# DAMAGES
# IN
# INTERNATIONAL LAW

BY
MARJORIE M. WHITEMAN, LL.B., J.S.D.
Assistant to the Legal Adviser
of the
Department of State

VOLUME II

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1937

KRAUS REPRINT CO.
Millwood, New York
1976

PUBLICATION No. 961

**Library of Congress Cataloging in Publication Data**

Whiteman, Marjorie Millace.
Damages in international law.

Reprint of 2 v. of the 1937 ed. published by U. S. Govt. Print. Off., Washington, which was issued as no. 960-961 of U. S. Dept. of State, Publication series.
1. Damages. 2. Claims. I. Title. II. Series: United States. Dept. of State. Publication ; no. 960-961.
JX5483.W452 341.5'2 76-13520
ISBN 0-527-95970-7

Printed in U.S.A.

# CONTENTS

## CHAPTER V.—PROPERTY

CHAPTER V.—PROPERTY—Continued

# PROPERTY

## RESPONSIBILITY AND REPARATION

Grotius states that "fault creates the obligation to make good the loss".[1] This statement comprehends within its scope three problems in the settlement of a claim: (1) a possible "fault" on the part of the respondent state; (2) the existence and extent of the "loss" sustained; and (3) the amount of reparation which will "make good" the loss. We are particularly concerned with problems 2 and 3 in the consideration of the measure of damages in any case. (Although problem 1 is a different problem from that on which the emphasis is placed in this treatise, it is, of course, of primary importance in the settlement of any case.)

It is necessary to determine in a given case whether the property rights for the interference with which the damages are asked, have actually been interfered with. For example, where a mere permission (without other interest) has been granted and subsequently revoked, no indemnity will be allowed, even though monetary losses have been sustained. In 1846, *Kerford & Jenkin*, British merchants resident in Zacatecas, Mexico, purchased a quantity of goods in England designed for the Mexican trade and especially adapted to that market. According to a law of the United States of March 3, 1845,[2] it was permissible to export merchandise overland to Mexico via Santa Fe with the benefit of drawback on duties. The goods referred to were ordered to be shipped to Philadelphia, thence overland to Santa Fe, and thence to the interior of Mexico. They arrived in Philadelphia in June 1846, when war existed between the United States and Mexico and commercial intercourse between the two countries had stopped. By a special order of the Secretary of the Treasury permission was granted to proceed with the goods with the accustomed allowance of drawback, "without giving rise to any inferences as regards the condition of Santa Fe". At Santa Fe a certificate was issued for the return of the duties which had been paid in the United States.

No international injury; revocation of a permission

The caravan transporting the goods was later overtaken and detained by United States military forces *en route* to the capture of Chihuahua. After a delay of from six to eight months, at great expense to the owners arising from the loss of mules, consumption

[1] *De jure belli ac pacis* (1646 ed., Carnegie Endowment for International Peace, translation, 1925), bk. II, ch. XVII, sec. I, p. 430.

[2] 5 Stat. 750.

of provisions, damage to goods, and other losses, the caravan proceeded to its destination.

Notwithstanding the delay, the claimants realized a large profit, though it was much less than they would have realized had there been no delay.

Their claim against the United States for $300,000 was presented by Great Britain to the Commission established between the two countries under the convention of February 8, 1853.[3] Umpire Bates held that the order of the Treasury was a mere "permission to the claimants to undertake an adventure which was at the time legally prohibited" and that it could not be "imagined that the United States Government had the slightest intention to confer a privilege which might interfere materially with their operations against the enemy".[4] The Umpire disallowed the claim on the grounds (1) that the claimants had no license to trade with the enemy or to pursue a course calculated to interfere with the military operations of the United States forces and (2) that the detention arose out of the state of war.[5]

In the case of *Silvio Poggioli* (Italy *v.* Venezuela), Umpire Ralston, of the Commission established under the 1903 protocols between the two countries, allowed the claimant damages for the burning of sugar mills, houses, and buildings; for the destruction of crops and merchandise; for the seizure of livestock; for the sacking of a store; for "injuries to properties from having driven off agents"; for the loss of prospective coffee crops during three years of forced abandonment of the plantation; for costs of defending a wrongful suit; and for the expenses of a trip to Caracas for the purpose of submitting the claim to the Venezuelan Government.[6]

Large damages were also claimed in this case on account of the closing of the port of Buena Vista, with ensuing loss to the claimant. It was argued that the reason given for the closing of the port—that arms were imported there for the use of the revolution—was untenable, as other ports were not closed where arms could have been imported and that the closing of the port was a matter of spite toward the firm of which the claimant was a member. The claim for indemnity on this account was disallowed. In this connection, Umpire Ralston stated that:

[3] *Report of the Decisions of the Commission of Claims under the Convention of February 8, 1853* (1856) 351.

