



PERMANENT COURT OF ARBITRATION

THE “CARTHAGE”

FRANCE

v.

ITALY

AWARD OF THE TRIBUNAL

Unofficial English Translation

Arbitrators:

G. Fusinato

K. Hj. L. Hammarskjöld

J. Kriege

L. Renault

Baron M. de Taube

The Hague, 6 May 1913

**AWARD RENDERED MAY 6, 1913
BY THE ARBITRAL TRIBUNAL
IN THE CASE OF
THE FRENCH MAIL STEAMER “CARTHAGE”^[1]**

Whereas by an agreement dated January 26, 1912, and by a *compromis* dated March 6 following, the Government of the French Republic and the Royal Italian Government agreed to submit to an Arbitral Tribunal composed of five members the decision of the following questions:

1. Were the Italian naval authorities within their rights in proceeding, as they did, to the capture and temporary seizure of the French mail steamer “Carthage”?
2. What should be the pecuniary or other consequences resulting from the decision of the preceding question?

Whereas in fulfilment of this *compromis* the two Governments have chosen, by mutual consent, the following members of the Permanent Court of Arbitration to constitute the Arbitral Tribunal:

His Excellency GUIDO FUSINATO, Doctor of Law, Minister of State, former Minister of Public Instruction, Honorary Professor of International Law in the University of Turin, Deputy, Counselor of State;

Mr. KNUT HJALMAR LÉONARD DE HAMMARSKJÖLD, Doctor of Law, former Minister of Justice, former Minister of Public Worship and Instruction, former Envoy Extraordinary and Minister Plenipotentiary at Copenhagen, former President of the Court of Appeals of Jönköping, former Professor in the Faculty of Law of Upsala, Governor of the Province of Upsala;

Mr. KRIEGE, Doctor of Law, at present Privy Counselor of Legation and Director in the Department of Foreign Affairs, Plenipotentiary in the German Federal Council;

Mr. LOUIS RENAULT, Minister Plenipotentiary, member of the Institute, Professor in the Faculty of Law of the University of Paris and of the *Ecole Libre des Sciences Politiques*, Jurisconsult in the Ministry of Foreign Affairs;

His Excellency BARON MICHEL DE TAUBE, Doctor of Law, Assistant Minister of Public Instruction of Russia, at present Counselor of State;

That the two Governments have, at the same time, designated Mr. DE HAMMARSKJÖLD to perform the duties of President.

Whereas, in accordance with the *compromis* of March 6, 1912, the memorials and counter-memorials have been duly exchanged by the Parties and communicated to the Arbitrators;

Whereas the Tribunal, constituted as stated above, met at The Hague on March 31, 1913;

¹ Translated from French into English, based on the version in GEORGE GRAFTON WILSON, THE HAGUE ARBITRATION CASES (1915).

That the two Governments have respectively appointed as Agents and Counsel,

The Government of the French Republic:

Mr. HENRI FROMAGEOT, Advocate in the Court of Appeals of Paris, Assistant Jurisconsult in the Ministry of Foreign Affairs, Counselor in International Law for the Navy Department, Agent;

Mr. ANDRÉ HESSE, Advocate in the Court of Appeals of Paris, Member of the Chamber of Deputies, Counsel;

The Royal Italian Government:

Mr. ARTURO RICCI-BUSATTI, Envoy Extraordinary and Minister Plenipotentiary, Chief of the Bureau of Claims and Legislation of the Royal Ministry of Foreign Affairs, Agent;

Mr. DIONISIO ANZILOTTI, Professor of International Law in the University of Rome, Counsel.

