

**FINAL REPORT OF THE SPANISH
TREATY CLAIMS
COMMISSION: WASHINGTON,
D.C., MAY 2, 1910**

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FINAL REPORT
OF
THE SPANISH TREATY
CLAIMS COMMISSION

WASHINGTON, D. C.
MAY 2, 1910



WASHINGTON
GOVERNMENT PRINTING OFFICE
1910

THE SPANISH TREATY CLAIMS COMMISSION

COMMISSIONERS:

JAMES P. WOOD, *President*
WILLIAM A. MAURY
WILLIAM L. CHAMBERS
HARRY K. DAUGHERTY
ROSWELL F. BISHOP

MEMBERS OF THE COMMISSION AS ORIGINALLY CONSTITUTED:

WILLIAM E. CHANDLER,¹ *President*
GERRIT J. DIEKEMA ²
JAMES P. WOOD ³
WILLIAM A. MAURY
WILLIAM L. CHAMBERS

¹Resigned November 10, 1907. Succeeded by Roswell F. Bishop, as member of the Commission.

²Resigned May 1, 1907. Succeeded by Harry K. Daugherty.

³Appointed President of the Commission upon the resignation of William E. Chandler.

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FINAL REPORT
OF THE
SPANISH TREATY CLAIMS COMMISSION.

WASHINGTON, D. C., *May 2, 1910.*

The PRESIDENT:

The Spanish Treaty Claims Commission has the honor to submit this, its final report:

The Commission was created under an act of Congress approved March 2, 1901, "to carry into effect the stipulations of article seven of the treaty between the United States and Spain, concluded on the tenth day of December, eighteen hundred and ninety-eight." Article VII of this treaty reads as follows:

The United States and Spain mutually relinquish all claims for indemnity, national and individual, of every kind, of either Government, or of its citizens or subjects, against the other Government that may have arisen since the beginning of the late insurrection in Cuba, and prior to the exchange of ratifications of the present treaty, including all claims for indemnity for the cost of the war. The United States will adjudicate and settle the claims of its citizens against Spain relinquished in this article.

Section 1 of the act of Congress above referred to provides for the appointment by the President of five commissioners, one of whom was to be designated by the terms of his appointment to be the president of said Commission, to receive, examine, and adjudicate all claims of citizens of the United States against Spain which the United States agreed to adjudicate and settle by Article VII of the treaty. Pursuant to this provision, President McKinley, on the 9th day of March, 1901, nominated William E. Chandler, of New Hampshire; Gerrit J. Diekema, of Michigan; James P. Wood, of Ohio; William A. Maury, of the District of Columbia, and William L. Chambers, of Alabama, as commissioners, designating Mr. Chandler to be the president of the Commission, which nominations were confirmed by the Senate on the same date. Mr. Diekema resigned May 1, 1907, and was succeeded by Harry K. Daugherty, of Pennsylvania. Mr. Chandler resigned November 10, 1907. Thereupon Mr. Wood was appointed president of the Commission, and Roswell P. Bishop, of Michigan, was appointed a member of the Commission. There have been no other changes in the personnel of the Commission.

ORGANIZATION OF COMMISSION.

Pursuant to a public notice issued by the Attorney-General, the first meeting of the Commission was held at the Department of Justice on April 8, 1901, and remained in active session until July 1, 1901, during which time orders of the Commission from No. 1 to No. 59 were adopted, covering the completion of the organization of the Commission, the promulgation of its rules, the procurement of quarters for holding its sessions, and securing the necessary employees.

RECEPTION OF CLAIMS.

The reception of petitions began promptly after notice of the organization of the Commission was given, and during the first six months, the period within which the act required the claims to be presented, 495 claims were filed, aggregating \$60,387,828.54. Thereafter 47 claims, aggregating \$2,284,248.74 were filed under the terms of the act, which provided "that the Commission may receive claims within six months after the termination of said period if the claimants shall establish to their satisfaction good reasons for not presenting the same earlier." Of the 542 cases filed, 354 were for damages on account of property losses, amounting to \$57,495,377.28, and 152 for damages to seamen of the battleship *Maine*, amounting to \$2,825,200, and 36 for damages on account of personal injuries (other than *Maine* claims), amounting to \$2,351,500, the amount involved in the three classes of cases aggregating \$62,672,077.28. By subsequent amendments to the petitions, the aggregate claims amounted to \$64,931,694.51.