[4] *Ibid.* 373.

[5] *Ibid.* 375.

[6] The claimant in this case also sought to prove that the acts would result in his ultimate bankruptcy if he did not receive an award. Umpire Ralston, however, did not allow indemnity for the loss of credit, stating in this connection that—

> this item is entirely too indefinite and uncertain to be taken into consideration by the umpire. [Ralston's Report (1904) 847, 870.]

This may have been the case, but the umpire has nothing whatever to do with the reasons inducing the Government to close the port. The umpire assumes that it was within its police power to close it, and no contract existing between the Poggiolis and the Government (as in the Martini case), by virtue of which damages could be claimed for the closing of the port, the power of the Government must be regarded as plenary and the reasons for its exercise beyond question.[7]

Use of port revocable

On November 28, 1882 merchandise belonging to an Italian national, *M. Joseph Consonno*, was seized by Persian customs authorities at Recht, apparently upon the refusal of the owner to submit to the usual customs formalities. Nearly eight years later the goods were confiscated. As a result, a claim was made by Italy against Persia, seemingly for the value of the merchandise.

Sir William White was appointed Arbitrator in the case, under an agreement of June 5, 1890 between the two countries. He rendered an award on June 12, 1891, by the terms of which he allowed the Italian Government 78,000 francs, representing the value of the goods as it had been declared by the claimant, together with interest for the period of nearly eight years.[8]

It was held that the Persian customs authorities at Recht had the right to examine and stamp the merchandise contained in the ninety-two cases sought to be imported; that the claimant by opposing the examination had acted illegally; and, further, that the Persian Government had the right, upon the refusal of Consonno to submit to the customs formalities, to confiscate the goods. However, it was also held that "the Persian Government, by not using its right immediately and by leaving the dispute unsettled for nearly eight years, caused a manifest injury to Consonno" and that "if it is just, on the one hand, to abandon to the Persian Government the said goods contained in the ninety-two above-mentioned cases, it seems equitable, on the other hand, to pay the value of them to M. Consonno according to the valuation by him at the customhouse".

Again, a state may be held liable in damages although the losses occasioned may be the result of a *bona-fide* mistake in law. For example, in the case of *The Coquitlam* (Great Britain *v.* United States), a claim for $104,709.03 and interest was presented to the Tribunal established under the terms of the special agreement of August 18, 1910 between the United States and Great Britain on behalf of the charterers and the owners of the British steamer *Coquitlam* and the owners of her cargo, on account of the wrongful seizure of the vessel in the Bering Sea by the United States Revenue Cutter *Corwin* on June 22, 1892.[9]

Where mistake of law

[7] *Ibid.*

[8] La Fontaine, *Pasicrisie internationale* (Bern, 1902) 342, 343.

[9] Nielsen's Report (1926) 447.

On July 5, 1892 the United States District Attorney filed a libel of information against the *Coquitlam*, its appurtenances and cargo, in the District Court of Alaska, alleging that the ship had committed three separate offenses: (1) that by receiving and unloading merchandise and cargo in the waters and within four leagues of the coast of the United States she had violated sections 2867 and 2868 of the Revised Statutes of the United States; (2) that by transferring merchandise within those limits without having previously reported and received a permit she had violated section 3109 of the Revised Statutes; and (3) that by having brought no written manifest of the cargo into the United States she had violated sections 2807, 2808 and 2809 of the Revised Statutes. On September 18, 1893, upon trial, the vessel and her cargo and appurtenances were condemned. On appeal, the United States Circuit Court of Appeals for the Ninth Circuit on November 16, 1896 reversed the decree of forfeiture and dismissed the libel. Meanwhile the vessel had been released on bond.

