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Title

The Pious Fund of the Californias, The United States of America vs. The United Mexican States, Permanent Court of Arbitration, 14. October 1902

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PERMANENT COURT OF ARBITRATION

THE PIOUS FUND OF THE CALIFORNIAS

THE UNITED STATES OF AMERICA v. THE UNITED MEXICAN STATES

AWARD OF THE TRIBUNAL

Unofficial English Translation

Arbitrators:

Henning Matzen
Edward Fry
Martens
T. M. C. Asser
A. F. De Savornin Lohman

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The Award of the Permanent Court of Arbitration in the matter of the Pious Fund of the Californias, Rendered October 14, 1902

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The Arbitral Tribunal, constituted by virtue of the treaty concluded at Washington on May 22, 1902, between the United States of America and the United Mexican States;

Whereas, by a *compromis* (agreement of arbitration) prepared under the form of a Protocol between the United States of America and the United Mexican States, signed at Washington on May 22, 1902, it was agreed and determined that the differences which existed

between the United States of America and the United Mexican States, relating to the subject of the "Pious Fund of the Californias," the annuities of which were claimed by the United States of America for the benefit of the Archbishop of San Francisco and the Bishop of Monterey, from the Government of the Mexican Republic, should be submitted to an arbitral tribunal, constituted on the basis of the Convention for the Pacific Settlement of International Disputes, signed at The Hague on July 29, 1899, which should be composed in the following manner, that is to say:

The President of the United States of America should designate two arbitrators (non-nationals), and the President of the United Mexican States equally two arbitrators (non-nationals); these four arbitrators should meet on September 1, 1902, at The Hague, for the purpose of nominating the umpire, who at the same time should by right be the President of the Arbitral Tribunal.

Whereas the President of the United States of America named as Arbitrators: The Right Hon. Sir EDWARD FRY, Doctor of Laws, former Member of the Court of Appeals, Member of the Privy Council of His Britannic Majesty, Member of the Permanent Court of Arbitration; and His Excellency M. DE MARTENS, Doctor of Laws, Privy Councilor, Member of the Council of the Imperial Ministry of Foreign Affairs of Russia, Member of the Institute of France, Member of the Permanent Court of Arbitration.

Whereas the President of the United Mexican States named as Arbitrators: Mr. T. M. C. ASSER, Doctor of Laws, Member of the Council of State of the Netherlands, former Professor at the University of Amsterdam, Member of the Permanent Court of Arbitration; and Jonkheer A. F. DE SAVORNIN LOHMAN, Doctor of Laws, former Minister of the Interior of the Netherlands, former Professor at the Free University at Amsterdam, Member of the Second Chamber of the States General, Member of the Permanent Court of Arbitration;

Which Arbitrators, at their meeting on September 1, 1902, in conformity with Articles 32-34 of the Hague Convention of July 29, 1899, elected as umpire and President

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by right of the Arbitral Tribunal, Mr. HENNING MATZEN, Doctor of Laws, Professor at the University of Copenhagen, Councilor Extraordinary to the Supreme Court, President of the Landsting, Member of the Permanent Court of Arbitration; and

Whereas, by virtue of the Washington Protocol of May 22, 1902, the above-named Arbitrators, convened as the Arbitral Tribunal, were required to decide:

1. If the said claim of the United States of America for the benefit of the Archbishop of San Francisco and the Bishop of Monterey was governed by the principle of *res judicata* by virtue of the arbitral award of November 11, 1875, pronounced by Sir EDWARD THORNTON, in the capacity of umpire.
2. If not, whether the said claim was just, with power to render such judgment as would seem to them just and equitable.

