

An examination has been made of a number of treaties between Russia and other countries in addition to those mentioned above, but no record has been found of any settlement made by Russia in respect to claims of foreign governments or nationals.

THE ADJUSTMENT OF THE *I'M ALONE* CASE

The auxiliary schooner *I'm Alone*, built and registered at Lunenburg, Nova Scotia, and owned by the Eugene Creaser Shipping Company Limited, a company incorporated under the laws of the Province of Nova Scotia, was sunk on the high seas by the United States Coast Guard vessel *Dexter* on March 22, 1929, more than 200 miles from the coast of the United States. The master and crew were plunged into the sea. The boatswain, one Leon Mainguy, died from drowning. The captain and the remaining members of the crew survived and were taken on board American Coast Guard vessels. They sustained losses of instruments, tools and personal effects. The cargo, consisting of intoxicating liquors, and valued at \$125,457, was lost. The destruction of the vessel was the climax of the pursuit thereof initiated by the United States Coast Guard cutter *Wolcott* on March 20, 1929, when the *I'm Alone* was within one hour's sailing distance from the coast of the United States, but outside of the territorial waters thereof. The *Dexter* joined in the pursuit on March 22. The schooner was fired upon and sunk because of the refusal of the commander to heave to.¹

After her construction, the *I'm Alone* was employed for some years in rum running, the cargo being destined for illegal introduction into, and sale in,

¹ See "I'm Alone" Case: Diplomatic Correspondence between the Governments of the United States and Canada concerning the Sinking of the "I'm Alone," together with an Opinion of Attorney General William D. Mitchell and the Conventions of January 23 and June 6, 1924, for the Prevention of Smuggling of Intoxicating Liquors, Department of State, Arbitration Series No. 2 (1); "I'm Alone" Case: Claim made by His Majesty's Government in Canada under the Provisions of Article IV of the Convention concluded January 23, 1924, between the United States and Great Britain, *id.*, No. 2 (2); "I'm Alone" Case: Answer of the Government of the United States of America to the Claim of His Majesty's Government in Canada in Respect of the Ship "I'm Alone," *id.*, No. 2 (3); "I'm Alone" Case: Brief Submitted on Behalf of His Majesty's Government in Canada in Respect of the Ship "I'm Alone," *id.*, No. 2 (4); "I'm Alone" Case: Answering Brief of the Government of the United States of America to the Claim of His Majesty's Government in Respect of the Ship "I'm Alone," *id.*, No. 2 (5); Claim of the British Ship "I'm Alone": Statement with Regard to the Claims for Compensation Submitted by the Canadian Agent Pursuant to Directions Given by the Commissioners, Dated the 30th June, 1933, Ottawa, 1933; Claim in Respect of the Ship "I'm Alone": Statements Submitted by the Agent for the United States Pursuant to the Directions Given by the Commissioners, Dated the 30th June, 1933, Government Printing Office, Washington, 1934; Joint Final Report, Jan. 5, 1935, Department of State, Press Release, Jan. 9, 1935; Department of State, Press Release of same date, descriptive of Joint Final Report; Mr. Hull, Secretary of State, to the Minister of the Dominion of Canada, Jan. 19, 1935, Department of State, Press Release, Jan. 21, 1935. The Joint Interim Report of the Commissioners, dated June 30, 1933, and the Joint Final Report of Jan. 5, 1935, are reprinted in this JOURNAL, *infra*, pp. 326-331.

the United States. In December, 1928, and during the early months of 1929, down to the date of the sinking of the vessel, "she was engaged in carrying liquor from Belize, in British Honduras, to an agreed point or points in the Gulf of Mexico, in convenient proximity to the coast of Louisiana, where the liquor was taken from her in smaller craft, smuggled into the United States and sold there."²

In August, 1929, the United States and Canada agreed to appoint two commissioners to consider the claim of Canada in respect to the sinking of the vessel. This action was pursuant to the provisions of Article IV of the Convention concluded on January 23, 1924,³ between the United States and Great Britain, providing in part that:

Any claim by a British vessel for compensation on the grounds that it has suffered loss or injury through the improper or unreasonable exercise of the rights conferred by article 2 of this treaty or on the ground that it has not been given the benefit of article 3 shall be referred for the joint consideration of two persons, one of whom shall be nominated by each of the High Contracting Parties.

