

REPORT OF THE COMMITTEE ON INTERNATIONAL LAW

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TO THE AMERICAN BAR ASSOCIATION :

Your Committee on International Law would respectfully present its annual report, in which it seeks to embody, according to long established custom, the treaties and international incidents affecting the United States within the year since its last report.

CONFERENCE OF AMERICAN REPUBLICS.

The Fourth International Conference of American Republics met at Buenos Aires July 12, 1910, under the honorary presidency of the Honorable Philander C. Knox, Secretary of State of the United States, and Doctor Victorina de la Plaza, Secretary of State of Argentina. The work of the conference was based wholly on a program adopted by the Governing Board of the Pan American Union in Washington. This board was given power to fix the time and place of the next meeting, which is to be convoked within five years. The conference adopted a modification of the previous treaty for the submission to arbitration of all pecuniary claims, which cannot be adjusted amicably through diplomacy, which requires that "The decisions shall be given in conformity to the principles of international law," and the limitation of the treaty to six years was done away and its duration made indefinite.

Treaties were also adopted as to copyrights, patents and trade-marks, and it was provided, in accord with most recent and advanced views, that "the recognition of a right of literary property obtained in one State in conformity with its laws shall be of full effect in all the others without the necessity of fulfilling any further formality, whenever there appears in the work some statement indicating reservation of the property right".

Somewhat kindred provisions were made as to patents and trade-marks. Recommendations were adopted for the unification and simplification of consular documents and customs regulations and for the limitation of consular fees, all in aid of international trade.

The adoption of the International Sanitary Convention of Washington was recommended.

(See *Amer. Journal Inter. Law* for 1910, p. 933 to 941.)

(See *Supp. Amer. Journal Inter. Law*, January, 1911, p. 1—.)

FISHERIES AWARD.

The last report of this committee mentioned that the Arbitral Tribunal as to the Newfoundland Fisheries was then in session at the Hague. It rendered its award September 7, 1910, closing a dispute which has been a source of difficulty both to the United States and Great Britain for seventy years past.

The United States claimed under the treaty of London of 1818 a right to take fish in treaty waters and on treaty shores subject to no regulation by local authority, or, if to any, only to reasonable and necessary regulations.

The first part of this claim was rejected by the award, but the submission to arbitration of any regulation claimed to be unreasonable was advised, and provision for notice of regulations and suspension of their enforcement at times for as long as seven months, was made and for hearing before an impartial court of experts as to reasonableness.

The United States fishermen had a right to take or cure fish within three marine miles of any bays. They claimed that this language applied only to bays not exceeding six marine miles in width and that it had no application whatever to great bays like the Bay of Fundy. The award held "the three marine miles are to be measured from a straight line drawn across the body of water at the place where it ceases to have the configuration and characteristic of a bay." From this conclusion Dr. Drago dissented. This finding is deemed very indefinite and unsatisfactory, but it is thought to leave an American vessel fishing in a great bay more than three miles from shore exempt from seizure by British authority: she is outside British territory, and, if she violates the provisions of the treaty, is merely violating a treaty of her own country upon the high seas, and therefore to be punished only in the courts of her own country.

The other points decided were not deemed important as to international law, being merely interpretive, but are of great commercial advantage.

The award gives to American ship owners the right to employ non-inhabitants on their vessels in the treaty waters; to take fish

in bays, creeks and harbors of the treaty coasts of Newfoundland and the Magdalen Islands.

American fishing vessels, it is held, may be required to report to customs officers, but only if conveniences therefor are provided, and report by telegram is enough; mere commercial formalities, duties, etc., not imposed on domestic fishermen shall not be imposed on American fishermen.

American fishermen entering for wood, water, etc., and remaining over forty-eight hours in Canadian bays or harbors may be required to report at the customs.

It was further held that there was nothing in the treaty to forbid vessels exercising both commercial and fishing privileges, if not during the same voyage. This is believed to mean that a ship may go out as a trader and return as a fisherman, or vice versa, and that the same voyage does not mean a round trip, but that the voyage out and the voyage back are separate voyages.

(See *Amer. Journal Inter. Law*, January, 1911, pp. 1 to 30.)

(See *Amer. Journal Inter. Law*, vol. 4, p. 948.)

