



PERMANENT COURT OF ARBITRATION

DESERTERS OF CASABLANCA

FRANCE

v.

GERMANY

AWARD OF THE TRIBUNAL

Unofficial English Translation

Arbitrators:

K. Hj. L. Hammarskjöld

E. Fry

G. Fusinato

M. Kriege

L. Renault

The Hague, 22 May 1909

**Arbitral Award
rendered May 22, 1909
in the Casablanca Arbitration¹**

Whereas, by a protocol of November 10, 1908, and by an agreement to arbitrate of the 24th of the same month, the Government of the French Republic and the Imperial German Government agreed to submit to an arbitral tribunal, composed of five members, the settlement of the questions of fact and of law arising from the events which occurred at Casablanca on September 25, 1908, between officers of the two countries;

Whereas, in accordance with the said agreement, the two Governments have respectively appointed as arbitrators the following persons, namely,

the Government of the French Republic:

the Right Honorable Sir EDWARD FRY, Doctor of Laws, former judge of the Court of Appeals, Member of the Privy Council of the King, Member of the Permanent Court of Arbitration, and

Mr. LOUIS RENAULT, Member of the Institute of France, Minister Plenipotentiary, Professor in the Faculty of Law at Paris, Counsel of the Ministry of Foreign Affairs, Member of the Permanent Court of Arbitration;

and the Imperial German Government:

Mr. GUIDO FUSINATO, Doctor of Laws, former Minister of Public Instruction, former Professor of International Law at the University of Turin, Deputy in the Italian Parliament, Councillor of State, Member of the Permanent Court of Arbitration, and

Mr. KRIEGE, Doctor of Laws, at present Privy Councillor of Legation, Counsel and Jurisconsult of the Department of Foreign Affairs, Member of the Permanent Court of Arbitration;

Whereas the arbitrators thus appointed being instructed to name an umpire, have chosen Mr. K. HJ. L. DE HAMMARSKJÖLD, Doctor of Laws, former Minister of Justice, former Minister of Religion and Public Instruction, former Envoy Extraordinary and Minister Plenipotentiary at Copenhagen, former President of the Court of Appeal at Jönköping, former Professor of the Faculty of Law at Upsala, Governor of the province of Upsala, member of the Permanent Court of Arbitration;

Whereas, in accordance with the provisions of the agreement to arbitrate of November 24, 1908, the memorials and counter-memorials have been duly exchanged between the Parties and communicated to the arbitrators;

Whereas, the Tribunal as above constituted convened at The Hague on the 1st of May, 1909;

Whereas the two Governments respectively designated the following persons as their Agents,

the Government of the French Republic: Mr. ANDRÉ WEISS, Professor in the Faculty of Law at Paris, Assistant Counsel of the Ministry of Foreign Affairs,

and the Imperial German Government: Mr. ALBRECHT LENTZE, Doctor of Laws, Privy Councillor of Legation, Counsel of the Department of Foreign Affairs;

Whereas the Agents of the Parties have presented to the Tribunal the following conclusions; that is to say,

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

The Agent of the Government of the French Republic:

MAY IT PLEASE THE TRIBUNAL,

To declare and decide that it was wrong for the consul and the officers of the Imperial German consulate at Casablanca to attempt to embark on a German ship deserters from the French Foreign Legion who were not German subjects;

To declare and decide that it was wrong for the said consul and consular officers, under the same circumstances, to grant, on the territory occupied by the French corps on disembarking at Casablanca, their protection and material assistance to three other members of the legion whom they believed or might have believed to be Germans, thus disregarding the exclusive right of jurisdiction belonging to the occupying state in foreign territory, even in a country granting extraterritorial jurisdiction, as regards the soldiers of the army of occupation, and to acts likely to endanger its safety, whatever they may be or from wherever they may originate;

To declare and decide that, in the persons of Mr. JUST, Chancellor of the Imperial Consulate at Casablanca, and of the Moroccan soldier ABD-EL-KERIM BEN MANSOUR, no breach of the rules regarding consular inviolability was committed by the French officers, soldiers and marines who had arrested the deserters, and that in resisting the attacks and the acts of violence directed against them the said officers, soldiers, and marines merely availed themselves of the right of lawful defense.

And the Agent of the Imperial German Government:

MAY IT PLEASE THE TRIBUNAL,

1. As regards the questions of fact,
to declare that the three individuals who had previously served in the French Foreign Legion, WALTER BENS, HEINRICH HEINEMANN and JULIUS MEYER, all three Germans, on September 25, 1908, at the port of Casablanca, while they were accompanied by the agents of Germany, were violently taken from the latter and arrested by the agents of France, and on this occasion the agents of Germany were attacked, maltreated, outraged and threatened by the agents of France;

2. As regards the questions of law,
to declare that the three individuals mentioned under No. 1 above were, on September 25, 1908, subject exclusively to the jurisdiction and to the protection of the Imperial German Consulate at Casablanca and that the agents of France had no authority at that time to interfere with agents of Germany in granting German protection to these three individuals and to claim for themselves a right of jurisdiction over said individuals;

3. As regards the status of the individuals arrested on September 25, 1908, and concerning whom there is a dispute, to decide that the Government of the French Republic shall release the three Germans mentioned under No. 1 above as soon as possible and shall turn them over to the German Government.

