

The presumption may be overcome in either case by his presenting to a diplomatic or consular officer of the United States proof establishing the following facts:

(a) That his residence in Turkey is solely as a representative of American trade and commerce and that he intends eventually to return to the United States to reside; or

(b) That some unforeseen and controlling exigency beyond his power to foresee has prevented his carrying out a bona fide intention to return to the United States within the time limited by law, and that it is his intention to return and reside permanently in the United States immediately upon the removal of the preventing cause; or

(c) That he resides in a distinctively American community recognized as such by the Turkish Government; or

(d) That he resides in Turkish dominions as the regularly appointed missionary of a recognized American church organization.

The evidence required to overcome the presumption of expatriation must be of the specific facts and circumstances which bring the alleged citizen under one of the foregoing heads, and mere assertions, even under oath, of any of the enumerated reasons existing will not be accepted as sufficient.

Whenever evidence shall be produced to overcome the presumption of expatriation as indicated in this instruction the depositions and other proofs must be made in duplicate, one copy thereof being sent forthwith to this Department, and if the proofs have been presented to a consular officer he shall notify the embassy at Constantinople of the name of the person and of the facts concerning his residence abroad.

This instruction, in so far as it relates to the presumption of expatriation from residence in Turkey, supersedes the corresponding parts of the Department's circular instruction of April 19, 1907, entitled "Expatriation."

I am, etc.,

ELIHU ROOT.

The situation of naturalized missionaries in China will undoubtedly call for regulation and the extension of section 2 of the act of March 2, 1907, with necessary modifications, for Chinese subjects may not become citizens of the United States, which guarantee protection without permitting a fraudulent use of American citizenship.

THE REMISSION OF A PORTION OF THE CHINESE INDEMNITY

The joint resolution introduced in the Senate on January 9, 1908, is as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is hereby authorized to consent to a modification of the bond for twenty-four million four hundred and forty thousand seven hundred and seventy-eight dollars and eighty-one cents, dated

December fifteenth, nineteen hundred and six, received from China pursuant to the protocol of September seventh, nineteen hundred and one, for indemnity against losses and expenses incurred by reason of the so-called Boxer disturbances in China during the year nineteen hundred, so that the total payment to be made by China under the said bond shall be limited to the sum of eleven million six hundred and fifty-five thousand four hundred and ninety-two dollars and sixty-nine cents and interest at the stipulated rate of four per centum per annum, and that the remainder of the indemnity to which the United States is entitled under the said protocol and bond may be remitted as an act of friendship, such payments and remission to be at such times and in such manner as the President shall deem just.

The facts of the Boxer disturbances in China are too well known to be set forth in detail, but it is otherwise with the object for which the Boxer indemnity was asked and received by the Department of State, and the manner in which private claims have been dealt with by the Department in pursuance of that object. For this reason the following brief observations upon the distribution of the indemnity, as well as a summary of the various steps in the negotiations relating to the indemnity, may be of general interest.

By the joint note of December 22, 1900 (see Senate Document No. 67, 57th Cong., 1st sess., p. 59), the powers presented their demands to the Imperial Chinese Government. The note begins:

During the months of May, June, July, and August of the present year serious disturbances broke out in the northern provinces of China and crimes unprecedented in human history — crimes against the law of nations, against the laws of humanity, and against civilization — were committed under peculiarly odious circumstances. The principal of these crimes were the following:

Under four heads are placed the detailed grievances. These are, first, the murder of the Germain minister; second, the attack and siege of the legations, participated in by Chinese troops; third, the murder of the chancellor of the Japanese legation, the attack upon and murder of other foreigners at Peking and in several provinces, and the *pillage and destruction of their establishments*; fourth, the desecration of foreign cemeteries, the resistance of Chinese troops to the relief expedition, etc.

Then follows the list of conditions of peace imposed by the powers. The sixth item thereof, which provides for the indemnification of private parties, stands as follows:

Equitable indemnities for governments, societies, companies, and private individuals, as well as for Chinese who have suffered during the late events in person or in property in consequence of their being in the service of foreigners.

