

CLAIMS: THE CASE OF P. W. SHUFELDT

Exchange of notes at Guatemala November 2, 1929

Entered into force November 2, 1929

*Terminated upon fulfillment of its terms*¹

Department of State files

The American Minister to the Minister of Foreign Affairs

GUATEMALA, *November 2, 1929*

MR. MINISTER:

Referring to previous correspondence between the Legation and the Guatemalan Foreign Office concerning the claim of P. W. Shufeldt against the Government of Guatemala, which claim has been espoused by the Government of the United States, it is agreed by the two Governments that this question shall be submitted to Sir Herbert Sisnett, Chief Justice of British Honduras, as Arbitrator. The question to be submitted to the Arbitrator is as follows:

1. Has P. W. Shufeldt, a citizen of the United States, as cessionary of the rights of Víctor M. Morales I. and Francisco Nájera Andrade, the right to claim a pecuniary indemnification for damages and injuries which may have been caused to him by the promulgation of the Legislative Decree of the Assembly of Guatemala No. 1544, by which it disapproved the contract of February 4, 1922, for the extraction of a minimum of 75,000 quintales of chicle, in a defined area in the Department of the Petén, the cession of Nájera Andrade and Morales in favor of Shufeldt having been made by contract of February 11, 1924 [1922]?

2. In case the Arbitrator declare that Shufeldt does have the right to having an indemnification paid to him by the Government of Guatemala, what sum should the Government of Guatemala in justice pay to the Government of the United States for the account of Shufeldt?

It is proposed that the following procedure shall govern the presentation and adjudication of the case by the Tribunal, and the payment of the award, if any:

1. The Tribunal shall sit at Belize, residence of the Arbitrator.

¹ The arbitrator returned an award in favor of the claimant on July 24, 1930.

2. Each Government shall appoint one or more representatives who shall have the authority necessary to appear before the Arbitrator and to represent it.

3. The first day of February 1930 is fixed as the day on which the representatives of the parties shall present their credentials to the Arbitrator either in person or through their respective consular officers. If they be in good and due form, the Arbitrator shall declare the proceedings open.

4. The representatives of the parties shall submit to the Arbitrator a written statement which shall comprise their respective points of view in the relation of the facts, the statements of the juridic points upon which their cause is based and all the proofs which they may wish to present as basis for their claims. They may be set forth in English or in Spanish. The term, within which the statement of their cause must be presented by the parties, is that of thirty days counted from the time when the Arbitrator declares the proceedings open.

5. Each party shall deliver to the other party a textual copy of its statements, allegations and proofs when the originals thereof are submitted to the Arbitrator.

6. Within sixty days counted from the day on which the last of the parties presented the statement of its cause, in conformity with article 4, each party shall have the right to present a written reply to the allegations of the other party. A copy of that reply shall be delivered to the other at the time of being presented to the Arbitrator.

7. Within thirty days following the termination of the sixty days' period mentioned in article 6, the parties may present oral or written arguments to the Arbitrator, summarizing the proofs and arguments produced in the statements, but no additional evidence shall be presented except at the request of the Arbitrator.

8. Each Government shall have the right to exhibit all documents pertaining to the subject-matter of the arbitration, and the original documents or copies certified by a notary or public officials, whatever may be their character, and to request the production of such documents by the other party.

9. The Arbitrator shall have authority to establish such rules of procedure as he may deem opportune and conducive to the success of the arbitral proceeding, always provided that they do not contradict the bases laid down in the protocol of arbitration.

10. The Tribunal shall keep a record of its proceedings. The two Governments shall assign to the Tribunal such amanuenses, interpreters and employees as may be necessary. The Tribunal is authorized to administer oaths to witnesses and to take evidence on oath.

11. The decision of the Tribunal shall be given within a period of sixty days following the termination of the thirty days' period mentioned in article 7. The decision, when made, shall be forthwith communicated to the Gov-

ernments at Guatemala and Washington. It shall be accepted as final and binding upon the two Governments.

12. Each Government shall pay its own expenses and one half of the common expenses of the arbitration.

13. The amount granted by the award, if any, shall be payable in gold coin of the United States at the Department of State, Washington, within one year after the rendition of the decision by the Tribunal, with interest at six per centum per annum, beginning to run one month after the rendition of the decision.