Whereas, the above-named Arbitrators having examined with impartiality and care all the documents and papers presented to the Arbitral Tribunal by the Agents of the United States of America and of the United Mexican States, and having heard with the greatest attention the oral arguments presented before the Tribunal by the Agents and the Counsel of the two Parties in dispute;

Considering that the dispute submitted for the decision of the Arbitral Tribunal consists of a conflict between the United States of America and the United Mexican States, which can only be decided on the basis of international treaties and the principles of international law;

Considering that the international treaties concluded between the two Powers in dispute from the year 1848 to the *compromis* of May 22, 1902, manifest the eminently international character of this conflict;

Considering that all the parts of a judgment or a decree concerning the points debated in the dispute enlighten and mutually supplement each other, and that they all serve to render precise the meaning and the bearing of the *dispositif* (the decisory part of the judgment), to determine the points upon which there is *res judicata* and which therefore cannot be put in question;

Considering that this rule applies not only to the judgments of tribunals created by the State, but equally to arbitral awards rendered within the limits of the jurisdiction established by the *compromis*;

Considering that this same principle should, for an even stronger reason, be applied to international arbitration;

Considering that the Convention of July 4, 1868, concluded between the two States in dispute had accorded to the Mixed Commission named by these States, as well as to the umpire to be eventually designated, the right to rule upon their own jurisdiction;

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Considering that in the dispute submitted to the decision of the Arbitral Tribunal by virtue of the *compromis* of May 22, 1902, there are not only the same parties to the suit, but also the same subject-matter that was judged in the arbitral award of Sir EDWARD THORNTON, as umpire, in 1875, and amended by him on October 24, 1876;

Considering that the Government of the United Mexican States conscientiously executed the arbitral award of 1875 and 1876 by paying the annuities adjudged by the umpire;

Considering that since 1869, thirty-three annuities have not been paid by the Government of the United Mexican States to the Government of the United States of America, and that the rules of prescription, which belong exclusively to the domain of civil law, cannot be applied to the present conflict between the two States in dispute;

Considering that, so far as the currency in which the annual payment should take place is concerned, the silver dollar has legal tender in Mexico, payment in gold cannot be exacted, except by virtue of an express stipulation;

That in the present instance, with no such stipulation in existence, the defending Party has the right to free itself by paying in silver;

That in relation to this point, the award of Sir EDWARD THORNTON does not have the force of *res judicata*, except for the twenty-one annuities with regard to which the umpire decided that the payment should take place in Mexican gold dollars, because the question of the mode of payment does not relate to the basis of the right in dispute, but only to the execution of the award;

Considering that in accordance with Article 10 of the Washington Protocol of May 22, 1902, the present Arbitral Tribunal must determine, in the event of an award against the Republic of Mexico, the currency in which payment must take place;

For these reasons the Arbitral Tribunal decides and unanimously pronounces as follows:

1. That the said claim of the United States of America for the benefit of the Archbishop of San Francisco and of the Bishop of Monterey is governed by the principle of *res judicata* by virtue of the arbitral award of Sir EDWARD THORNTON of November 11, 1875, as amended by him on October 24, 1876;

2. That in conformity with this arbitral award, the Government of the Republic of the United Mexican States must pay to the Government of the United States of America the sum of one million, four hundred and twenty thousand, six hundred and eighty two Mexican dollars and sixty seven cents (\$1,420,682.67 Mexican), in currency having legal tender in Mexico, within the period fixed by Article 10 of the Washington Protocol of May 22, 1902.

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This sum of one million, four hundred and twenty thousand, six hundred and eighty two Mexican dollars and sixty seven cents (\$1,420,682.67 Mexican) will totally extinguish the annuities accrued and not paid by the Government of the Mexican Republic; that is to say, the annuity of forty three thousand and fifty Mexican dollars and ninety nine cents (\$43,050.99 Mexican) from February 1869, to February 2, 1902.

3. The Government of the Republic of the United Mexican States shall pay to the Government of the United States of America on February 2, 1903, and each following year on the same date of February 2, in perpetuity, the annuity of forty three thousand and fifty Mexican dollars and ninety nine cents (\$43,050.99 Mexican), in currency having legal tender in Mexico.

Done at The Hague in the Hall of the Permanent Court of Arbitration in triplicate original, on October 14, 1902.

HENNING MATZEN
EDWARD FRY
MARTENS T. M. C. ASSER
A. F. DE SA VORNIN LOHMAN

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

Referring Principles

Trans-Lex Principle: XIII.4.5 - Conclusive and preclusive effects of awards; *res judicata*