As the two Governments concerned were unable to agree upon the settlement of the matter through the diplomatic channel, the case was submitted to the consideration of Mr. Justice Willis Van Devanter, of the Supreme Court of the United States, as American Commissioner, and the Right Honorable Lyman Poore Duff, as Canadian Commissioner.⁴ In compliance with a direction given on the 28th of January, 1932, by the Commissioners, the Agents and Counsel of the opposing States submitted briefs and oral argument in relation to three preliminary questions; and the Commissioners, on June 30, 1933, in a Joint Interim Report, gave answers to two of those questions (numbers one and three).

The first of these was whether the Commissioners might enquire into the beneficial or ultimate ownership of the *I'm Alone* or of the shares of the corporation that owned the ship. The implications of an affirmative answer were obvious; and such an answer was made by the Commissioners. Thus, in their Joint Final Report of January 5, 1935, the Commissioners declared that they found as a matter of fact that, from September, 1928, down to the date when she was sunk, the *I'm Alone*, although a British ship of Canadian registry, was *de facto* owned, controlled, and at the critical times, managed,

² Joint Final Report of Jan. 5, 1935, Department of State, Press Release, Jan. 9, 1935, p. 3; this JOURNAL, *infra*, p. 329.

³ U. S. Treaty Series, No. 685; reprinted in this JOURNAL, Supplement, Vol. 18 (1924), p. 127.

⁴ "The Commissioners met at Washington on January 28, 1932; at Ottawa on June 28-30, 1933; and at Washington on December 28, 1934-January 5, 1935. During the last session, oral testimony of witnesses was heard by the Commissioners and arguments were presented by the Agents of both Governments." (Department of State, Press Release, Jan. 9, 1935, p. 1.)

and her movements directed and her cargo dealt with and disposed of, by a group of persons acting in concert who were entirely, or nearly so, citizens of the United States, and who employed her for the purpose of carrying intoxicating liquors from British Honduras designed for illegal introduction and sale in the territory of the United States. It was said that the possibility that one of the group of such persons might not have been of American nationality was regarded as of no importance in the circumstances of the case. Therefore, the Commissioners declared that "in view of the facts, no compensation ought to be paid in respect of the loss of the ship or the cargo."⁵

This conclusion has much significance. It bears testimony to the reasonableness of the requirement that a respondent State should not, through the agency of an arbitral or other agency or commission, be subjected to the burden of paying damages necessarily accruing to the direct benefit of its own nationals. It would have been unconscionable, under the circumstances of the case, to impose an obligation upon the United States to reimburse the American owners of the vessel and the cargo; and it would have been impossible to establish that the design of the parties to the convention of January 23, 1924, as set forth in Article IV thereof, contemplated such reimbursement.

The second question propounded to the Commissioners under their directions of January 28, 1932, related to the right of hot pursuit, and embraced, in its first aspect, the enquiry whether the Government of the United States, under the convention of January 23, 1924, "has the right of hot pursuit where the offending vessel is within an hour's sailing distance of the shore at the commencement of the pursuit and beyond that distance at its termination."⁶ In their Joint Interim Report of June 30, 1933, the Commissioners announced that they were not then in agreement as to the proper answer and had not reached a final disagreement thereon.⁷ In view of their ultimate response to the third question confronting them, the Commissioners seemingly found it unnecessary in their Joint Final Report to answer the second question.

The third question was based upon the assumption that the United States had the right of hot pursuit in the circumstances and was entitled to exercise the right under Article II of the convention at the time when the *Dexter* joined the *Wolcott* in the pursuit of the *I'm Alone*. The precise issue was

⁵ Joint Final Report of Jan. 5, 1935, Department of State, Press Release, Jan. 9, 1935, p. 3; this JOURNAL, *infra*, p. 329.

⁶ Joint Interim Report of the Commissioners of June 30, 1933, Claim of the British Ship "I'm Alone," Statement with Regard to the Claims for Compensation Submitted to the Canadian Agent Pursuant to Directions Given by the Commissioners, Dated the 30th June, 1933, Ottawa, 1933, p. 6. A second aspect of this question concerned the possession by the United States of a right of hot pursuit of a vessel when pursuit was commenced within the distance of twelve miles established by the revenue laws of the United States and was terminated beyond that distance. Inasmuch as the American Government withdrew that part of its answer which led to the propounding of this second aspect of the question, the issue called for no answer.