Whereas the Agents of the Parties have presented to the Tribunal the following demands, to wit,

The Agent of the Government of the French Republic:

MAY IT PLEASE THE TRIBUNAL,

As to the first question raised by the *compromis*,

To say that the Italian naval authorities were not within their rights in proceeding as they did to the capture and temporary seizure of the French mail steamer “Carthage”;

In consequence and as to the second question,

To say that the Royal Italian Government shall be obliged to pay to the Government of the French Republic as compensation:

1. The sum of *one franc* for the offense against the French flag;
2. The sum of one hundred thousand francs as reparation for the moral and political injury resulting from the failure to observe international common law and conventions reciprocally binding upon Italy and upon France;
3. The sum of five hundred and seventy-six thousand, seven hundred and thirty-eight francs, twenty-three centimes, the total amount of the losses and damages claimed by private parties interested in the steamer and its voyage;

To say that the above-mentioned sum of one hundred thousand francs shall be paid to the Government of the Republic for the benefit of such work or institution of international interest as it shall please the Tribunal to indicate;

Further, and in case the Tribunal does not consider itself at present sufficiently informed as to the grounds for the individual claims,

To say that through one or more of its members whom it may be pleased to assign for this duty, it shall, in the presence of the Agents and Counsel of the two Governments,

proceed, in the chamber where its deliberations take place, to the examination of each of the said individual claims;

In any event, and by the application of Article 9 of the *compromis*,

To say that, upon the expiration of a period of three months from the day of the award, the sums charged against the Royal Italian Government and not yet paid shall bear interest at the rate of four per cent per annum.

And the Agent of the Royal Italian Government:

MAY IT PLEASE THE TRIBUNAL

As to the first question raised by the *compromis*,

To say and decide that the Italian naval authorities were entirely within their rights in proceeding as they did to the capture and temporary seizure of the French mail steamer “Carthage”;

In consequence and as to the second question,

To say and decide that no pecuniary or other consequence should be imposed upon the Royal Italian Government for the capture and temporary seizure of the French mail steamer “Carthage”;

To say and decide that the French Government shall be obliged to pay to the Italian Government the sum of two thousand and seventy-two francs, twenty-five centimes, the amount of the expense caused by the seizure of the “Carthage”;

To say that, upon the expiration of three months from the day of the award, the sum charged against the Government of the French Republic will, if it has not yet been paid, bear interest at the rate of four per cent per annum.

Whereas, after the Tribunal had heard the oral statements of the Agents of the Parties and the explanations which they furnished at its request, the arguments were duly declared closed.

AS TO FACT

Whereas in the course of a regular voyage between Marseilles and Tunis, the French mail steamer “Carthage”, of the *Compagnie Générale Transatlantique*, was stopped by the torpedo destroyer “Agordat” of the Royal Italian Navy in the open sea, 17 miles from the coast of Sardinia, on January 16, 1912, at 6:30 a.m.;

That the commander of the “Agordat”, having ascertained the presence on board the “Carthage” of an aeroplane belonging to one DUVAL, a French aviator, and consigned to his address at Tunis, declared to the captain of the “Carthage” that the aeroplane in question was considered by the Italian Government contraband of war;

That as the trans-shipment of the aeroplane could not be made, the captain of the “Carthage” received the order to follow the “Agordat” to Cagliari, where he was detained until January 20;

AS TO LAW

Whereas, according to the principles universally acknowledged, a belligerent warship has, as a general rule and except under special circumstances, the right to stop a neutral commercial vessel in the open sea and to proceed to search it to see whether it is observing the rules of neutrality, especially as to contraband;

Whereas, on the other hand, as the legality of every act which goes beyond a mere search depends upon the existence either of trade in contraband or of sufficient reasons to believe that there is such a trade,

That, in this respect, the reasons must be of a juridical nature;

Whereas in this case the “Carthage” was not only stopped and visited by the “Agordat”; but also taken to Cagliari, sequestered and detained for a certain time, after which it was released by the administrative authority;

Whereas the purpose of the measures taken against the French mail steamer was to prevent the transportation of the aeroplane belonging to one DUVAL, and shipped on the “Carthage” to the address of this same DUVAL at Tunis;

That this aeroplane was considered by the Italian authorities as contraband of war, both by its nature and by its destination, which in reality might have been for the Ottoman forces in Tripolitana;

