



PERMANENT COURT OF ARBITRATION

RUSSIAN CLAIM FOR INTEREST ON INDEMNITIES (DAMAGES CLAIMED BY RUSSIA FOR DELAY IN PAYMENT OF COMPENSATION OWED TO RUSSIANS INJURED DURING THE WAR OF 1877-1878)

RUSSIA

v.

TURKEY

AWARD OF THE TRIBUNAL

Unofficial English Translation

Arbitrators:

Lardy

Taube

Mandelstam

Herante Abro Bey

Ahmed Réchid Bey

The Hague, 11 November 1912

Award
rendered on November 11, 1912,
by the Arbitral Tribunal
constituted by virtue of the arbitration *compromis*
signed at Constantinople
between Russia and Turkey,
July 22/August 4, 1910^[1]

By a *compromis* signed at Constantinople July 22/August 4, 1910, the Imperial Government of Russia and the Imperial Ottoman Government agreed to submit the following questions to an arbitral tribunal for final decision:

- I. Whether or not the Imperial Ottoman Government must pay the Russian claimants interest-damages by reason of the dates on which the said Government made payment of the indemnities determined in pursuance of Article 5 of the Treaty of January 27/February 8, 1879, as well as of the Protocol of the same date?
- II. In case the first question is decided in the affirmative, what would be the amount of these interest-damages?

The Arbitral Tribunal was composed of

His Excellency Monsieur LARDY, Doctor of Laws, Member and former President of the Institute of International Law, Envoy Extraordinary and Minister Plenipotentiary of Switzerland at Paris, Member of the Permanent Court of Arbitration, umpire;

His Excellency Baron MICHAEL VON TAUBE, Assistant Minister of Public Instruction of Russia, Councilor of State, Doctor of Laws, associate of the Institute of International Law, Member of the Permanent Court of Arbitration;

Monsieur ANDRÉ MANDELSTAM, First Dragoman of the Imperial Embassy of Russia at Constantinople, Councilor of State, Doctor of International Law, associate of the Institute of International Law;

HERANTE ABRO BEY, Licentiate in Law, Legal Counsellor of the Sublime Porte;
and AHMED RÉCHID BEY, Licentiate in Law, Legal Counsellor of the Sublime Porte;

Monsieur HENRI FROMAGEOT, Doctor of Laws, associate of the Institute of International Law, advocate in the Court of Appeals of Paris, acted as Agent of the Imperial Russian Government and was assisted by

Monsieur FRANCIS REY, Doctor of Laws, Secretary of the European Commission of the Danube, in the capacity of Secretary;

Monsieur EDOUARD CLUNET, advocate in the Court of Appeals of Paris, Member and former President of the Institute of International Law, acted as Agent of the Imperial Ottoman Government and was assisted by

Monsieur ERNEST ROGUIN, Professor of Comparative Legislation in the University of Lausanne, Member of the Institute of International Law, in the capacity of Counsel to the Ottoman Government;

Monsieur ANDRÉ HESSE, Doctor of Laws, advocate in the Court of Appeals of Paris, in the capacity of Counsel to the Ottoman Government;

YOUSSEF KÉMÂL BEY, Professor in the Faculty of Law of Constantinople, former

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

deputy, Director of the Ottoman Commission of Juridical Studies; in the capacity of Counsel to the Ottoman Government;

Monsieur C. CAMPINCHI, Advocate in the Court of Appeals of Paris, in the capacity of Secretary to the Agent of the Ottoman Government;

Baron MICHIELS VAN VERDUYNEN, Secretary General of the International Bureau of the Permanent Court of Arbitration, acted as Secretary General, and

Jonkheer W. RÖELL, First Secretary of the International Bureau of the Court, attended to the Secretariat.

After a first session at The Hague on February 15, 1911, to settle certain questions of procedure, the Cases, Counter-Cases, Replies and Counter-Replies were duly exchanged by the Parties and communicated to the Arbitrators, who declared respectively, as well as the Agents of the Parties, that they waived any requests for supplementary information.