⁷ *Id.*, p. 6.

“whether, in the circumstances, the Government of the United States was legally justified in sinking the *I'm Alone*.”⁸ In their Joint Interim Report of June 30, 1933, the Commissioners declared in this connection:

On the assumptions stated in the question, the United States might, consistently with the Convention, use necessary and reasonable force for the purpose of effecting the objects of boarding, searching, seizing and bringing into port the suspected vessel; and if sinking should occur incidentally, as a result of the exercise of necessary and reasonable force for such purpose, the pursuing vessel might be entirely blameless. But the Commissioners think that, in the circumstances stated in paragraph eight of the Answer, the admittedly intentional sinking of the suspected vessel was not justified by anything in the Convention.⁹

In their Joint Final Report of January 5, 1935, it was said: “By their interim report the Commissioners found that the sinking of the vessel was not justified by anything in the Convention. The Commissioners now add that it could not be justified by any principle of international law.”¹⁰ Accordingly, the Commissioners added that inasmuch as the act of sinking the ship was “an unlawful act,” they considered “that the United States ought formally to acknowledge its illegality, and to apologize to His Majesty’s Canadian Government therefor; and, further, that as a material amend in respect of the wrong the United States should pay the sum of \$25,000 to His Majesty’s Canadian Government; and they recommend accordingly.”¹¹

This feature of the report has two important aspects. It points to the conclusion of the Commissioners that the United States could, and did, through the instrumentality of its Coast Guard service violate an international obligation towards His Majesty’s Canadian Government, and that by necessary implication an obligation to make reparation by some process immediately sprang into being. It also concerns the rather delicate question of the character and amount of damages due to a friendly State by way of reparation for an essentially public injury sustained by it. It may be noted parenthetically that compensation was recommended for the benefit of the captain and members of the crew of the *I'm Alone*, “none of whom was a party to the illegal conspiracy to smuggle liquor into the United States and sell the same there.”¹² The recommendation that \$25,000 be paid to His

⁸ *Id.*, p. 7.

⁹ *Id.*

¹⁰ Joint Final Report, Jan. 5, 1935, Department of State, Press Release, Jan. 9, 1935, p. 3; this JOURNAL, *infra*, p. 329.

¹¹ *Id.*

On Jan. 19, 1935, Secretary Hull, in behalf of the Government of the United States, tendered to His Majesty’s Canadian Government an apology for the sinking of the vessel and announced that he was taking steps to obtain an appropriation for the sum which the Commissioners recommended to be paid by the United States to that Government. See Department of State, Press Release, Jan. 21, 1935.

¹² Joint Final Report, Jan. 5, 1935, Department of State, Press Release, Jan. 9, 1935, p. 3; this JOURNAL, *infra*, p. 329. Accordingly, the sum of \$25,666.50 was recommended as com-

Majesty's Canadian Government "as a material amend in respect of the wrong" found to be chargeable to the United States deserves scrutiny. According to Article IV of the convention of January 23, 1924, it was "any claim by a British vessel for compensation" on the grounds that it had suffered loss or injury through the improper or unreasonable exercise of rights conferred by Article II of that instrument, or on the ground that it had not been given the benefit of Article III thereof, that was to be the subject of reference to joint commissioners. The article did not appear to contemplate the reference to them of an essentially public claim. It should be observed, however, that in its discussion of the three preliminary questions, in the "Answering Brief" of the Government of the United States, of March 30, 1933, it was declared that "if the Commissioners interpret their function as that of authoritative advisers to the two Governments [which it was urged that they should], they may properly make to either Government any recommendation upon which they can agree with respect either to the further pressing of the claim or to any other phase of the controversy."¹³ Thereafter the United States was hardly in a position to complain of the assessment of a penalty for the benefit of the Canadian Government. It should also be observed that the claim of that Government embraced an item of expenses incurred in repatriating the crew, amounting to \$6,109.41, and embracing "legal expenses" amounting to \$27,701.02, the total item being \$33,810.43. The \$25,000 recommended for payment to the Canadian Government, apart from the reasons suggested by the Commissioners, constituted partial compensation for expenses incurred by it in the prosecution of its case against the United States. For that reason, the recommendation of the Commissioners that this sum be paid to the Canadian Government may be deemed to lack importance as a precedent indicative of the propriety of the imposition by an arbitral tribunal or by a joint commission of penal damages against a respondent State in satisfaction of an essentially public claim.