On December 21, 1904 the United States informed the British Ambassador that the United States Government recognized liability and would recommend payment of a reasonable indemnity but that it would be necessary for the British Government to submit proofs showing the nature and extent of the damages suffered by the seizure. There was no evidence that the British Government ever complied with this request.

When the claim was presented to the Anglo-American Tribunal the United States urged that the officer who made the seizure acted *bona fide* in the belief that the revenue laws of the United States had been infringed and that there was probable cause for this belief. As to this contention the Tribunal, Henri Fromageot, President, said:

> The good faith and fair conduct of the officers of the *Corwin* are unquestionable, but though this may be taken into account as an explanation given by the same officers to their Government, it can not operate to prevent their action being an error in judgment for which the Government of the United States is liable to a foreign Government.[10]

The Tribunal held, further, that doubt as to the interpretation of the United States statutes did not constitute probable cause for the seizure.

The sum of $48,000 was allowed without explanation as to its computation,[11] and interest was allowed from a date six months after the date of the decision of the United States Circuit Court (November 16, 1896), i.e. May 16, 1896, to December 21, 1904, the date on which the Government of the United States recognized its liability and asked to be informed of the amount of the damages claimed.

The determination of extent of loss and amount of damages is frequently fraught with more difficulty than that of determining

[10] *Ibid.* 449–450.

[11] *Ibid.* 450.

whether responsibility exists. Umpire Lieber, first umpire of the Commission established under the convention of July 4, 1868 between the United States and Mexico, commented on this in a number of his decisions. In the case of *Emilio Roberts* (United States *v.* Mexico), he explained that:

> It is often much more difficult for us to fix the amount of the claim, in a reasonable manner, than to give judgment about the justice of the same claim. Claimants almost always exaggerate enormously, and try to present the facts in the light most favorable to themselves, without paying great respect to the truth. The authorities having in charge the collection of the defensive evidence, very seldom pay attention to the estimate of damages, and use all their efforts in contradicting the principle of the claim. For this reason, we, the Commissioners, are compelled to proceed solely by simple conjectures and inferences, drawn from the few facts we have before us, and to make a very ample use of the discretionary power which pertains to our office.[12]

Necessity of actual pecuniary loss

Grotius' statement, previously referred to, indicates, and the great preponderance of decisions of arbitral tribunals have established, that in assessing damages for "fault" the actual existence of loss must be present. Contrary to the law of many local jurisdictions nominal damages [13] are not ordinarily recoverable in international law. In international cases it is only where individuals or states have suffered injuries or pecuniary losses that the costly processes of arbitration are invoked. There have been, however, several seeming exceptions.

In the case of the *Compagnie Générale des Asphaltes de France* (Great Britain *v.* Venezuela), it appeared that in April and June of 1902 a British company, the Compagnie Générale des Asphaltes de France, owning a mining concession at Guanipa, Venezuela, was required by the Venezuelan Consul at Port of Spain, Trinidad (British territory), to pay $20 for passports on two occasions and the full amount of the duties chargeable in Venezuela on goods imported into that country on three occasions, as a condition precedent to the clearance of the British vessel *Euterpe*, which had been chartered by the company to carry food and laborers to Guanipa from Port of Spain. After July 10, 1902 the Venezuelan Consul refused to clear the *Euterpe*, stating as his reason that the company had complained to the colonial authorities at Trinidad of his previous action and that the permit enabling him to clear vessels for the mining company had been withdrawn. The import duties paid under protest by the company on the three trips, were not in fact again paid in Venezuela. It appeared that Pedernales and Güiria, ports of entry for which the vessel desired clearance, were in the hands of revolutionists, at least for a part of the period during which the Consul refused clearance. It also ap-

[12] Memorial and Opinion, docket 594; ms. Department of State.