Whereas, the Agent of the French Republic declared at the hearing of May 17, 1909, that in his conclusions he was only concerned, whether as regards the deserters of German nationality or as regards the others, with the measures taken by the German agents after the desertion and for the purpose of embarking the deserters;

Whereas, after the Tribunal had listened to the oral statements of the Agents of the Parties and to the explanations which they furnished at its request, the discussion was declared closed at the session of May 17, 1909;

Whereas, under the extraterritorial jurisdiction in force in Morocco, the German consular authority exercises as a general rule an exclusive jurisdiction over all German subjects who happen to be in that country;

Whereas, on the other hand, an occupying army exercises as a general rule an exclusive jurisdiction over all persons belonging to it;

Whereas, this right of jurisdiction should always be recognized as a general rule even in countries granting extraterritorial jurisdiction;

Whereas, in a case where the subjects of a power enjoying the rights of territorial jurisdiction in Morocco, belong to the occupying army sent into this country by another power, there necessarily arises a conflict between the two above mentioned jurisdictions;

Whereas, the French Government did not make known the composition of the expeditionary troop and did not declare that the military occupation modified the exclusive consular jurisdiction arising from the extraterritorial rights, and that, on the other hand, the German Government made no protest regarding the employment in Morocco of the Foreign Legion, which is well known to be composed in part of German subjects;

Whereas, it is not within the province of this Tribunal to express an opinion on the organization of the Foreign Legion or on its employment in Morocco;

Whereas, the conflict of jurisdictions which has been mentioned cannot be decided by an absolute rule which would in a general manner accord the preference to either of the two concurrent jurisdictions;

Whereas, in each particular case account must be taken of the actual circumstances which tend to determine the preference;

Whereas, the jurisdiction of the occupying army ought, in case, of conflict, to have the preference when the persons belonging to this army have not left the territory placed under the immediate, actual, and effective control of the armed force;

Whereas, at the time in question the fortified city of Casablanca was under military occupation and guard of the French military forces which constituted the garrison of that city and were either in the city itself or in the neighboring camps;

Whereas, under these circumstances the deserters of German nationality, who belonged to the military forces of one of the camps and being within the precincts of the city, remained subject to the exclusive military jurisdiction;

Whereas, on the other hand, in a country granting extraterritorial jurisdiction, the question of the respective competency of the consular and the military jurisdiction is very complicated and has never been settled in an express, distinct and universally recognized manner, so that the German consular authority cannot incur any blame for having granted his protection to the above mentioned deserters who had solicited it;

Whereas, the German Consul at Casablanca did not grant the protection of the Consulate to the deserters of non-German nationality, and the dragoman of the Consulate did not exceed the limits of his authority in this regard;

Whereas, the fact that the Consul, without reading it, signed the safe-conduct providing for *six* persons instead of *three* and omitted to state that they were of German nationality, as he had prescribed himself, cannot be imputed against him except as an unintentional mistake;

Whereas, the Moroccan soldier of the Consulate, in aiding the embarkation of the deserters, acted only in accordance with the orders of his superiors, and, by reason of his subordinate position, no personal responsibility can be attached to him;

Whereas, the Secretary of the Consulate intentionally sought to embark the deserters of non-German nationality as entitled to the protection of the Consulate;

Whereas, to that end, he deliberately induced the Consul to sign the safe conduct mentioned above, and with the same intention, he took measures both to conduct these deserters to the port and to have them embarked;

Whereas, in thus acting, he exceeded the limits of his authority and committed a grave and manifest violation of his duty;

Whereas, the deserters of German nationality were found at the port under the actual protection of the German consular authority, and as this protection was not manifestly illegal;

Whereas, this actual situation should have been respected, as far as possible, by the French military authorities;

Whereas, the deserters of German nationality had been arrested by that authority in spite of the protests made in the name of the Consulate;

Whereas, the military authority could have and consequently should have confined itself to preventing the embarkation and the flight of these deserters, and before proceeding to their arrest and imprisonment, to offering to leave them sequestered in the German Consulate until the question of the competent jurisdiction had been settled;

Whereas, this mode of procedure would also have tended to maintain the prestige of the consular authority, in conformity with the common interest of all Europeans living in Morocco;

Whereas, even if one were to admit the legality of the arrest, the circumstances did not warrant, on the part of the French soldiers, either the threats made with the revolver, nor the continuation of the blows struck upon the Moroccan soldier of the Consulate even after his resistance had been overcome;

Whereas, as regards the other outrages or assaults alleged on both sides, it is impossible to establish the connection or the exact nature of the events;

Whereas, in conformity with what has been said above, the deserters of German nationality should have been returned to the Consulate in order to restore the actual situation which was disturbed by their arrest;

Whereas such restitution would also have been desirable with a view to maintaining the consular prestige; however, inasmuch as, in the present state of affairs, this Tribunal being called to determine the final status of the deserters, there is no occasion for ordering their provisional and temporary restoration which should have taken place;

FOR THESE REASONS,

The Arbitral Tribunal

Declares and awards as follows,

It was wrong and through a grave and manifest error that the Secretary of the Imperial German Consulate at Casablanca attempted to have embarked, on a German steamship, the deserters from the French Foreign Legion who were not of German nationality.

The German Consul and the other officers of the Consulate were not responsible in this regard, however, in signing the safe-conduct which was presented to him, the Consul committed an unintentional mistake.

The German Consulate had not, under these circumstances, the right to grant its protection to deserters of German nationality; however, the error of law committed on this point by the officers of the Consulate cannot be imputed against them either as an intentional or unintentional mistake.

It was wrong for the French military authorities not to respect, as far as possible, the actual protection granted to these deserters in the name of the German Consulate.

Even setting aside the obligation to respect consular protection, the circumstances did not warrant, on the part of the French soldiers, either the threat made with the revolver or the continuation of the blows struck upon the Moroccan soldier of the Consulate.

There is no occasion for passing on the other charges contained in the conclusions of the two Parties.

Done at The Hague, in the Hall of the Permanent Court of Arbitration, May 22, 1909.

President: HJ. L. HAMMARSKJÖLD

Secretary-General: MICHIELS VAN VERDUYNEN