The Arbitral Tribunal met again at The Hague on October 28, 29, 30, 31, November 1, 2, 5, and 6, 1912, and after having heard the oral arguments of the Agents and Counsel of the Parties, has rendered the following Award:

PRELIMINARY QUESTION

Considering the preliminary request of the Imperial Ottoman Government that the claim of the Imperial Russian Government be declared inadmissible without examining the principal question, the Tribunal,

considering that the Imperial Ottoman Government bases this preliminary request, in its written arguments, upon the fact “that in all the diplomatic correspondence it is the Russian subjects individually, benefiting by a stipulation made in their names, either in the preliminaries of peace signed at San Stefano on February 19/March 3, 1878, or by Article 5 of the Treaty of Constantinople of January 27/February 8, 1879, or by the Protocol of the same date, who were the direct creditors for the principal sums adjudged to them, and that their rights in this respect were established by the designative decisions of the commission *ad hoc* set up at the Russian Embassy at Constantinople, whose decisions were communicated to the Sublime Porte;

“That, under these circumstances, the Imperial Russian Government should have proved the survival of the rights of each claimant and the identity of the persons entitled to avail themselves of these rights at the present time, especially since the transfer of certain of these rights has been reported to the Imperial Ottoman Government;

“That the Imperial Russian Government should have done the same, even on the hypothesis that the Russian State was the only direct creditor as to the indemnities, inasmuch as the said Government could not disregard its duty to transmit to the claimants or to their assigns the sums which it might obtain in the present suit as moratory interest-damages, the claimants appearing, upon this supposition, as beneficiaries of the stipulation made in their interest, if not as creditors.

“That, however, the Imperial Russian Government furnished no proof as to the identity of the claimants or of their assigns, or as to the survival of their claims.” (Counter-Reply of Turkey, pp. 81 and 82.)

Considering that the Imperial Russian Government maintains, on the contrary, in its written arguments,

“That the debt specified in the Treaty of 1879 is, nonetheless, a debt of State to State;

that it could not be otherwise as to the responsibility resulting from the non-payment of the said debt; that consequently the Imperial Russian Government alone is qualified to receipt for it, and, similarly, to receive the sums set aside to be paid to the claimants; that, moreover, the Imperial Ottoman Government does not dispute the Russian Government's title of direct creditor of the Sublime Porte;

“That the Imperial Russian Government is acting by virtue of a right which it possesses in claiming the interest-damages by reason of the non-fulfilment of an obligation made with it directly;

“That it fully proves this by establishing the non-fulfilment of this obligation, which, moreover, is not disputed, and by bringing forward its title, which is the Treaty of 1879 ...;

“That the Sublime Porte, provided with the receipt regularly delivered to it by the Imperial Russian Government, has no concern in the allotment of the sums distributed or to be distributed by the said Government among its subjects entitled to indemnity; that this is then a question of a domestic nature of which the Imperial Ottoman Government has not to take cognizance”; (Reply of Russia, pp. 49 and 50).

Considering that the origin of the claim arises from a war, an international fact in the first degree; that the source of the indemnity is not only an international treaty but a treaty of peace and the agreements made with a view to the execution of this treaty of peace; that this treaty and these agreements were between Russia and Turkey, settling between themselves, State to State, as public and sovereign Powers, a question of international law; that the preliminaries of peace had regard to the ten million roubles allowed as damages and interest to Russian subjects who were victims of the war in Turkey to the amount of the indemnities “which His Majesty the Emperor of Russia claims that the Sublime Porte bound itself to pay to him”; that this character of debt from State to State has been confirmed by the fact that the claims were to be examined by a purely Russian commission; that the Imperial Russian Government has reserved complete control in the matter of allotting, collecting and distributing the indemnities, in its capacity as sole creditor; that it is of little consequence to know whether, in theory, Russia has acted by virtue of its right to protect its nationals or by some other right, since it is with the Imperial Russian Government alone that the Sublime Porte assumed or undertook the obligations the fulfilment of which is claimed;

Whereas the fulfilment of obligations is, between States as between individuals, the surest commentary on the meaning of these obligations;

That, upon the attempt in 1885 of the Ottoman Department of Finance to collect, upon a receipt given by the Russian Embassy at Constantinople for a payment on account, the proportional stamp-tax required from individuals by the Ottoman law, Russia immediately protested and maintained “that the debt was contracted by Ottoman Government with that of Russia” ... and “not a simple debt between individuals arising from a private pledge or contract” (Russian note of March 15/27, 1885, Russian Case, Appendix No. 19, p. 19); that the Sublime Porte did not insist, and that in fact the two Parties have constantly acted in practice, for more than fifteen years, as if Russia was the creditor of Turkey to the exclusion of private claimants;

That the Sublime Porte has made, without a single exception, all successive payments solely upon the receipt of the Russian Embassy at Constantinople, acting on behalf of its Government;

That the Sublime Porte has never asked, at the time of payments on account, if the beneficiaries were still living or who their assigns were at the time, nor according to what methods the payments on account were divided among them, leaving this duty entirely to the Imperial Russian Government;

Whereas the Sublime Porte contends, in the main, in the present dispute, that it is fully released by the payments which it has, in fact, made to the Imperial Russian Government alone represented by its Embassy, without the participation of the claimants,

FOR THESE REASONS

Decides
the preliminary request is set aside.