[13] Under the local law of New Jersey, for example, nominal damages are allowed in cases where the evidence of the amount of damages sustained is insufficient. (*Teets* v. *Halm* (1927), 137 Atl. 559.)

peared that, after July 10, 1902, the Consul cleared vessels other than those of this company for the same ports. The company claimed that, as the result of the refusal of the Consul to grant clearance, it was unable to make use of the schooner *Euterpe*, thereby losing three months' time under the charter, and that it was forced to maintain the crew while the ship was idle. It also claimed that it was prevented from sending food and supplies to Venezuela, that the employees at the mines, being on the verge of starvation, were compelled to leave and go to Trinidad, and that all mining operations necessarily ceased. The company submitted a claim for 6,060 bolivares to the Claims Commission established by Great Britain and Venezuela under the terms of the protocols of February 13 and May 7, 1903.[14]

Umpire Plumley of that Commission decided that—

> the Venezuelan consul resident at Trinidad has not the authority to issue them [passports] to a British subject, and can only countersign them *if requested* so to do; that it was wholly in the right of the captain of the *Euterpe* to sail for any port in Venezuela without having the passports of his passengers countersigned by the Venezuelan consul at Trinidad; that the matter of passports had nothing to do with the clearance of the *Euterpe*, and that it was error for the Venezuelan consul to insist upon their being a condition precedent to such clearance.[15]

He also held that—

> To assume to collect in Trinidad import duties on goods to be entered at Venezuelan ports was an act of Venezuelan sovereignty on British soil. It was wholly without right and directly against the right of sovereignty which inhered in the British Government only. It could not be countenanced or permitted by and was a just cause of offense to that Government.
>
> To take the other step and make the payment of these duties on British soil a condition precedent to the clearance by the Venezuelan consul of a British ship bound for a Venezuelan port was a most serious error on the part of such consul.[16]

The Umpire further held that—

> the question of responsibility of Venezuela for the acts of their consul at Trinidad is found in the failure of the Government of Venezuela, after knowledge thereof, to make seasonable disclaimer of his acts and seasonable correction of his mistakes. If the respondent Government authorized or directed some of these acts, or only ratified them by silence and acquiescence, its responsibility is the same. In determining the issues raised in this case, especially those following June 28, 1902, the umpire is not passing, in any part, upon the propriety or wisdom of the governmental policy of Venezuela in that regard. He can readily assume that it seemed to those in power that the exigencies of the situation required drastic measures for the preservation of the national life. In such case, however, it must have been appreciated that loss would ensue and that reparation therefor must follow.[17]

---

[14] Ralston's Report (1904) 331.
[15] *Ibid.* 334.
[16] *Ibid.*
[17] *Ibid.* 338.

In assessing the amount of the damages the Umpire held that since the duties were levied wrongfully they should be restored, even though they were not in fact again paid by the claimant company. He stated:

> The umpire is not disregardful of the claim of the honorable Commissioner for Venezuela that, since the duties were not, in fact, again paid, the claimant company has suffered no loss, and hence, in equity, has no rightful demand for their repayment; but it is the opinion of the umpire that an unjustifiable act is not made just because, perchance, there were not evil results which might well have followed. The claimant Government has a right to insist that its sovereignty over its own soil shall be respected and that its subject shall be restored to his original right before consequent results shall be discussed. The umpire having found that the requirement of import duties before clearance was an unlawful exaction and a wrongful assumption of Venezuelan sovereignty on British soil, it is just and right, and therefore justice and equity, that these duties be restored to the claimant company.[18]

Wrongfully assessed duties restored, though no actual loss

The sum of £214 (5,403.50 bolivares), including interest, was allowed. The cost of making translations for the Commission was included in the award.

Claims were submitted to the American and British Claims Commission established under the terms of the special agreement of August 18, 1910, by certain American citizens on account of the deprivation by British authorities of their titles to land. The titles were alleged to have been acquired in the Fiji Islands [19] from native chiefs prior to the annexation of the islands by Great Britain on October 10, 1874. Article IV of the agreement of the deed of cession of the islands to Great Britain reads as follows:

> That the absolute proprietorship of all lands, not shown to be now alienated, so as to have become *bona fide* the property of Europeans or other foreigners, or not now in the actual use or occupation of some Chief or tribe, or not actually required for the probable future support and maintenance of some Chief or tribe, shall be and is hereby declared to be vested in Her said Majesty, her heirs and successors.[20]

Immediately after the cession Great Britain established a Board of Land Commissioners to investigate and pass upon the validity of titles to land. Its findings and conclusions were subject to review by the Governor in Council. Somewhat later, provision was made for the rehearing of cases on a proper petition before a final tribunal made up of the Governor and the members of his Council, with the Chief Justice of the Colony and the native commissioner sitting with them. Between 1874 and 1882 more than 1,300 claims were considered and passed upon by the Board. Among these claims was that

[18] *Ibid.* 340.

