

SETTLEMENT OF CLAIMS

Convention signed at Washington July 28, 1926

Senate advice and consent to ratification January 26, 1929

Ratified by the President of the United States September 11, 1931

Ratified by Panama September 25, 1931

Ratifications exchanged at Washington October 3, 1931

Entered into force October 3, 1931

Proclaimed by the President of the United States October 6, 1931

Articles VI and VIII amended by convention of December 17, 1932¹

Terminated June 30, 1936²

47 Stat. 1915; Treaty Series 842

The United States of America and the Republic of Panama, desiring to settle and adjust amicably claims by the citizens of each country against the other, have decided to enter into a Convention with this object, and to this end have nominated as their plenipotentiaries:

The President of the United States of America, The Honorable Frank B. Kellogg, Secretary of State of the United States of America; and

The President of the Republic of Panama, The Honorable Doctor Ricardo J. Alfaro, Envoy Extraordinary and Minister Plenipotentiary of Panama to the United States and the Honorable Doctor Eusebio A. Morales, Envoy Extraordinary and Minister Plenipotentiary of Panama on special mission;

who, after having communicated to each other their respective full powers found to be in due and proper form, have agreed upon the following articles:

ARTICLE I

All claims against the Republic of Panama arising since November 3, 1903, except the so-called Colon Fire Claims hereafter referred to, and which at the time they arose were those of citizens of the United States of America, whether corporations, companies, associations, partnerships or individuals, for losses or damages suffered by persons or by their properties, and all claims against the United States of America arising since November 3, 1903, and which

¹ TS 860, *post*, p. 739.

² On payment by Panama of award of Claims Commission. The Commission completed its work and adjourned *sine die* on June 30, 1933.

at the time they arose were those of citizens of the Republic of Panama, whether corporations, companies, associations, partnerships or individuals, for losses or damages suffered by persons or by their properties; all claims for losses or damages suffered by citizens of either country, by reason of losses or damages suffered by any corporation, company, association or partnership, in which such citizens have or have had, a substantial and bona fide interest, provided an allotment to the claimant by the corporation, company, association or partnership, of his proportion of the loss or damage suffered is presented by the claimant to the Commission; and all claims for losses or damage originating from acts of officials or others acting for either Government, and resulting in injustice, and which claims may have been presented to either Government for its interposition with the other, and which have remained unsettled, as well as any other such claims which may be filed by either Government within the time hereinafter specified, shall be submitted to a Commission consisting of three members for decision in accordance with the principles of international law, justice and equity. As an exception to the claims to be submitted to such Commission, unless by later specific agreement of the two Contracting Parties, are claims for compensation on account of damages caused in the manner set forth in Article VI of the Treaty of November 18, 1903,³ for the construction of the Panama Canal, which shall continue to be heard and decided by the Joint Commission provided for in that Article of the Treaty.

With regard to the exception above made respecting the claims for losses suffered by American citizens as a result of the fire that occurred in the City of Colon on March 31, 1885, the Government of Panama agrees in principle to the arbitration of such claims under a Convention to which the Republic of Colombia shall be invited to become a party and which shall provide for the creation or selection of an arbitral tribunal to determine the following questions: First, whether the Republic of Colombia incurred any liability for losses sustained by American citizens on account of the fire that took place in the City of Colon on the 31st of March 1885; and, second, in case it should be determined in the arbitration that there is an original liability on the part of Colombia, to what extent, if any, the Republic of Panama has succeeded Colombia in such liability on account of her separation from Colombia on November 3, 1903, and the Government of Panama agrees to cooperate with the Government of the United States by means of amicable representations in the negotiation of such arbitral agreement between the three Countries.

The hearing and adjudication of particular claims in accordance with their merits in order to determine the amount of damages to be paid, if any, in case a liability is found, shall take place before a special tribunal to be constituted in such form as the circumstances created by the tri-partite arbitration shall demand.

³ TS 431, *ante*, p. 663.

As a specific exception to the limitation of the claims to be submitted to the Commission against the United States of America it is agreed that there shall be submitted to the Commission the claims of Abbondio Caselli, a Swiss citizen, or the Government of Panama, and Jose C. Monteverde, an Italian subject, or the Government of Panama, as their respective interests in such claims may appear, these claims having arisen from land purchased by the Government of Panama from the said Caselli and Monteverde and afterwards expropriated by the Government of the United States, and having formed in each case the subject matter of a decision by the Supreme Court of Panama.

The Commission shall be constituted as follows: One member shall be appointed by the President of the United States; one by the President of the Republic of Panama; and the third, who shall preside over the Commission, shall be selected by mutual agreement between the two Governments. If the two Governments shall not agree within two months from the exchange of ratifications of this Convention in naming such a third member, then he shall be designated by the President of the Permanent Administrative Council of the Permanent Court of Arbitration at The Hague described in Article 49 of the Convention for the Pacific Settlement of International Disputes concluded at The Hague October 18, 1907.⁴ In case of the death, absence or incapacity of any member of the Commission, or in the event of the member omitting or ceasing to act as such, the same procedure shall be followed for filling the vacancy as was followed in appointing him.