It must afford satisfaction both in the United States and Canada that recourse to a joint commission in pursuance of the convention of January 23, 1924, proved to be the means of adjusting amicably an issue calculated to produce much irritation and ill-will in the Dominion. Such an instrumentality, suggested by John Jay as early as April 21, 1785,¹⁴ applied successfully in the adjustment of the Alaskan Boundary Dispute in 1903,¹⁵ utilized in the convention of January 11, 1909, concerning the boundary waters between the United States and Canada,¹⁶ and recommended by Secretary Hughes in

pensation for them, embracing \$10,185 as compensation for the widow and children of Leon Mainguy.

¹³ Publications, Department of State, Arbitration Series No. 2 (5), p. 6.

¹⁴ American State Papers, Foreign Relations, I, 94.

¹⁵ See convention of Jan. 24, 1903, Malloy's Treaties, II, 787.

¹⁶ U. S. Treaty Vol. III, 2607; this JOURNAL, Supplement, Vol. 4 (1910), p. 239.

1923 for broadest invocation as a preventive of misunderstandings between the United States and Canada,¹⁷ still offers a potent means of safeguarding American-Canadian interests from unnecessary injury.

CHARLES CHENEY HYDE

THE UNITED STATES SENATE AND THE WORLD COURT

For twelve years, proposals for the support of the Permanent Court of International Justice have been before the Senate and people of the United States. On February 24, 1923, President Harding requested the Senate's advice and consent for adherence by the United States to the Protocol of Signature of December 16, 1920, subject to four reservations. By a resolution of January 27, 1926, the Senate gave its advice and consent, subject to five reservations.¹ On September 14, 1929, a Protocol on the Accession of the United States was opened to signature at Geneva; and on December 9, 1929, the 1920 Protocol of Signature, the 1929 Protocol of Accession by the United States, and the 1929 Revision Protocol were signed on behalf of the United States.² On December 10, 1930, President Hoover requested the advice and consent of the Senate for the ratification of these protocols. No action was taken in the Senate until its Committee on Foreign Relations made a report on June 1, 1932;³ but this report was never considered on the floor of the Senate. Public hearings on the matter were held by the Committee on Foreign Relations on March 23 and May 16, 1934,⁴ and in the early months of 1934 announcement was made that it would be considered in the Senate early in the first session of the Seventy-fourth Congress.

On January 10, 1935, the Senate Committee on Foreign Relations made a report⁵ recommending the Senate's adoption of the following resolution:

Whereas the President, under date of December 10, 1930, transmitted to the Senate a communication, accompanied by a letter from the Secretary of State dated November 18, 1929, asking the favorable advice and consent of the Senate to adherence by the United States to the protocol of date December 16, 1920, of signature of the Statute for the Permanent Court of International Justice, the protocol of revision of the Statute of the Permanent Court of International Justice of date September 14, 1929, and the protocol of accession of the United States of America to the protocol of signature of the Statute of the Permanent Court of International Justice of date September 14, 1929, all of which are set out in the said message of the President dated December 10, 1930: Therefore be it

¹⁷ Charles E. Hughes, *The Pathway of Peace, Representative Addresses, 1921-1925*, New York, 1925, 3, 16.

¹ See the writer's analysis of the reservations, in this *JOURNAL*, Vol. 22 (1928), pp. 776-796.

² For the texts, see 1 Hudson, *World Court Reports* (1934), pp. 16, 95, 102.

³ 72d Congress, 1st Session, Senate Report No. 758. See the writer's comment in this *JOURNAL*, Vol. 26 (1932), pp. 569-572.

⁴ Records of these hearings were published at the time.

⁵ 74th Congress, 1st Session, Senate Executive Report No. 1.