[19] *Fijian Land Claims* (United States *v.* Great Britain), Nielsen's Report (1926) 588.

[20] *Ibid.* 590.

of *Isaac M. Brower*, an American citizen, whose claim for the allowance of a Crown grant for his land was disallowed.[21]

On account of the disallowance of his claim by the Board, Brower submitted a claim for $1,250, with interest, to the American and British Claims Commission. This claim, briefly, was as follows: In 1863 two American citizens, Thompson and Gillam, purchased from a Fiji chief known as Tui Cakau a group of small islands, forming part of the Fiji group, known as Ringgold Islands. The islands were not inhabited and never had been. Not more than three of them had any potential value, the rest being described as "mere rocks" or "sand banks". There was a legend to the effect that treasure was buried there; and the natives went there to hunt turtles.

Gillam and Thompson paid $250 gold (Chilean money) for the islands. They dug for the treasure for a period of two months, and at the end of that time they put a blank deed of sale for the islands in the hands of the American Consul, Brower, and left them. Thereafter Brower sold the islands to one Barber; and still later, in 1870, he repurchased a half interest in the islands from Barber for the sum of £30. In 1873 the remaining half interest was sold by Barber to one Halstead.

In 1875, immediately after the cession of the Fiji Islands to Great Britain, Brower and Halstead applied for a Crown grant to the islands. Their application was refused in November 1880 by the land commissioners and in 1881, on rehearing, was again denied. At the final hearing in 1881 Brower and Halstead asked leave to amend the petition for the Crown grant and to substitute the names of two half-castes called Valentine for that of Brower, and the amendment was allowed.

Some three years previously Brower had entered into an arrangement, the exact nature of which was not disclosed in the record before the American and British Claims Commission, for the sale of the land to the Valentines for the sum of £100, which was paid. After the failure of Brower to secure the Crown grant to the land the Valentines sued Brower, in the Supreme Court of Fiji, for the repayment of the £100, and in August 1884 they recovered a judgment for that amount, which was duly paid.

On November 14, 1923 the American and British Claims Commission, Henri Fromageot, President, held that—

> the title was vested in Brower and Halstead at the time of the cession to Great Britain.
>
> . . . . . .
>
> . . . The most reasonable view is that Brower did try to dispose of his interest; that the transaction was upset by the failure to secure a Crown Grant and that the final result was to place him exactly where he stood in the beginning. The effort to sell was abortive and he was obliged to pay back what he had received.

[21] *Ibid.* 612.

We find no evidence that the title definitely passed to the Valentines and remained in them; but their complete disappearance from the situation raises an obvious presumption against the supposition that Brower's interest actually passed to them.

We hold that the title to a half interest in the Ringgold islands was properly vested in Brower at the time of the cession to Great Britain; that this title should have been recognized by Great Britain as the succeeding power in the islands under the obligation assumed at the time of the cession; and that Brower was the holder of the title at the date of the filing of the claim against Great Britain by the United States.[22]

The Commission then considered the subject of the amount of the damages to be allowed for the interference by Great Britain with Brower's title to the land. It said:

Passing to the question of damages, it is plain that the islands forming the subject matter of this claim had only a speculative and precarious value. Nobody had ever taken the trouble to occupy and settle upon them. There is no evidence of any improvements. In their natural state they apparently formed only a fishing ground for turtle. The chart indicates that they were little more than reefs or points of rock. Their value apparently rested entirely upon a rumour of buried treasure. The original purchase for a fantastic consideration paid in gold pieces is explainable on no other theory. The subsequent dealings were clearly based upon the same speculative consideration. The treasure tradition evidently persisted and the same fictitious valuation is reflected in the purchase by Brower of a half interest for £30, and in the purported transfer of that interest to the Valentines for £100. With the lapse of time the islands as such did not assume any real value, for as late as 1898, Mr. Allardyce, the Colonial Secretary and Receiver-General, made the following report upon them:

No "real value"; nominal damages allowed

> "These are six small islands of the Ringgold group. They are mere islets with a few cocoanut trees on them. They are situated in a remote portion of the Colony at a distance of about 180 miles from Suva. If put up to auction, I doubt if there would be a single bid for them." (Answer, p. 11.)