CONFERENCE ON MARITIME LAW.

A further session of the third International Conference on Maritime Law was held at Brussels, September 12th to 27th. The topics discussed were (1) Collisions, (2) Salvage, (3) Maritime Liens and (4) Limitation of Shipowner's Liability. No conclusion was reached as to the two last, but the previous convention as to salvage remained, and that as to collision was signed with certain reservations to prevent its affecting the provisions of the Harter Act and other Acts of Congress and to prevent actions for damages caused by death until action by Congress, and to limit certain provisions to Courts of Admiralty and Maritime Jurisdiction.

(*Amer. Journal Inter. Law*, January, 1911, p. 182.)

INTERNATIONAL COURT OF PRIZE.

An additional protocol to the convention as to an international court of prize was signed at the Hague September 19, 1910, and with the original convention ratified by the Senate, February 15, 1911. Under this protocol, in cases of constitutional difficulties in accepting the original convention, a signatory may limit recourse to the international court to actions for damages caused by the capture, and methods of procedure are fixed. Under this proto-

col any possible invasion of the constitutional jurisdiction of the Supreme Court of the United States is believed to be avoided.

(*Amer. Journal Inter. Law*, April, 1911, p. 302.)

(*Supp. same*, April, 1911, p. 95.)

AWARD AS TO THE ORINOCO STEAMSHIP COMPANY'S CLAIM AGAINST
VENEZUELA.

By agreement of February 13, 1909, the United States and Venezuela agreed to submit to a board of three arbitrators not citizens of either litigant, chosen from the permanent court of arbitration a claim of the United States against Venezuela.

The matter of the Orinoco Steamship Company's claim was accordingly submitted to a tribunal consisting of the Cuban Minister at Berlin, M. Beernert, Minister of State of Belgium, and Prof. Lammasch of the University of Vienna, member of the upper house of the Austrian Parliament. October 25, 1910, an award was made upholding the previous award of the umpire, Mr. Barge, made in 1904, as to \$1,209,701.04; but the new award allows to the United States several further claims aggregating \$46,867.44, with three per cent interest from June 16, 1903, and \$7,000 costs. The basis of the modification of the original award seems to be that the umpire erroneously felt himself bound by local and technical rules and legislation, or lack of specific notice, instead of by absolute equity, which is held to have been binding upon him.

The submission required a decision "upon a basis of absolute equity without regard to objections of a technical nature or of the provisions of local legislation." In so far as the previous award was based on lack of formal notice of the assignment of the right, required by the contract or local statute, Venezuela not having lacked actual knowledge, or been prejudiced by acting in ignorance, such previous award is modified as not in accord with the terms of submission above.

The award of costs is proportioned to the new awards to the United States.

The decision, in so far as favorable to the United States, holds her claims are in part sustained, thus establishing their justice *pro tanto*, and she is held entitled to a proportionate award of costs.

(Reference is made to the learned and extended discussion of this award and kindred modification of arbitral awards, by M. Ernest Nys: See "*La Revision de la Sentence Arbitral*,"

"Revue de Droit International et de Legislation Comparée," Tome XII, 2 Series, pp. 595 to 641.)

(*Amer. Journal Inter. Law*, January, 1911, p. 35. See *Award*, p. 230.)

DUTIES ON SAMPLES.

A declaration was signed at Washington December 3 and 8, 1910, by representatives of Great Britain and United States, exempting Commercial Travellers' samples from customs inspection.

CANADIAN RECIPROCITY.

By direction of the President, the Secretary of State of the United States dispatched two representatives of the Department of State as special commissioners at Ottawa, Canada, authorized to take steps to formulate a reciprocal treaty agreement with Canada. The conference was adjourned to Washington and attended January 7th, 1911 by two Cabinet Ministers of Canada, who on January 21st completed with the Secretary of State of the United States a reciprocal treaty agreement. This was transmitted to Congress by the President, January 26, 1911, with a special message calling attention to the settlement of the Canadian Fisheries question by arbitration and to an equitable adjustment of through rates effected by our Interstate Commerce Commission and a similar body in Canada, and urging that a reciprocal treaty agreement was the logical sequence. The agreement substantially provides for free trade in agricultural products of the two countries, corresponding reductions of duty on secondary food products and considerable reduction in a number of manufactured goods. The two powers agreed to seek such legislative action as was necessary to carry out the agreement. The required legislation passed the House of Representatives in April and the Senate on July 22d.