ARTICLE II

The Commissioners so named shall meet at Washington for organization within six months after the exchange of ratifications of this Convention, and each member of the Commission before entering upon his duties, shall make and subscribe a solemn declaration stating that he will carefully and impartially examine and decide according to the best of his judgment and in accordance with the principles of international law, justice and equity, all claims presented for his decision, and such declaration shall be entered upon the record of the proceedings of the Commission.

The Commission may fix the time and place of its subsequent meetings, either in the United States or in Panama as may be convenient, subject always to the special instructions of the two Governments.

ARTICLE III

The Commission shall have authority by the decision of the majority of its members to adopt such rules for its proceedings as may be deemed expedient and necessary, not in conflict with any of the provisions of this Convention.

⁴ TS 536, *ante*, vol. 1, p. 577.

Each Government may nominate agents or counsel who will be authorized to present to the Commission orally or in writing, all the arguments deemed expedient in favor of or against any claim. The agents or counsel of either Government may offer to the Commission any documents, affidavits, interrogatories or other evidence desired in favor of or against any claim and shall have the right to examine witnesses under oath or affirmation before the Commission, in accordance with such rules of procedure as the Commission shall adopt.

The decision of the majority of the members of the Commission shall be the decision of the Commission.

The language in which the proceedings shall be conducted and recorded shall be English or Spanish.

ARTICLE IV

The Commission shall keep an accurate record of the claims and cases submitted, and minutes of its proceedings with the dates thereof. To this end, each Government may appoint a Secretary; those Secretaries shall act as joint Secretaries of the Commission and shall be subject to its instructions. Each Government may also appoint and employ, any necessary assistant secretaries and such other assistants as may be deemed necessary. The Commission may also appoint and employ any other persons necessary to assist in the performance of its duties.

ARTICLE V

The High Contracting Parties being desirous of effecting an equitable settlement of the claims of their respective citizens, thereby affording them just and adequate compensation for their losses or damages, agree that no claim shall be disallowed or rejected by the Commission through the application of the general principle of international law that the legal remedies must be exhausted as a condition precedent to the validity or allowance of any claim.

ARTICLE VI ⁵

Every such claim for loss or damage accruing prior to the signing of this Convention, shall be filed with the Commission within four months from the date of its first meeting, unless in any case reasons for the delay, satisfactory to the majority of the Commissioners, shall be established, and in any such case the period for filing the claim may be extended not to exceed two additional months.

The Commission shall be bound to hear, examine and decide, within one year from the date of its first meeting, all the claims filed.

⁵ For amendments to arts. VI and VIII, see convention of Dec. 17, 1932 (TS 860), *post*, p. 739.

Three months after the date of the first meeting of the Commissioners and every three months thereafter, the Commission shall submit to each Government a report setting forth in detail its work to date, including a statement of the claims filed, claims heard and claims decided. The Commission shall be bound to decide any claim heard and examined, within six months after the conclusion of the hearing of such claim and to record its decision.

ARTICLE VII

The High Contracting Parties agree to consider the decision of the Commission as final and conclusive upon each claim decided, and to give full effect to such decisions. They further agree to consider the result of the proceedings of the Commission as a full, perfect and final settlement of every such claim upon either Government, for loss or damage sustained prior to the exchange of the ratifications of the present Convention. And they further agree that every such claim, whether or not filed and presented to the notice of, made, preferred or submitted to such Commission, shall from and after the conclusion of the proceedings of the Commission, be considered and treated as fully settled, barred, and thenceforth inadmissible, provided in the case of the claims filed with the Commission that such claims have been heard and decided.

This provision shall not apply to the so-called Colon Fire Claims, which will be disposed of in the manner provided for in Article I of this Convention.

ARTICLE VIII ⁵

The total amount awarded in all the cases decided in favor of the citizens of one country shall be deducted from the total amount awarded to the citizens of the other country, and the balance shall be paid at the City of Panama or at Washington, in gold coin or its equivalent within one year from the date of the final meeting of the Commission, to the Government of the country in favor of whose citizens the greater amount may have been awarded.

ARTICLE IX

Each Government shall pay its own Commissioner and bear its own expenses. The expenses of the Commission including the salary of the third Commissioner shall be defrayed in equal proportions by the two Governments.

ARTICLE X

The present Convention shall be ratified by the High Contracting Parties in accordance with their respective Constitutions. Ratifications of this Convention shall be exchanged in Washington as soon as practicable and the Convention shall take effect on the date of the exchange of ratifications.

In witness whereof, the respective plenipotentiaries have signed and affixed their seals to this Convention.

Done in duplicate in Washington this twenty-eighth day of July 1926.

FRANK B. KELLOGG [SEAL]

R. J. ALFARO [SEAL]

EUSEBIO A. MORALES [SEAL]