Deciding then

UPON THE MAIN QUESTION

the Arbitral Tribunal has rendered the following Award:

I.

AS TO FACT

The Protocol signed at Adrianople on January 19/31, 1878, which by an armistice put an end to hostilities between Russia and Turkey, contains the following stipulation:

5. The Sublime Porte undertakes to indemnify Russia for the expense of the war and for the losses that it has been forced to suffer. The character of this indemnity, whether pecuniary, territorial or other, will be arranged later.

Article 19 of the preliminaries of peace signed at San Stefano on February 19/March 3, 1878, is in these terms:

The war indemnities and the losses suffered by Russia which His Majesty the Emperor of Russia claims, and which the Sublime Porte has undertaken to pay to him, consist of: (a) 900 million roubles, war expenses ... (b) 400 million roubles, damages inflicted upon the southern coast ... (c) 100 million roubles, damages done in the Caucasus ... (d) *ten million roubles, damages and interest, to Russian subjects and institutions in Turkey*: total 1400 million roubles.

And further on:

The ten million roubles claimed as indemnity for Russian subjects and institutions in Turkey shall be paid as soon as the claims of those interested have been examined by the Russian Embassy at Constantinople and transmitted to the Sublime Porte.

At the Congress of Berlin, at the session of July 2, 1878, protocol No. 11, it was understood that the ten million roubles in question did not concern Europe but only the two interested States, and that they would not be mentioned in the Treaty between the Powers represented at Berlin. Consequently the question was again taken up directly between Russia and Turkey, who stipulated, in the final Treaty of Peace signed at Constantinople on January 27/February 8, 1879, the following condition:

Art. V. – The claims of Russian subjects and institutions in Turkey to a right to indemnity for damages suffered during the war will be paid as soon as they are examined by the Russian Embassy at Constantinople and transmitted to the Sublime Porte. The total of these claims shall in no case exceed 26,750,000 francs. Claims may be presented to the Sublime Porte beginning one year after the date of exchange of

ratifications, and no claims will be admitted which are presented after the expiration of two years from that date.

The same day, January 27/February 8, 1879, in the Protocol to the Treaty of Peace, the Russian plenipotentiary, Prince LOBANOW, declared that the sum of 26,750,000 francs specified in Article V:

constitutes a maximum to which the total claims could probably never reach; he adds that a commission ad hoc will be set up at the Russian Embassy to scrupulously examine the claims which are presented to it, and that, according to the instructions of his Government, an Ottoman delegate can take part in the examination of these claims.

Ratifications of the treaty of peace were exchanged at St. Petersburg on February 9/21, 1879.

The commission set up at the Russian Embassy and composed of three Russian officials immediately began its work. The Ottoman commissioner generally abstained from taking part. The total amount of the losses of Russian subjects was fixed by the commission at 6,186,543 francs. These were successively communicated to the Sublime Porte between October 22/November 3, 1880, and January 29/February 10, 1881. The amount was not contested and the Russian Embassy made claim for the payment at the same time that it transmitted the final decisions of the commission to the Sublime Porte.

On September 23, 1881, the Embassy transmitted a "petition" of the lawyer Rossolato, "special attorney for several Russian subjects" who were entitled to receive indemnities, which petition was addressed to the Embassy and served notice that the Ottoman Government should reach an understanding with it "within a period of eight days from notification, as to the method of payment," declaring that the said Ottoman Government was "held now and henceforth responsible for all interest-damages, especially for the moratory interest."

By a convention signed at Constantinople on May 2/14, 1882, the two Governments, agreed, Article I, that the war indemnity, of which the amount was fixed at 802,500,000 francs by Article IV of the Treaty of Peace of 1879 after deducting the value of the territory ceded by Turkey, should bear no interest and should be paid in the form of one hundred annual instalments of 350,000 Turkish pounds, approximately 8,000,000 francs.

On June 19/July 1, 1884, no sum having been paid for the claimants, the Embassy "makes formal claim for full payment of the indemnities which were adjudged to Russian subjects ...; it will be obliged, otherwise, to recognize their right to claim, in addition to the principal, interest proportional to the delay in the settlement of their claims."

On December 19, 1884, the Sublime Porte made a first payment on account, of 50,000 Turkish pounds, approximately 1,150,000 francs.

In 1885 the union of Bulgaria and Eastern Roumelia occurred, as well as the Serbo-Bulgarian war. Turkey made no further payment on account. A reminder notification having been sent in January, 1886, without result, the Embassy insisted, on February 15/27, 1887; it transmitted a "petition" sent to it by Russian claimants, in which they hold the Ottoman Government "responsible for this increase of damages which ensues to them by the delay experienced in the payment of their indemnities," and the Embassy adds: "Further postponements will force the Imperial Government to make claim on behalf of its nationals for interest on account of the delays in settling their claims."