STATUTE TO PROVIDE EMBASSIES AND CONSULARIES.

By act approved February 17, 1911, Congress has authorized the Secretary of State to acquire in foreign countries sites and buildings, appropriated for by Congress, for diplomatic and consular establishments of the United States at an expenditure of not over \$500,000 in any fiscal year, or over \$150,000 at any one place. This policy is new as to European countries, except as to Turkey, our country having provided for some years a spacious

and dignified embassy building at Constantinople, alone of European capitols. It is the natural result of our increased international intercourse and responsibility, and therefore of the more complete and adequate diplomatic equipment required.

(See *Supplement Amer. Journal Inter. Law*, April, 1911, p. 128.)

TREATY WITH JAPAN.

A new treaty of commerce and navigation with Japan was proclaimed April 5, 1911. It provides full and, in all respects, equal rights in all matters of trade, commerce, residence and intercourse for the nationals of each in the territory of the other. The treaty is the first of a series to be negotiated by Japan with the powers of the Caucasian race on the basis of complete and absolute equality, and it omits the stipulation in the previous treaty with the United States that the provisions therein "do not in any way affect laws, ordinances and regulations with regard to trade, immigration of laborers, police and public security which are in force or which may hereafter be enacted in either of the two countries." It is hoped that these stipulations fully recognizing the equality of the two peoples may continue and cement forever relations of peace and amity between the two great maritime powers of the Pacific. It should be added that His Excellency the Ambassador of Japan, in signing the treaty expressly declared by the authority of his government "that the Imperial Japanese government are fully prepared to maintain with equal effectiveness the limitation and control which they have for the past three years exercised in regulation of the emigration of laborers to the United States."

The treaty was confirmed by the Senate within five days after it was reported and, happily, without opposition from the portion of our country most directly interested.

(*Supplement Amer. Journal Inter. Law*, April, 1911, p. 100.)

TREATIES OF ARBITRATION WITH GREAT BRITAIN AND FRANCE.

Comprehensive treaties for arbitrating practically all disputes have been negotiated between the United States and Great Britain and the United States and France, but have not yet been confirmed. They eliminate the exception in existing treaties as to questions of vital interest and national honor. All differences are to be submitted to the Hague tribunal unless another is agreed upon.

The differences are to be referred to a Commission of Inquiry with power to make recommendations, the commission to be made

up of nationals of the two governments. If the commission decides for arbitration, this is binding. Arbitrations are to be conducted under terms of submission subject to the advice and consent of the Senate. The commission, at the request of either government, shall delay its finding for one year to give opportunity for diplomatic settlement.

The proposed treaties have met with official and popular approval upon both sides of the Atlantic, and like treaties with Germany and Japan are mentioned as more than probable.

A new Anglo-Japanese treaty was signed July 13, 1911, providing that if either party conclude a treaty of general arbitration with a third power, the alliance shall not entail an obligation to go to war with that power. This has been everywhere hailed as a preparation for the final completion of the above arbitration treaty between the two great English speaking nations. No event in the history of international arbitration is of greater significance or more to be welcomed by the friends of international law and international justice.

FUR SEALS.

A treaty between the United States, Great Britain, Japan and Russia for the protection of fur seals was ratified by the Senate July 24, 1911. Its provisions became effective Dec. 15.

On June 25, 1910, the Congress of the United States unanimously passed the following joint resolution:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled that a commission of five members be appointed by the President of the United States to consider the expediency of utilizing existing international agencies for the purpose of limiting the armaments of the nations of the world by international agreement and of constituting the combined navies of the world an international force for the preservation of universal peace and to consider and report upon any other means to diminish the expenditures of governments for military purposes, and to lessen the probability of war."

The President on Nov. 16, 1910, addressed letters to ten of the principal governments of Europe and to Japan, inviting them to appoint like commissioners, which should meet and seek to co-operate with our commissioners. The replies were not sufficiently favorable to induce further action.

No appointments have as yet been made by the President under this act.

