

CLAIMS AGAINST PORTUGAL REGARDING THE LOURENÇO MARQUES RAILROAD CONCESSION

Protocol signed at Bern June 13, 1891

Entered into force June 13, 1891

Terminated July 21, 1900, upon fulfillment of its terms¹

Treaty Series 386

[TRANSLATION]

PROTOCOL

The President of the Swiss Confederation having notified the Governments of Great Britain, the United States of North America and Portugal that the Swiss Federal Council had taken into consideration the request made by those Governments that it be pleased to appoint three lawyers, selected among those of the greatest distinction, to constitute an Arbitration Tribunal charged with fixing the amount of the indemnity due by Portugal to the claimants of the other two countries on account of the rescission of the concession of the Lourenço Marques Railroad, and of the taking possession of that railroad by the Portuguese Government, the Undersigned, Envoys Extraordinary and Ministers Plenipotentiary of Great Britain, the United States of North America, and Portugal, accredited near the Swiss Confederation, duly authorized by their respective Governments, have agreed to the following:

ARTICLE I

The mandate which the three Governments have agreed to refer to the Arbitration Tribunal is, to fix, as it shall deem most just, the amount of the compensation due by the Portuguese Government to the claimants of the other two countries, in consequence of the rescission of the concession of the Lourenço Marques Railroad, and the taking possession of that railroad by the Portuguese Government, and thereby to settle the controversy existing between the three Governments on the subject.

¹Decision and final award of the Delagoa Bay court of arbitration were signed by the arbitrators Mar. 29, 1900 (1900 For. Rel. 903); the Portuguese Government paid the indemnity due the claimants on July 21, 1900, with interest from June 25, 1889, to July 21, 1900, in accordance with terms of the award (1900 For. Rel. 845; John Bassett Moore, *A Digest of International Law*, vol. VI, p. 649).

ARTICLE 2

The Arbitration Tribunal will set the Governments of Great Britain and the United States of North America the term within which they must deliver to it the memoranda, conclusions and documents in support of the claims of their citizens.

These documents shall be transmitted in duplicate to the Portuguese Government, with the invitation to present its reply, its conclusions and the documents in support of them, likewise in duplicate, within the term which shall be set for it.

The Arbitration Tribunal shall itself, after hearing the parties or their representatives, and with their consent, fix the mode of procedure, especially the terms above-mentioned, and those to be set for the putting in of the replication and the rejoinder, the rules to be followed in hearing the parties or their representatives, the production of documents, the deliberation in its own bosom, the rendering of the judgment and the drawing up of the protocol.

Each of the three Governments undertakes to do all in its power to have the documents and information demanded by the Arbitration Tribunal, furnished to it in due form and within the terms fixed by it.

ARTICLE 3

The Arbitration Tribunal shall have full authority to take cognizance of the conclusions presented to it by each of the parties, in their whole extent and in all their appurtenances or incidents; it shall render its judgment upon the substance of the cause, and shall pronounce, as it shall deem most just, upon the amount of the indemnity due by Portugal to the claimants of the other two countries, in consequence of the rescission of the concession of the Lourenço Marques Railroad, and of the taking possession of that railroad by that Government.

ARTICLE 4

The judgment shall be final and without appeal.

The President of the Arbitration Tribunal shall deliver a certified copy of the decision to the Representatives of each of the three Governments.

The three Governments bind themselves beforehand, for themselves and for their respective citizens, to accept and carry out the decision, as a final settlement of all their differences upon this question. It is understood that, although it appertains to the Arbitration Tribunal to designate the private persons or the moral persons who are entitled to the indemnity, the amount of that indemnity shall be paid by the Portuguese Government to the other two Governments, in order that they may make distribution of it to the claimants. The receipt given by those two Governments shall constitute a complete and valid discharge of the Portuguese Government.

The amount of the indemnity shall be paid by the Portuguese Government to the other two Governments within the term of six months, counting from the rendering of the award.

ARTICLE 5

The President of the Arbitration Tribunal shall be requested to present an account of all the expenses occasioned by the arbitration, and the three Governments bind themselves to have them paid at such time as the President shall fix.

In testimony whereof, the undersigned have drawn up this protocol, and have affixed their signatures and their seals.

Done in triplicate at Berne, June 13, 1891.

[For the United Kingdom:]

CHARLES S. SCOTT

[SEAL]

[For Portugal:]

D. G. NOGUEIRA SOARES

[SEAL]

[For the United States:]

JOHN D. WASHBURN

[SEAL]