MORE SPECIFIC STATEMENTS.

The petitions were filed in large numbers during the early dates, and in many instances, although voluminous, were deficient in detail, and upon motions of the Attorney-General, the Commission required claimants to amend their petitions by furnishing more specific statements of damages, which, in the opinion of the Commission, was not only a requirement of section 9 of the organic law, but was absolutely essential in order that the issues might be defined with such clearness that the testimony in support of them could be reduced to the minimum, in view of the fact that in the main the witnesses resided in Cuba and Spain, and procuring their testimony would necessarily be attended with great expense and inconvenience both to claimants and the Government.

TIME FOR GOVERNMENT TO PLEAD EXTENDED.

The bulk of the petitions having been filed almost simultaneously at the end of the first six months' limitation, it was practically impossible for the Attorney-General, with the limited assistance he had

at the time, to familiarize himself at once with the various petitions and to prepare and file proper pleadings within the time prescribed by the rules. It therefore became necessary to grant the Government extensions from time to time in many of the cases.

GENERAL ARGUMENTS ORDERED.

When the issues were finally joined, it was apparent that substantially all the questions of law to be applied in the final determination of the various cases had been raised. In view of this condition and of the great expenditure of time and money necessarily attendant upon the taking of depositions and securing other proofs in foreign countries, the Commission deemed it not only the part of wisdom, but a duty, to determine in advance of the taking of testimony the cardinal principles of law which should govern in the allowance or disallowance of claims.

The Commission thereupon decided to call for briefs and to hear oral arguments upon the following important issues raised by the pleadings: First, whether under the treaty of Paris the United States incurred any greater liability for the payment of these claims than that for which Spain could have been held under the principles of international law; second, the liability of Spain for injuries alleged to have been done by the insurgents in Cuba; third, the liability of Spain for damages resulting from acts of war committed by Spanish authorities; fourth, the liability of Spain for damages claimed on account of reconcentration; and, fifth, the liability of Spain for alleged violations of the treaty of 1795. On each of these propositions exhaustive briefs were filed by numerous counsel representing practically all the claims and for the defense by the Attorney-General. Oral arguments were heard from time to time extending through several months, it being necessary to set many different occasions for arguments, as counsel for claimants resided in many parts of the United States and in Cuba. The questions were of such controlling importance that the Attorney-General appointed special counsel to assist in these arguments.

During the interim of the arguments on these subjects, which extended over some months, arguments were also heard in the 152 cases commonly known as the *Maine* cases.

Realizing the far-reaching effect the findings on these cardinal principles would have on the respective rights of both the claimants and the Government, the greatest latitude was given counsel on both sides in the way of oral arguments and the furnishing of briefs. These briefs and arguments rank among the ablest and most exhaustive discussions and elucidations of the principles of international law applicable to cases involving individual claims against a foreign government for property losses and personal injuries. They have been preserved in bound volumes.

PRINCIPLES OF ALLOWANCE.

As a result of a full and careful consideration of the various questions presented by these arguments the Commission announced as the controlling principles by which it would be governed in the adjudication of cases the following:

1. Under Article VII of the treaty of Paris the United States assumed the payment of all claims of her own citizens for which Spain would have been liable according to the principles of international law. It follows, therefore, that the sole question before this Commission is that of the primary liability of Spain, which is not in any way enlarged by the agreement of the United States to adjudicate and pay such claims.

2. Although the late insurrection in Cuba assumed great magnitude and lasted for more than three years, yet belligerent rights were never granted to the insurgents by Spain or the United States so as to create a state of war in the international sense which exempted the parent government from liability to foreigners for the acts of the insurgents.