It should be observed that the Declaration of London modifying the law of prize has at last after two years been confirmed by action of the British Parliament and it is deemed probable that its ratification by the other signatories will rapidly follow.

Among the decisions of the highest interest in the matters of international law rendered within the year may be mentioned the case of *Virginia v. West Virginia* decided by the Supreme Court of the United States, March 6, 1911. This decision apportions the debts of the two States on principles of justice as if the two were independent sovereigns, and makes the adjustment upon a basis of the relative wealth of the two States.

THE CARNEGIE PEACE FOUNDATION.

It seems fit to mention the Carnegie Peace Fund created by Mr. Andrew Carnegie by a deed of trust on December 14, 1910, bestowing in trust and in perpetuity the sum of ten millions of dollars, the revenue of which is to be administered by "The Trustees" to hasten the abolition of international war. It should be added that the trustees have declared, as among the objects of this foundation, "to establish a better understanding of international rights and duties and a more perfect sense of international justice among the inhabitants of civilized countries and a careful study of the principles of international law involved in peace and its maintenance."

Your committee believes that the objects of this noble foundation will have the hearty sympathy and efficient co-operation of the American Bar Association.

(*Amer. Journal Inter. Law*, January, 1911, p. 210.)

Your committee would further submit a schedule furnished by the Department of State, under date of June 29 last, of treaties proclaimed since July 1, 1910, and of treaties which have been signed but ratifications of which have not yet been exchanged.

Your committee desires to call attention to the fact that international relations are more and more confided to the administration and control of the legal profession and are more and more withdrawn from military and purely diplomatic control. It is submitted that the growth of that tendency has never been more marked than during the past year. It is hoped that the lawyers of America may prove competent for the discharge of this high

and enlarging trust and faithful and zealous in the delicate duties so profoundly affecting the peace and welfare of mankind.

CHARLES NOBLE GREGORY,
JAMES O. CROSBY,
JAMES BROWN SCOTT,
THEODORE S. WOOLSEY,

Members Standing Committee on International Law, American Bar Association.

ARBITRATION AS TO CHAMIZAL TRACT.

The Chamizal tract comprises about 600 acres between the channel of the Rio Grande of 1852 and the present channel, which has moved to the south. It has always been, physically and geographically a part of the city of El Paso, Texas, and includes the dwellings of about 6,000 of its inhabitants.

Mexico claimed this tract before the boundary commission in 1894, but the commission was unable to agree upon a decision.

By treaty of June 24, 1910, the question was again referred to the International Boundary Commission, to which was added a Canadian jurist, Hon. Eugene Lafleur, of Montreal, being ultimately designated. A decision was rendered June 15, 1911.

The treaty of Guadalupe-Hidalgo determined the boundary line by the middle of the deepest channel of the Rio Grande and provided that the Commissioners shall keep journals and make plans, and results agreed on by them shall be a part of the treaty. The Gadsen treaty of 1853 reiterates the above declarations.

The boundary convention of 1884 provides the boundary shall be as before "and follow the center of the normal channel of the rivers named," notwithstanding alterations in banks or courses by gradual erosion and deposit of alluvium and not by avulsion, but change by cutting a new bed by force of the current or deepening another channel shall not change the boundary as fixed in 1852, at the middle of the original channel, even if this be wholly dry.

Mexico claimed the boundary of 1848 and '53 was fixed and unchanged by alterations in the course of the Rio Grande; that the treaty of 1884 was not retroactive and did not apply, as the Chamizal tract was mainly formed prior thereto; that the rapid and intermittent changes at El Chamizal were neither the "slow and gradual erosion and deposit" nor the cutting of a new bed provided for by the treaty, and therefore it was inapplicable; that

the ordinary rules of international law as to river boundaries did not apply, as the Rio Grande was not a river but a torrential stream, and that the United States had acquired no title by prescription.

The United States claimed the treaties established a fluvial boundary; that the treaty of 1884 was retroactive and embraced all changes, except cutting of a new bed, which was not claimed. If it did not apply, that then the rules of international law as to avulsion and erosion applied with like effect, as the Rio Grande is a true river; also there was claim by prescription.