China shall adopt financial measures acceptable to the powers for the purpose of guaranteeing the payment of said indemnities and the interest and amortization of the loans.

An international commission on indemnities was appointed to lay down the principles upon which private claims should be dealt with. They submitted their report to the diplomatic corps and it was approved *ad referendum*. The Department of State (instruction to Peking No. 515, May 3, 1902) expressed its judgment that the rules thus laid down would be found suggestive and instructive. They were not, however, agreed to by all the powers, and were not, therefore, binding *internationally*.

In the instruction referred to above the Department also remarked that all merely speculative or imaginary claims or elements of damages were to be excluded from consideration.

Item C of this report (see Senate Document No. 67, 57th Cong., 1st sess., p. 106) records the manner in which it was deemed proper that private claims should be dealt with. It says:

MERCHANTS. — *Private property of merchants.*

Real estate destroyed or damaged, including temporary housing and repairs, expert surveys for determining amount of damages, etc.

Furniture.

Usual and inevitable salary of employees whose services could not be turned to account.

Unavoidable office expenses not made good in consequence of the events.

Stock in trade, goods, provisions, samples possessing pecuniary value, destroyed or deteriorated.

Extraordinary cost of storage and reshipment.

Debts recognized as valid which can no longer be recovered.

Bank notes lost or which cannot be cashed.

Specie, bills payable at sight.

Broken contracts of all descriptions, losses suffered in consequence of the non-execution of contracts entered into for articles of exportation or importation.

Deposits of money in telegraph offices or in banks. Advances to Chinese merchants who have become insolvent in consequence of the events.

Extraordinary cost of insurance rendered necessary by the events referred to.

Goods requisitioned for foreign troops for defensive works.

When the two American commissioners were appointed to investigate and determine American claims, they were given the following instructions, from which it will be seen that the rule quoted above was adopted on behalf of the United States to govern the action of its commissioners (Mr. Conger to Mr. Bainbridge, No. 1135, March 14, 1902):

In compliance with instruction No. 435, dated January 14, 1902, of the Department of State, I hereby designate you and Consul J. W. Ragsdale, of Tientsin, as commissioners to investigate and determine what amount should be allowed on each and all of the claims of citizens of the United States against the Chinese Government, growing out of the so-called "Boxer" uprising of 1900; and also on the claims of Chinese who, during the same events, suffered in person or property in consequence of their being in the service of citizens of the United States.

This commission will meet first in Peking, and proceed thence to such other localities as the exigencies of careful and intelligent examination demand.

Reasonable notice of the sittings of the commission in the several localities should be given to the claimants in advance.

The commission will be governed by the rules and practices usually required in proving and allowing claims of citizens of the United States under like circumstances; together with the regulations prepared by the committee on indemnities and approved by the representatives of the powers in Peking on March 13, 1901.

The commissioners will make a report on each claim, reciting the evidence of citizenship and of the fact and amount of loss or damage upon which the claim is based.

Their recommendations will be submitted for revision to the United States minister in China, and the whole will be subject to the final revision and approval of the Department of State.

The following is quoted from the final report of the American commissioners, addressed to the minister at Peking and dated November 17, 1902:

Indemnity claims have been filed by American merchants for goods destroyed, for losses through breach of contracts, through the death, disappearance, or insolvency of Chinese debtors, through the general interruption of business, depreciation in value of stock, and for extraordinary cost of storage and insurance. Interest has been claimed on capital employed in carrying stock rendered idle in consequence of the disturbances.

