Of course our Government is probably as much within its rights in continuing to recognize an ambassador from a government which has long ceased to exist as it would be in recognizing one purporting to come from the planet Jupiter or some island in the Pacific Ocean which had been destroyed by a volcano or an earthquake. And as long as we continue to recognize him, he is entitled, by custom and courtesy at least, to diplomatic privileges and immunities.

As Satow (*Diplomatic Practice*, I, p. 368) observes: "Whatever may be the causes that lead to the termination of a mission, the minister remains in possession of the immunities and privileges attached to his public character until he leaves the country to which he has been accredited."[3]

AMOS S. HERSHEY.

THE SWISS DECISION IN THE BOUNDARY DISPUTE BETWEEN COLOMBIA AND VENEZUELA

On March 24, 1922, the Federal Council of Switzerland rendered its award upon certain boundary disputes pending between Colombia and Venezuela.

The dispute, as is so often the case between nations, has a long history. It was due, in first instance, to the uncertain boundaries of the Spanish possessions in America, and the desire of the Republics succeeding to the Spanish dominions in America to render definite what had been indefinite with due regard to their respective interests. There is one passage from the award which should be quoted by way of introduction, as it lays down a principle common to the Spanish-American Republics, and suggests a connection with a famous doctrine of North-American origin, which did not escape the keen eye and trained intelligence of the arbitrator. In English, of course the text is in French, this part of the award is as follows:

> When the Spanish colonies of Central and South America proclaimed their independence in the second decade of the nineteenth century, they adopted a principle of constitutional and international law to which they gave the name of *uti possidetis juris* of 1810. The principle laid down the rule that the boundaries of the newly established republics would be the frontiers of the Spanish provinces which they were succeeding. This general principle offered the advantage of establishing the absolute rule that in law no territory of old Spanish America was without an owner. To be sure there were many regions that had not been occupied by the Spanish and many regions that were unexplored or inhabited by uncivilized natives, but these sections were regarded as belonging in

[3] As if in some doubt as to whether this statement is not too absolute, Satow adds: "In any case, his person continues to be inviolable." Vattel (IV, chap. 9, p. 125) indicated as the reason for the retention by an ambassador of his diplomatic rights and privileges after the termination of his mission that he must "return to his principal, to whom he is to make a report of his embassy." This reason can hardly be said to be operative in the case of Mr. Bakhmeteff.

https://doi.org/10.2307/2188181 Published online by Cambridge University Press

> law to the respective republics that had succeeded the Spanish provinces to which these lands were connected by virtue of old royal decrees of the Spanish mother country. These territories, although not occupied in fact, were by common agreement considered as being occupied in law by the new republics from the very beginning. Encroachments and ill-timed efforts at colonization beyond the frontiers, as well as occupations in fact, became invalid and ineffectual in law. This principle also had the advantage, it was hoped, of doing away with boundary disputes between the new states. Finally it put an end to the designs of the colonizing states of Europe against lands which otherwise they could have sought to proclaim as *res nullius*. The international status of Spanish America was from the very beginning quite different from that of Africa for example. This principle later received general sanction under the name of the Monroe Doctrine, but had long before been the basis of South American public law.[1]

As long as Colombia and Venezuela were united, the delimitation of boundaries was not so important as it became after 1830, in which year the union of Venezuela, Colombia and Ecuador was dissolved, each state asserting the independence which it has since maintained. Finally, on September 14, 1881, the representatives of Colombia and of Venezuela signed a treaty of arbitration submitting to the Crown of Spain the question of boundaries between the United States of Colombia and the United States of Venezuela.

The decision was not to be a compromise. The government of His Majesty the King of Spain was to decide the disputes as a judge according to principles of law—the French phrase—"en qualité d'arbitre Juge de droit". Each of the contracting governments was to present its side of the case within eight months after His Majesty had been invited to act as arbiter. The award was to determine once and for all the boundaries in dispute between the two countries, and the award itself was to become binding immediately upon its publication in the official *Gaceta* of the government rendering it.

A difficulty which had not been foreseen arose, because of the death of Alphonse XII in 1885. Apparently there were intimations that it might be impossible to draw the lines in accordance to law, and that it would be desirable in such case to allow the arbiter to exercise his discretion. Therefore, on January 15, 1886, there was signed what is called "The Act of Paris", completing the arbitration agreement of September 14, 1881. In the first place, the plenipotentiaries of Colombia and Venezuela agreed that the submission was really to the government of Spain, not to the particular person who happened to be King at the time when the agreement was made and that, therefore, the government of the Queen Regent would be authorized to render the award in place of His Majesty Alphonse XII, who had died in the meantime. It was also agreed that the arbiter should fix the boundary in the manner which he felt would best accord with the documents whenever

[1] *Sentence arbitrale du Conseil Fédéral Suisse sur diverses questions de limites pendantes entre la Colombie et le Vénézuéla, Berne, 24 Mars 1922.* Neuchatel, Imprimerie Paul Attinger, 1922, pp. 5–6.

https://doi.org/10.2307/2188181 Published online by Cambridge University Press

they were not sufficiently clear. On March 16, 1891, the award was rendered, and on that day published in the Gazette of Madrid.