14. The honorarium and emoluments of the Arbitrator shall be as agreed upon in previous correspondence.

I avail myself [etc.]

ARTHUR H. GEISSLER

The Minister of Foreign Affairs to the American Minister

[TRANSLATION]

GUATEMALA, *November 2, 1929*

MR. MINISTER:

With reference to previous correspondence between the Ministry of Foreign Affairs and the United States Legation concerning the claim of P. W. Shufeldt against the Government of Guatemala, a claim sponsored by the Government of the United States, I am happy to inform Your Excellency that my Government has willingly accepted the text proposed in your note, which sets forth the two aspects of the matter to be resolved by the Chief Justice of British Honduras, acting as arbitrator. The text is as follows:

1. Is P. W. Shufeldt, a citizen of the United States, as the assignee in law of Víctor M. Morales I. and Francisco Nájera Andrade, entitled to claim damages as a result of the promulgation of Legislative Decree No. 1544 of the Assembly of Guatemala, which invalidated the contract of February 4, 1922 for the extraction of at least 75,000 quitals of chicle from a specific area in the Department of Petén, the assignment by Nájera Andrade and Morales to Shufeldt having been made in a contract dated February 11, 1924 [1922]?

2. In the event the arbitrator finds that Shufeldt is in fact entitled to compensation from the Government of Guatemala, what is considered to be the fair amount the Government of Guatemala should pay the Government of the United States as settlement for Shufeldt?

The Government of Guatemala has also approved the procedure to be followed for presenting the case before the Tribunal, for conducting the debate and reaching the findings, and for paying the compensation, if payment is ordered. The procedure is as follows:

1. The Tribunal will sit at Belize, the arbitrator's residence.
2. Each Government will designate one or more representatives with the required status to appear before the arbitrator.
3. February 1, 1930 is designated the date when the representatives of the parties shall present their powers to the arbitrator, personally or through their consuls. If the powers are found to be in order, the arbitrator shall declare the hearing open.
4. The representatives of the parties shall submit a written statement to the arbitrator containing their views on the matter, a statement of the points of law on which they base their cases, and all evidence they wish to present as a foundation for their claims. The statements may be in English or in Spanish.
The parties shall present the statement of their cases within thirty days after the hearing is opened by the arbitrator.
5. Upon presentation of the originals to the arbitrator, each party shall present to the other party a complete copy of its statements, allegations, and evidence.
6. Within sixty days after the date on which the second party presented a statement of its case, pursuant to article 4, each party shall be entitled to reply to the allegations of the other. A copy of the reply shall be delivered to the other party at the time of delivery to the arbitrator.
7. Within thirty days after the end of the sixty-day period referred to in article 6 the parties may present their allegations to the arbitrator orally or in writing, summarizing the evidence and arguments contained in their statements; but no additional evidence shall be introduced unless requested by the arbitrator.
8. Each Government may present documents related to the subject of the arbitration as well as original documents or duly notarized or authenticated copies of any kind, and it may request presentation of such documents by the other party.
9. The arbitrator may establish such rules as he deems appropriate or conducive to the successful completion of the arbitration, provided they are not in conflict with the bases established in the arbitration protocol.
10. The Tribunal shall keep a record of its proceedings.
The two Governments will assign necessary reporters, translators, and clerks to the Tribunal. The Tribunal shall be authorized to administer oaths and to receive testimony under oath.
11. The Tribunal shall hand down its award within a sixty-day period following the thirty-day period referred to in article 7. The Governments at Guatemala and Washington shall be informed immediately when the Tribunal reaches a decision. The two Governments shall accept the award as final and binding.
12. Each Government will defray its own expenses and half of the expenses incurred jointly for the arbitration.

13. The amount fixed by the findings of the Tribunal, should payment be ordered, shall be payable in United States gold currency to the Department of State at Washington within one year after the Tribunal has handed down its award; one month after the Tribunal has handed down its award the amount will begin to draw 6 percent annual interest.

14. The arbitrator's fees and stipends were agreed upon in previous correspondence.

I avail myself of this opportunity (etc.)

ED. AGUIRRE V.