The commission has allowed as compensation for goods destroyed their actual value at the time of destruction. It has recognized rights vested by existing contracts and allowed compensation for the actual injury sustained through broken contracts due to the events, including expense of carrying undelivered merchandise, counting interest as part of such expense. But the commission has disallowed contractual claims where the contracts have been ascertained to be capable of fulfillment through the continued solvency of parties. Claims for losses through the general interruption of business have not been allowed; nor has interest been allowed on capital invested in goods for sale in open market not contracted for in delivery. Losses resulting from debts recognized as valid but no longer recoverable because of the death, disappearance, or bankruptcy of Chinese debtors due to the uprising have been compensated. Extraordinary cost of storage and insurance has been allowed.

The above will perhaps make clear the object for which the Boxer indemnity was asked and received and the general manner in which, in so far as private claims are concerned, it has been devoted to that object.

The various steps in the negotiations relating to the indemnity were as follows:

December 22, 1900.

The foreign representatives sent in a joint note consisting of twelve articles setting forth certain demands.

Article VI stated that China should pay equitable indemnities for states, companies or societies, private individuals and certain Chinese, etc.

December 30, 1900.

The foreign representatives received a reply to their note of the 22d, embodying an imperial decree dated the 27th, accepting all of the twelve articles.

January 7, 1901.

Foreign representatives formulated their twelve articles into a protocol and submitted this to the Chinese plenipotentiaries for signature.

January 16, 1901.

Each foreign minister received from the Chinese plenipotentiaries a copy of the aforesaid protocol duly signed and sealed, and also a copy of the imperial decree accepting all of the demands.

May 7, 1901.

The foreign ministers submitted statement to China showing their losses to be 450,000,000 taels. This joint note was not a demand for the above-named amount, but was sent to the Chinese plenipotentiaries to enable them to give formal expression as to the limits of China's ability to pay and the means she proposed taking.

May 11, 1901.

Reply of Chinese plenipotentiaries *re* indemnity of 450,000,000 taels, proposing monthly method of payment of above amount for thirty years, but begging that total be reduced.

May 28, 1901.

A list of the indemnities asked by the foreign powers until the 1st of July and prepared by the committee on the payment of indemnities was

circulated by the dean of the diplomatic corps among his colleagues. The amount given as representing the total claim of the United States was \$25,000,000, or 34,072,500 taels. In the opinion of the committee, as stated in the dean's note, the total indemnity would not, when adjusted, exceed 450,000,000 taels.

May 30, 1901.

A note from Chinese plenipotentiaries to dean of diplomatic corps accepting 450,000,000 taels.

May 30, 1901.

A note from Chinese plenipotentiaries to dean of diplomatic corps accepting 450,000,000 taels, with interest at 4 per cent., for the indemnity embodying an imperial edict dated the 29th of May covering the above amount.

September 7, 1901.

Final protocol signed by plenipotentiaries of all the powers in which it is agreed that the indemnity should be paid in thirty-nine annual installments, with interest at rate of 4 per cent per annum.

Article 6 (b). The service of the debt was to take place in Shanghai as follows:

"Each power shall be represented by a delegate on a commission of bankers authorized to receive the amount which shall be paid it by the Chinese authorities designated for that purpose, to divide it among the interested parties, and to give a receipt of the same."

Article 6 (c). "The Chinese Government shall deliver to the dean of the diplomatic corps a bond for the lump sum, which shall subsequently be converted into fractional bonds bearing the signature of the delegates of the Chinese Government designated for that purpose. This operation and all those relating to issuing of the bonds shall be performed by the above-mentioned commission, in accordance with the instructions which the powers shall send their delegates."

John K. Moir, of the International Banking Corporation in Shanghai, was chosen the delegate of the United States on the commission of bankers at Shanghai.

October 13, 1901.

The bond for the lump sum of 450,000,000 taels was delivered by the Chinese plenipotentiaries to the dean of the diplomatic corps, in compliance with paragraph (c) of Article VI of the final protocol.

June 14, 1902.

At a meeting of the representatives of the powers held in Peking on the 14th of June an agreement was signed declaring a definite apportionment of the indemnity and accepting on behalf of their governments such apportionment.

The United States took 32,939,055 taels, or \$24,440,778.81 gold, with interest at 4 per cent per annum from July 1, 1901.