Whereas, in so far as concerns the hostile destination of the aeroplane, an essential element of its seizability,

That the information possessed by the Italian authorities was of too general a nature and had too little connection with the aeroplane in question to constitute sufficient juridical reasons to believe in any hostile destination whatever and, consequently, to justify the capture of the vessel which was transporting the aeroplane;

That the despatch from Marseilles, regarding certain remarks made by Mr. DUVAL’s mechanic, did not reach the Italian authorities until after the “Carthage” had been stopped and conducted to Cagliari and could not, therefore, have caused these measures;

That, moreover, the despatch could not in any case have afforded a sufficient reason, in the light of what has previously been said;

Whereas, this conclusion being reached, it is not for the Tribunal to inquire whether or not the aeroplane should by its nature be included in articles of contraband, either conditional or absolute, or even to examine whether the theory of continuous voyage should or should not be applicable in this case;

Whereas the Tribunal finds it likewise superfluous to examine whether there were, at the time of the measures taken against the “Carthage”, irregularities of form, and if, in case of an affirmative reply, these irregularities were of a kind to vitiate measures which would otherwise have been legal;

Whereas the Italian authorities demanded the surrender of the mail only that it might be forwarded to its destination as quickly as possible,

That this demand, which apparently was at first misunderstood by the captain of the “Carthage”, was in conformity with the Convention of October 18, 1907, *relative to certain restrictions in the exercise of the right of capture*, which, however, was not ratified by the belligerents.

Upon the request that the Royal Italian Government be condemned to pay to the Government of the French Republic as compensation:

1. The sum of *one franc* for the offense against the French flag;
2. The sum of one hundred thousand francs as reparation for the moral and political injury resulting from the failure to observe international common law and conventions reciprocally binding upon France and upon Italy,

Whereas, in case a Power should fail to fulfil its obligations, whether general or special, to another Power, the statement of this fact, especially in an arbitral award, constitutes in itself a serious penalty;

That this penalty is made heavier, if there be occasion, by the payment of compensation for material losses;

That as a general rule and excluding special circumstances, these penalties appear to be sufficient;

That also as a general rule, the imposition of a further pecuniary penalty appears to be superfluous and to go beyond the purposes of international jurisdiction;

Whereas, by the application of what has just been said, the circumstances of the present case would not justify such a supplementary penalty; that, without further examination, there is no occasion to comply with the above-mentioned request.

Upon the request of the French Agent to the effect that the Italian Government be condemned to pay the sum of five hundred and seventy-six thousand seven hundred and thirty-eight francs, twenty-three centimes, the total amount of the losses and damages claimed by private parties interested in the vessel and its voyage,

Whereas the request for indemnity is, in principle, justified;

Whereas the Tribunal, after having heard the concurring explanations of two of its members, charged by it to proceed to an investigation of the said claims, has fixed the amount of indemnity due the *Compagnie Générale Transatlantique* at seventy-five thousand francs, the amount of indemnity due the aviator DUVAL and his associates at twenty-five thousand francs, and finally, the amount due the passengers and shippers at sixty thousand francs; or a total of one hundred and sixty thousand francs to be paid by the Italian Government to the French Government.

FOR THESE REASONS

The Arbitral Tribunal

Declares and pronounces as follows:

The Italian naval authorities were not within their rights in proceeding, as they did, to the capture and temporary seizure of the French mail steamer “Carthage”.

The Royal Italian Government shall be obliged, within three months from the present award, to pay to the Government of the French Republic the sum of one hundred and sixty thousand francs, the amount of the losses and damages sustained by the private parties interested the vessel and its voyage, by reason of the capture and seizure of the “Carthage”.

There is no reason to give effect to the other claims contained in the demands of the two Parties.

Done at The Hague, in the building of the Permanent Court of Arbitration, May 6,
1913.

President: HJ. L. HAMMARSKJÖLD
Secretary General: MICHIELS VAN VERDUYNEN
Secretary: RÖELL