3. But where an armed insurrection has gone beyond the control of the parent government, the general rule is that such government is not responsible for damages done to foreigners by the insurgents.

4. This Commission will take judicial notice that the insurrection in Cuba, which resulted in intervention by the United States and in war between Spain and the United States, passed, from the first, beyond the control of Spain and so continued until such intervention and war took place.

If, however, it be alleged and proved in any particular case before this Commission that the Spanish authorities by the exercise of due diligence might have prevented the damages done, Spain will be held liable in that case.

5. As war between Spain and the insurgents existed in a material sense, although not a state of war in the international sense, Spain was entitled to adopt such war measures for the recovery of her authority as are sanctioned by the rules and usages of international warfare. If, however, it be alleged and proved in any particular case that the acts of the Spanish authorities or soldiers were contrary to such rules and usages Spain will be held liable in that case.

6. As this Commission has been directed by Congress to ascertain and apply the principles of international law in the adjudication of claims of neutral foreigners for injuries to their persons and property caused by a parent state while engaged in subduing by war an insurrection which had passed beyond its control, it can not fail, in determining what are and what are not legitimate war measures, to impose upon the parent state such limitations as the consensus of nations at the present day recognizes as restricting the exercise of the right to remove all the inhabitants of a designated territory and concentrate them in towns and military camps and to commit to decay and ruin the abandoned real and personal property or destroy such property and devastate such region.

7. Adopting therefore a wide and liberal interpretation of the principle that the destruction of property in war where no military end is served is illegitimate, and that there must be cases in which devastation is not permitted, it should be said that whenever reconcentration,

destruction, or devastation is resorted to as a means of suppressing an insurrection beyond control the parent state is bound to give the property of neutral foreigners such reasonable protection as the particular circumstances of each case will permit. It must abstain from any unnecessary and wanton destruction of their property by its responsible military officers. When such neutral foreigners are included in the removal or concentration of inhabitants, the government so removing or concentrating them must provide for them food and shelter, guard them from sickness and death, and protect them from cruelty and hardship to the extent which the military exigency will permit. And, finally, as to both property and persons, it may be stated that the parent state is bound to prevent any discrimination in the execution of concentration and devastation orders against any class of neutral foreigners in favor of any other class or in favor of its own citizens.

8. Subject to the foregoing limitations and restrictions it is undoubtedly the general rule of international law that concentration and devastation are legitimate war measures. To that rule aliens as well as subjects must submit and suffer the fortunes of war. The property of alien residents, like that of natives of the country, when "in the track of war," is subject to war's casualties, and whatever in front of the advancing forces either impedes them or might give them aid when appropriated, or if left unmolested in their rear might afford aid and comfort to the enemy, may be taken or destroyed by the armies of either of the belligerents, and no liability whatever is understood to attach to the government of the country whose flag that army bears and whose battles it may be fighting.

If in any particular case before this Commission it is averred and proved that Spain has not fulfilled her obligations as above defined, she will be held liable in that case.

9. It is the opinion of the Commission that the treaty of 1795 and the protocol of 1877 were in full force and effect during the insurrection in Cuba, and they will be applied in deciding cases properly falling within their provisions.

10. As to the first clause of article 7 of the said treaty, wherein it is agreed that the subjects and citizens of each nation, their vessels, or effects shall not be liable to any embargo or detention on the part of the other for any military expedition or other public or private purpose whatever, the Commission holds that whether or not the clause was originally intended to embrace real estate and personal property on land as well as vessels and their cargoes, the same has been so construed by the United States, and this construction has been concurred in by Spain, and therefore the Commission will adhere to such construction in making its decisions.

11. But neither this particular clause nor any other provision of the treaty of 1795 will be so applied as to render either nation, while endeavoring to suppress an insurrection which has gone beyond its control, liable for damages done to the persons or property of the citizens of the other nation when found in the track of war or for damages resulting from military movements unless the same were unnecessarily and wantonly inflicted.

All of the commissioners concurred in some of these principles, and a majority concurred in all of them. The principles so announced