May 18, 1904.

The original fractional bond was signed by the commissioners of the Chinese Government and the commissioners of the United States Government, and was subsequently filed in the Department of State under cover of a letter from the International Banking Corporation of the above date.

July 2, 1905.

A new method of calculating payments and interest was presented in the form of a collective note by the representatives of the powers and subsequently agreed to by China.

December 15, 1906.

New bond based on collective note of July 2, 1905, signed and subsequently forwarded to the Department of State.

January 11, 1907.

Chinese Government was notified that henceforth the United States' share of the payments under the indemnity is to be paid direct to the United States Treasurer instead of through the International Banking Corporation of Shanghai.

The bond with the International Banking Corporation has since been canceled, owing to the above arrangement.

Following is a summary of the successive steps taken in the settlement of claims of American companies, societies, and individuals, and certain Chinese, for losses and damages growing out of the disturbances of 1900; schedule of the claims paid, etc.:

September 2, 1901.

Minister Conger transmitted to the Department copy of a letter addressed to him by certain American citizens having claims against the Chinese Government, requesting information as to the status of their claims and the procedure to be adopted in establishing them.

He suggested that many of the claimants should submit to a considerable reduction and that the local facts and conditions surrounding many of the claims rendered it very desirable that their examination should be made in China by some one familiar with the situation and local values. He expressed the hope also that an early adjustment of these claims would be reached.

One hundred and forty-six claims had up to this time been brought to the attention of the Department of State and the legation at Peking, most of them consisting of bare statements of facts by the claimants and estimated amounts of loss or damage, unaccompanied by evidence.

January 14, 1902.

The Department concurred with the legation that many of the claims should be reduced and that their investigation should be made in China by some one familiar with local conditions. The minister was instructed to designate one person from the legation and one from the consular service who would investigate the claims and determine what amount should be allowed in each case. The recommendations of these commissioners were to be submitted to the minister for revision, and the whole to be subject to the final revision and approval of the Department of State.

The commissioners were required to make a report on each claim, reciting the evidence of citizenship and of the fact and amount of loss or damage upon which the claim was based.

The commissioners were to be allowed from the indemnity paid by China their reasonable and necessary expenses while engaged in this work and such additional compensation as was reasonable and equitable. Due publicity through consuls and other officers was to be given all claimants of the establishments of the commission and the nature of its work.

March 14, 1902.

Minister Conger reported the designations of the persons who were to constitute the commission — Messrs. William E. Bainbridge, second secretary of legation at Peking, and James W. Ragsdale, American consul-general at Tientsin. The minister further expressed his views as to the extent and difficulty of the commissioners' task.

Minister Conger, in an instruction to the commissioners on the above date, said: "Reasonable notice of the sittings of the commission in the several localities should be given to the claimants in advance."

May 3, 1902.

The legation was instructed to forward to the Department, from time to time and as soon as passed on, all claims in order that the sums awarded could be distributed as speedily as practicable. The Department also suggested that as much of the work as possible should be done at or near Peking. The regulations prepared by the committee on indemnities and approved by the representatives of the powers in Peking on March 13, 1901, were not accepted by all the powers, and were therefore binding on none. However, it was believed by the Department they might be suggestive and instructive to the commission.

The indemnity in each case was to be fully and substantially compensatory, excluding all merely speculative or imaginary claims or elements of damages.

November 17, 1902.

The commission submitted its final report to the minister.

Its members were designated by the minister on March 14, 1902, and they began the work of examination of claims on May 5, 1902.

The Chinese Government, having recognized its responsibility for the Boxer outbreak, agreed to pay, pursuant to Article VI of the collective note of the powers, dated December 22, 1900, "equitable indemnities for governments, societies, companies, and private individuals, as well as for Chinese who have suffered during the late events in person or in property in consequence of their being in the service of foreigners."

The commission was not authorized to deal with losses sustained by the Government of the United States.