In these circumstances, we consider that notwithstanding our conclusion on the principle of liability, the United States must be content with an award of nominal damages.

NOW THEREFORE.

The Tribunal decides that the British Government shall pay to the United States, the nominal sum of one shilling.[23]

It will be seen that in the case of the *Compagnie Générale des Asphaltes de France* restitution was ordered of customs duties wrongfully assessed and paid by the claimant to the Venezuelan Government. This was ordered despite the fact that though the duties were properly leviable later, they were not so levied or paid by the claimants. In the *Brower* case the property for which the claimant had been wrongfully refused a Crown grant was of no "real value". Under those circumstances, nominal damages *eo nomine* were allowed.

Where the claimant alleges that he has sustained actual pecuniary damage, he must show that such damage was occasioned by the

[22] *Ibid.* 614, 615.

[23] *Ibid.* 615–616.

wrongful act of the respondent state. For example, where claims were presented for losses of property of Canadian nationals seized or destroyed in Germany, the Canadian Royal Commission held that it was not sufficient to show that the property was misappropriated or disposed of by private persons with whom the goods had been entrusted, but that it was necessary to show that the authorities of Germany, or its duly authorized agents, had misappropriated or disposed of the property.[24]

Damage by respondent state

In the case of *Paul De Maret* (Belgium *v.* Germany), where stocks of raw materials were sold by the claimant because of fear that they would be commandeered by the German authorities, the Belgian-German Mixed Arbitral Tribunal held that the claimant had not suffered damage on account of an act of Germany.[25]

Similarly, where a claimant and his family had left Germany at the outbreak of the war and thereafter his property in Germany had been sold under onerous conditions, in compliance with instructions given by the interested parties, without having been sequestrated, the claim for losses sustained, including rent paid during the voluntary sojourn of the family in France, which was presented to the Franco-German Mixed Arbitral Tribunal, was disallowed.[26]

In August 1917 *W. F. Thomas*, an American citizen and agent for the *Geo. A. Watson Tobacco Co.*,[27] was sent to solicit business in Manchuria and China. In order to discourage him, his sample case was completely looted by persons alleged to have been connected with the South Manchurian Railway. When a claim was made by the company for $13,043 for the cost of sending the agent from Virginia to China, for his salary during the period, for the expenses of the head office, and for forfeiture of pending business, the company was informed by the Department of State that the difficulty was purely a private matter between the company, or Thomas, and the railway officials. The claim was subsequently settled by the claimant and the railway company for about $800.

In these, as in other international cases, the burden of proof is upon the claimant to show not only that an international wrong has

[24] *Mrs. Mary D. Bristol* (Canada *v.* Germany), II *Reparations*, Royal Commission on Illegal Warfare Claims, etc. (Ottawa, 1928), 437, docket 1282; *Re Mrs. Annie Booth Ward* (Canada *v.* Germany), *ibid.* 445, docket 1295.

In the case of *Dr. Emile Simard* (Canada *v.* Germany), however, the claimant and his family, all Canadians, had fled from Brussels in 1914, leaving furnishings in a rented house which was subsequently taken possession of by the Germans, and upon the claimant's return after the Armistice he had found the house empty. Commissioner Friel inferred that the Germans had taken the contents of the house, and compensation was allowed therefor. (*Ibid.* 460, docket 1310.)

[25] IV *Recueil des décisions des tribunaux arbitraux mixtes* (1925) 103.

[26] *Héritiers Elie Weill* (France *v.* Germany), VI *Recueil* (1927) 190.

For other cases of remote damage, see ch. VII.

[27] MS. Department of State, file no. 494.11T38.

been committed but also, by the weight of authority, that pecuniary loss has been sustained by reason of the wrongful act.

In this connection attention is called to the case of *M. Pacifico*, a British subject, who claimed that he had suffered the loss of valuable documents relating to claims against the Portuguese Government when his house at Athens, Greece, was pillaged on April 4, 1847. The claims against Portugal related (1) to losses sustained and services rendered by Pacifico during the civil war in Portugal and (2) to claims for salary, expenses, and the cost of a voyage to Greece from Portugal, while the claimant was holding the office of Consul General of Portugal in Greece.

