; it being the intention of the parties that their respective views or contentions on either subject shall be in no wise prejudiced by anything in the present Arbitration.

<sup>o</sup> TS 494, *ante*, p. 295.

I have the honor to be, with the highest respect, Your Excellency's most obedient servant,

ELIHU ROOT

His Excellency The Right Honorable  
 JAMES BRYCE, O. M.,  
*Ambassador of Great Britain.*

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*The British Ambassador to the Secretary of State*

BRITISH EMBASSY,  
 Washington, January 27, 1909

SIR, I have the honour to acknowledge your note of to-day's date and in reply have to declare on behalf of His Majesty's Government, in order to place officially on record the understanding already arrived at by us in preparing the special Agreement which we have signed to-day for the submission of questions relating to fisheries on the North Atlantic Coast under the general Treaty of Arbitration concluded between Great Britain and the United States on the 4th day of April, 1908, that Question 5 of the series submitted, namely, "From where must be measured the 'three marine miles of any of the coasts, bays, creeks or harbours' referred to in the said Article" is submitted in its present form with the agreed understanding that no question as to the Bay of Fundy, considered as a whole apart from its bays and creeks, or as to innocent passage through the Gut of Canso is included in this question as one to be raised in the present arbitration; it being the intention of the parties that their respective views or contentions on either subject shall be in no wise prejudiced by anything in the present arbitration.

I have the honour to be, With the highest consideration, Sir, your most obedient, humble Servant,

JAMES BRYCE

The Honourable ELIHU ROOT,  
*etc., etc., etc.,*  
*Secretary of State.*

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*The Secretary of State to the British Ambassador*

DEPARTMENT OF STATE,  
 Washington, February 21, 1909.

No. 541

EXCELLENCY: I have the honor to inform you that the Senate, by its resolution of the 18th instant, gave its advice and consent to the ratification of the Special Agreement between the United States and Great Britain, signed on January 27, 1909, for the submission to the Permanent Court of

Arbitration at The Hague of questions relating to fisheries on the north Atlantic Coast.

In giving this advice and consent to the ratification of the Special Agreement, and as a part of the act of ratification, the Senate states in the resolution its understanding—"that it is agreed by the United States and Great Britain that question 5 of the series submitted, namely, 'from where must be measured the three marine miles of any of the coasts, bays, creeks or harbors referred to in said Article?' does not include any question as to the Bay of Fundy, considered as a whole apart from its bays or creeks, or as to innocent passage through the Gut of Canso, and that the respective views or contentions of the United States and Great Britain on either subject shall be in no wise prejudiced by anything in the present arbitration, and that this agreement on the part of the United States will be mentioned in the ratification of the special agreement and will, in effect, form part of this special agreement."

In thus formally confirming what I stated to you orally, I have the honor to express the hope that you will in like manner formally confirm the assent of His Majesty's Government to this understanding which you heretofore stated to me orally, and that you will be prepared at an early day to exchange the notes confirming the Special Agreement as provided for therein and in the general arbitration convention of June 5, 1908.<sup>7</sup>

I have the honor to be, with the highest consideration, Your Excellency's most obedient servant,

ROBERT BACON

His Excellency The Right Honorable  
JAMES BRYCE, O.M.,  
*Ambassador of Great Britain.*

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*The British Ambassador to the Secretary of State*

BRITISH EMBASSY,  
*Washington, March 4, 1909*

SIR, I have the honour to acknowledge the receipt of your note informing me that the Senate of the United States has approved the Special Agreement for the reference to arbitration of the questions relating to the fisheries on the North Atlantic Coast and of the terms of the Resolution in which that approval is given.

It is now my duty to inform you that the Government of His Britannic Majesty confirms the Special Agreement aforesaid and in so doing confirms also the understanding arrived at by us that Question V of the series of

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<sup>7</sup> The convention signed at Washington Apr. 4, 1908 (TS 494, *ante*, p. 295), entered into force June 4, 1908, and was proclaimed by the President June 5, 1908.

Questions submitted for arbitration, namely from where must be measured the "three marine miles of any of the coasts, bays, creeks, or harbours" referred to in the said article, is submitted in its present form with the agreed understanding that no question as to the Bay of Fundy considered as a whole apart from its bays or creeks, or as to innocent passage through the Gut of Canso, is included in this question as one to be raised in the present arbitration, it being the intention of the Parties that their respective views or contentions on either subject shall be in no wise prejudiced by anything in the present arbitration.

This understanding is that which was embodied in notes exchanged between your predecessor and myself on January 27th, and is that expressed in the abovementioned Resolution of the Senate of the United States.

I have the honour to be, with the highest respect, Sir, Your most obedient, humble Servant,

JAMES BRYCE

The Honourable ROBERT BACON,  
*Secretary of State.*

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*The Secretary of State to the British Ambassador*

DEPARTMENT OF STATE,  
*Washington, March 4, 1909*

EXCELLENCY: I have the honor to acknowledge the receipt of your note of the 4th instant in which you confirm the understanding in the matter of the Special Agreement submitting to arbitration the differences between the Governments of the United States and Great Britain concerning the North Atlantic fisheries, as expressed in the Resolution of the Senate of February 18, 1909, and as previously agreed upon by the interchange of notes with my predecessor of January 27, 1909.

I therefore have the honor to inform you that this Government considers the Special Agreement as in full force and effect from and after the 4th day of March, 1909.

I have the honor to be, with the highest consideration, Your Excellency's most obedient servant,

ROBERT BACON

His Excellency The Right Honorable  
JAMES BRYCE, O. M.,  
*Ambassador of Great Britain.*