It does not seem necessary for present purposes to consider in detail the text of this award, inasmuch as there has since been a re-submission to the Swiss Federal Council. Suffice to say, that the award divided the territory in dispute into six sections, the second and fourth of which were decided by agreement of the parties in litigation. The disputes regarding boundaries in the first and third sections were decided as a judge in accordance with law; the fifth section in accordance with the discretion of the arbiter; the sixth section was divided into two parts, the disputes within the first section being decided according to law, those of the second part according to discretion.

Years passed, and the frontiers were not marked, and the disputes, therefore, were not eliminated.

On December 30, 1898, a pact or convention was signed by representatives of Colombia and Venezuela to put into practical effect the award of the Crown of Spain. Two commissions were to be appointed, composed of an engineer and a legal adviser of each of the two countries, together with such engineers and assistance as should be considered useful. One commission was to fix the boundaries of sections 1, 2, 3 and 4; the other commission section 5 and the two parts of section 6. In order to eliminate causes of delay, it was provided that, in case of dispute about any particular section, the controversy should be submitted to the two governments, and the commission meanwhile continue its labors on other parts of the line without awaiting the decision of the governments.

It was further provided that Colombian or Venezuelan citizens within transferred portions of territory, should retain their citizenship unless they should renounce it within a period of six months.

It was finally provided that in case of the failure of one or the other government to appoint the members of the two commissions, the members appointed by the other should act for the commission. Both governments appointed their respective members, and the commissions were established.

Unfortunately, internal troubles prevented them from finishing their labors, and serious disputes arose which could not be settled by the two countries. Colombia maintained that each country should take possession of the territory assigned to it by the boundary lines as far as they had been drawn; Venezuela, on the other hand, that possession should not be taken until the boundary lines had been completed. This question among others, the two Republics decided to submit to the President of the Swiss Confederation, in order that the award of the Spanish Crown should be carried into effect.

By a supplemental agreement of July 20, 1917, at the date of the exchange of ratifications of the treaty or convention of arbitration of November 3, 1916, the Swiss Federal Council was substituted for the President of the Confederation.

https://doi.org/10.2307/2188181 Published online by Cambridge University Press

Having appointed mixed commissions to fix the boundaries in accordance with the arbitral award of the Spanish Crown, which had, for one reason or another, failed to do so or to complete their work, the convention of arbitration provided that the President of the Swiss Confederation should appoint experts, who should be persons of the same nationality as the arbiter, that is to say, Swiss citizens. Inasmuch as the experts are Swiss and are subject to the direction of the arbiter, it is to be presumed that the frontiers of the two countries will be delimited in the near future.

It was apparently the intention of the high contracting parties to negotiate a treaty regulating the navigation of the rivers common to both, the commerce in the frontier districts and during its transit through the two Republics. It was therefore provided in the convention that if this treaty of navigation and commerce should be concluded before the award, the arbiter should take note of its terms in so far as they might affect the questions in dispute; if the treaty of navigation and commerce were concluded after the award, that its terms should be modified in accordance with the provisions of the treaty. The treaty has, however, not been concluded.

The award of the Swiss Federal Council was rendered on March 24, 1922. It decided that the portions of the frontier settled by the award of the Crown of Spain, and as well as those fixed by the mixed commissions, constituted under the pact or convention of December 30, 1908, should be carried into effect without awaiting the final determination of all of the boundary disputes in question, and that the territory awarded to Colombia or Venezuela should be taken possession of and occupied by the authorities of one or the other country. That there might be no doubt about this phase of the subject, the award specified the sections which were to be occupied, and likewise specified the sections or portions thereof to be excepted from such occupation until the experts to be appointed by the Swiss government should have fixed the boundaries which were still in dispute.

The award is accompanied by an elaborate historical introduction, which gives an added value to the decision. Indeed, it is only fair to say that the arbitral awards whether rendered by the Swiss government or by Swiss publicists are models of their kind.

JAMES BROWN SCOTT.

HAGUE ARBITRATION COURT AWARD IN THE FRENCH CLAIMS AGAINST PERU

On October 11, 1921, the Hague Court of Arbitration made its award in the case of the French Claims against Peru. The *compromis* for this case was signed on February 2, 1914, and it provided for summary procedure in accordance with Chapter 4 of the Hague Convention of 1907. The three arbitrators were Mr. Sarrut, President of the Court of Cassation at Paris, and Mr. Elguera, former Minister Plenipotentiary and Mayor of Lima, and these together named as a third member Mr. Ostertag, President of the Swiss

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