Two hundred and thirty claims for indemnities were filed with the commission by citizens of the United States, aggregating \$3,308,036.18. These figures include \$39,254.72 which represents the total amount of claims submitted to the commission by Chinese in the employ of Americans.

In a general way these claims may be classified as follows:

- I. Claims of missionary societies and individuals.
- II. Commercial claims.
- III. Death claims.

The total amount disallowed or withdrawn was \$1,804,385.69. The amount allowed on claims was \$1,383,650.49. The amount of interest allowed, \$130,642.39; thus placing the total amount allowed by the commission on private claims at \$1,514,292.88. This amount, however,

has been increased through additional awards by the Department of State subsequent to the completion of the commission's work, so that the total amount, including both American private claims and certain Chinese claims, the latter being \$17,669.60, now aggregates \$1,994,929.18. The maximum estimate required by this Government to meet the claims of its citizens and of certain Chinese under this heading was placed by the Department at \$2,000,000; \$1,994,929.18 having been paid out on this account, there remains in the Treasury Department an unexpended balance of \$5,070.82.

November 19, 1902.

Legation transmitted to the Department final report of the commission.

January 27, 1903.

Department congratulated the minister and Commissioners Bainbridge and Ragsdale on the successful termination of their joint labors.

Amount of indemnity, principal, \$24,440,778.81.

(Under the plan of amortization adopted this sum — carrying with it interest at 4 per cent per annum — is payable in irregular annual installments, extending over a period of thirty-nine years, the last payment falling due in 1940.)

It is estimated that the maximum amount required by this Government to meet its expenses, incident to the relief of the legation in 1900, and claims of citizens and others, will be as follows (revised estimates):

War Department	\$7,186,310 75
Navy Department	2,469,181 94
Claims of citizens, corporations, societies, and others.	2,000,000 00
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Total	\$11,655,492 69
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Amount as stated above reserved by the Department to meet the claims of corporations, societies, and individuals, citizens of the United States and others; expenses of claims, commission, etc.....	\$2,000,000 00
Of this sum there has been expended to date.....	1,994,616 76
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Gross unexpended balance.....	\$5,383 24
Adjusted claims not yet paid.....	312 42
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Net balance	\$5,070 82
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The Treasury Department has received to date, on account of principal and interest.....	\$6,518,034 75
The claims of societies, individuals, etc., adjusted and paid	1,994,929 18
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Net unexpended balance at present in a separate account with the Treasury Department.....	\$4,523,105 57
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The expenditures of the War Department and the Navy Department, incident to the uprising of 1900 in China, are met in the ordinary course.

Deducting from the amount at present in the Treasury Department the \$5,070.82, which is the unexpended balance of the amount reserved for private claims, the remainder is \$4,518,034.75. As the expenses of the military and naval branches of the Government in China in 1900 were included in the regular military budget of that year, it would appear from the above that the last-mentioned sum may be disposed of by Congress as it may see fit.

CONSULAR ADMINISTRATION OF THE ESTATES OF DECEASED NATIONALS

The case of Wyman, Petitioner (191 Mass., 276), printed in Volume I, page 520, of this JOURNAL, raises an interesting, not to say difficult, question concerning the jurisdiction of consuls over the estates of those of the consul's nationals who die in the foreign state from which the consul holds his exequatur. The books lay it down that the care of such estates is one of the well-established rights or duties (depending upon the view-point) with which a consul is vested or charged. The general law has, however, left the details of the consul's powers to be determined either by the respective national customs or laws, or by international agreement. Accordingly, not only are there no uniform settled rules that govern the question among all nations, but no one nation has a uniform rule that will apply to all its own consular affairs with its fellow nations. Indeed, a reading of the treaties suggests that each two contracting powers have met the various questions involved uninfluenced by the custom of other nations and in much the way that seemed to be required by the surrounding circumstances of the particular negotiations in progress, though, as the analysis will show, and as would be expected, it is possible to make a more or less general classification of the various consular rights and duties under the treaties.