The presiding Commissioner, the Canadian jurist, with the United States Commissioner, held the Mexican claim of an invariable boundary, inadmissible, and that the treaties of 1848 and 1853 established a fluvial boundary.

The Mexican Commissioner dissented. All three commissioners agreed that there was no title by prescription. The presiding Commissioner holds that changes up to 1864 were by "slow and gradual erosion and deposit" and that there has been no change of the bed of the river; that the changes from 1864 to 1868 were not slow and gradual and therefore did not come under the terms of the treaty of 1884; that all which accreted after 1864 should be awarded to Mexico, but that the commission will not locate the line of 1864, as no evidence has been submitted.

The presiding Commissioner and the Mexican Commissioner award international title to the land between the boundary of 1852 and the middle of the bed of the river before the flood of 1864, to the United States and of the balance of the tract to Mexico.

The American Commissioner dissented and denied the jurisdiction of the commission to divide the tract, which had not been contemplated in the submission or argument, and claimed that the award of the majority introduced a novel and unsupported view in holding that there was such a form of change as rapid erosion and deposit not covered by the terms of the treaty as to slow changes or cutting a new bed, and also unknown to the common law; that this decision settles nothing, invites international litigation and breathes a spirit of "unauthorized compromise rather than judicial determination."

The agent of the United States also filed a protest because of the "departure from the terms of submission" and impossibility "of application."

(See *Amer. Journal Inter. Law* for July, 1911, pp. 709 to 714, and see for treaty of submission of 1910, *Supplement Amer. Journal Inter. Law*, April, 1911, p. 117.)

SEMI-DISSENT AS TO DIPLOMATIC RESIDENCE.

The salaries of our Ambassadors, \$17,500, would provide in any foreign country a residence of sufficient respectability for a representative of republican simplicity, and still leave sufficient to provide for an average family so that the business of diplomacy would not be embarrassed for want of "visible means of support."

Since our nation has become a world power we have entered into competition with empires and kingdoms in foreign capitols in grandeur of social display till the original object of representation has become altogether secondary,

The profligate squandering of our public revenues makes new inventions for taxation necessary, and tends towards the disintegration of government by the people.

James O. Crosby.

TREATIES PROCLAIMED SINCE JULY 1, 1910.

<i>Title.</i>	<i>Signed.</i>	<i>Proclaimed.</i>
Extradition with Dominican Republic.	June 19, 1909.	August 26, 1910.
<i>Great Britain</i> —Boundary Passamaquoddy Bay.	May 21, 1910.	September 3, 1910.
<i>Mexico</i> —Title to Chamizal Tract.	June 24, 1910.	January 25, 1911.
<i>Mexico</i> —Protocol to above.	December 5, 1910.	January 25, 1911.
<i>Sweden</i> —Consular.	June 1, 1910.	March 20, 1911.
<i>Japan</i> —Commerce and Navigation.	February 21, 1911.	April 5, 1911.
<i>Japan</i> —Protocol of Provisional Tariff Arrangement.	February 21, 1911.	April 5, 1911.
<i>International</i> —Repression of Circulation of Obscene Publications.	May 4, 1910.	April 13, 1911.

Treaties which have been signed but ratifications of which have not yet been exchanged:

<i>Title.</i>	<i>Signed.</i>	<i>Ratified.</i>
<i>International (Pan American)—</i>		
Pecuniary Claim..	August 11, 1910.	March 21, 1911.
Protection of		
Trade-marks.....	August 20, 1910.	March 21, 1911.
Inventions, Patents,		
Designs and In-		
dustrial Models..	August 20, 1910.	March 21, 1911.
Literary and Artis-		
tic Copyrights....	August 11, 1910.	March 21, 1911.
<i>Great Britain—</i>		
Fur Seals.....	February 7, 1911.	March 6, 1911.
<i>International—</i>		
Additional Protocol		
to Prize Court...	September 19, 1910.	February 27, 1911.
<i>Salvador—</i>		
Extradition	April 18, 1911.	June 8, 1911.
Treaties which have been signed but not yet ratified:		
<i>Great Britain—</i>		
Arbitration of Pecuniary Claims.....	August 18, 1910	
<i>Honduras—</i>		
Loan	January 10, 1911	
<i>Nicaragua—</i>		
Loan		June 6, 1911