Pacifico's claim against Greece was considered by a Commission which was appointed under the terms of the convention of July 18, 1850 between Greece and Great Britain for the purpose of investigating this claim and which was composed of Léon Béclard, Umpire, appointed by France, Patrick Francis Campbell Johnston, appointed by Great Britain, and George Torlades O'Neill, appointed by Greece. This Commission discovered in the archives of the Cortes at Lisbon the originals and certified copies of the documents containing certain of Pacifico's claims against Portugal. It was felt that Pacifico was still able to present these claims, if they were properly founded, although he had apparently neglected to present them promptly, and that he had sustained no actual pecuniary loss on account of the destruction in Greece of documents bearing on these claims.

On May 5, 1851 the Commission awarded the claimant £150, considering the possibility that a few documents of no great importance might have been lost when his house at Athens was pillaged and considering, also, the expenses which he had incurred during the "instant investigation".[28]

A claim on behalf of *Winthrop C. Neilson*, American owner (or holder of the legal title) of the S.S. *Mohegan*, was presented to the Mixed Claims Commission, United States and Germany, established under the terms of the agreement of August 10, 1922, for damages occasioned by the increasing of the speed of the engine of the *Mohegan* far beyond the point of safety while the ship was escaping from a German submarine on August 6, 1918. The claim was disallowed on the ground that the claimant had failed to discharge the burden of proof resting on him of showing that the vessel had sustained damage from the attempt to escape.[29]

In another case, an automobile belonging to *Fred Ludtmann*, an American national, was seized in 1923 by French authorities in German-occupied territory because of his noncompliance with French

[28] La Fontaine, *Pasicrisie internationale* (Bern, 1902) 114.

[29] *Decisions and Opinions* 670, docket 6481.

orders concerning the operation of vehicles in that territory. In December 1923 he was informed that he could have his car, but he refused to apply for it and the car was turned over to the municipality of Dusseldorf. The authorities offered him 800 francs for the damage to the car, which had been used 215 days.[30] The claimant, however, desired to be paid $2,400 (the alleged value of the car) plus $400 (the cost of equipping and conditioning the car) plus reimbursement for the expense to him of renting another car at $10 a day. He was unable to explain the business in which he was engaged that necessitated the daily hiring of a car. Under all the circumstances the Department of State took the position that it was not in a position to press the claim against the French Government.[31]

The Custodian of Enemy Property of the Union of South Africa stated in his report of December 31, 1924 that "The cost of investigating claims for merchandise, etc., lost at sea as the result of enemy action was £915 4s., but this investigation proved that in most instances the importers had passed their losses on to consumers or had made excess war profits, which more than covered their losses." [32] In his report of December 31, 1925 [33] he proposed that compensation should be paid for loss of merchandise in transit but that no compensation should be paid to claimants who were liable for excess-profits duty during the period of the war or in respect of shipments made after the outbreak of the war where merchants and importers had failed or neglected to insure against war risks or had recouped themselves by passing their losses on to the consumer.

The claim of *Dr. J. B. Bance, Receiver in Bankruptcy of Ernesto Capriles*, was submitted by the United States to the United States-Venezuelan Commission, established pursuant to the protocol of February 17, 1903, for the benefit of three American companies—*Weeks, Potter & Co.*, *Seabury & Johnson*, and *Johnson & Johnson*—creditors of Capriles, in the amount of 15,576.60 bolivares, which was "the proportionate amount corresponding to them in a credit of 200,000 bolivars held by Capriles, a Venezuelan national, against the Venezuelan Government" and which was at the time judicially in the hands of the receiver in bankruptcy for collection.

The Commission held that it was "not possible to consider any individual credits from the total estate as the private property of any one creditor" and that the collection of the credit against Venezuela "originally owned and still owned" by a Venezuelan citizen was not within the jurisdiction of the Commission.[34] The American com-

[30] MS. Department of State, file no. 451.11L96.

[31] *Ibid.* 451.11L96/6.

[32] Union of South Africa, *Report of the Custodian of Enemy Property* (Capetown, 1925) 4.

[33] *Ibid.* (Capetown, 1926) 4.

[34] Morris' Report (1904) 381, 383.