Reminder notes of July and December, 1887, being without effect, the Embassy complained on January 26/February 7, 1888, that Turkey has paid various debts incurred subsequent to its obligations to Russian claimants. It recalled that "the arrears amount to the sum of about 215,000 Turkish pounds, a single payment of 50,000 Turkish pounds having been made out of a total of 265,000 Turkish pounds awarded"; it then requested "urgently ...

that the sums due Russian subjects be immediately, and before every other payment, deducted from the amount paid by X ...” (a debtor of the Imperial Ottoman Government).

On April 22, 1889, Turkey made a second payment, on account, of 50,000 pounds.

On December 31, 1890/January 12, 1891, the Embassy, stating that it had been paid only 100,000 pounds on a total of 265,000, wrote to the Sublime Porte that the delay in the settlement of this debt is causing the Russian nationals to suffer continually increasing losses; it believes, therefore, that it is its duty to request the Sublime Porte “to authorize immediate orders to the proper person so that the sum due ... may be paid without delay, *as well as the legal interest* in regard to which [the Embassy] had the honor of notifying the Sublime Porte by note of February 15/27, 1887.”

In August, 1891, a further reminder was sent. In October/November, 1892, the Embassy wrote “that matters cannot continue indefinitely thus”; that “the requests of Russian subjects are becoming more and more pressing”, that “it is the duty of the embassy to act energetically as their representative, ... that it is a question of an indisputable obligation and an international duty to be performed ...”, that “the Ottoman Government can no longer offer the precarious state of its finances as an excuse”, and concluded by demanding a “prompt and final settlement of the debt.”

On April 2/14, 1893, a third instalment of 75,000 Turkish pounds was paid; the Sublime Porte, in giving notice of this payment on March 27, adds that, as to the balance, half of it will be included in the current budget and the other half in the next budget; “the question thus settled happily ends the incidents to which it had given rise.” The Porte hoped, therefore, that the Embassy would be willing, in its sentiments of sincere friendship towards Turkey, to accept definitively the *tumbéki* monopoly, in the manner of the other Powers.

On this occasion, and recalling that the Imperial Russian Government “has always shown itself friendly and conciliatory in all its affairs pertaining to the financial interests of the Ottoman Empire,” the Embassy on the 30th of the same month took advantage of the terms announced for the payment, and consented to subject Russians engaged in the *tumbéki* trade in Turkey to the newly created arrangement.

A year later, on May 23/June 4, 1894, not having received any further instalment, the Ambassador, after having reported the non-performance of the “arrangement” to which he had “consented in order to facilitate the fulfilment of its obligation by the Ottoman Government,” declared himself “placed in a position where he is unable to accept further promises, arrangements or postponements,” and “obliged to insist *that the total of the balance* due to Russian subjects, *which amounts to 91,000 Turkish pounds*, be, without further delay, paid to the embassy ... Recent financial operations there have just placed large sums at the disposal [of the Sublime Porte].”

On October 27 of the same year, 1894, an instalment of 50,000 Turkish pounds was paid, and the Sublime Porte wrote, as early as the third of the same month, to the Embassy: “As to the balance of 41,000 Turkish pounds, the Ottoman Bank will guarantee payment duly from the next receipts.”

In 1896, correspondence took place between the Sublime Porte and the Embassy as to whether the revenues from which the Ottoman Bank was to deduct the balance were not already pledged to Russia for payment of the war indemnity, properly so called, or whether that portion of the revenues over and above the annuity appropriated for the war indemnity could not be used as indemnity for Russian subjects who were victims of the events of 1877/8. In the course of this correspondence, the Sublime Porte pointed out, in the notes which it addressed to the Embassy on February 11 and May 28, 1896, that the balance due amounted to the sum of 43,978 Turkish pounds.

From 1895 to 1899, serious events occurred in Asia Minor obliging Turkey to seek an extension on behalf of the Ottoman Bank, at its request; the insurrection of the Druses, the

insurrection in Crete which was followed by the Greco-Turkish war of 1897, insurrections in Macedonia, caused Turkey repeatedly to mobilize troops and even armies.

For three years no correspondence was exchanged and when it was resumed the Sublime Porte again specified, in notes it addressed to the Embassy of July 19, 1899, and July 5, 1900, the sum of 43,978 Turkish pounds as the amount of the balance of the indemnities. On its part, the Embassy, in its notes of April 25/May 8, 1900, and March 3/16, 1901, specified the same figure, but complained that the orders given in various provinces "for the payment of the 43,978 Turkish pounds, the amount of the balance of the indemnity due Russian subjects," have not been of any effect, and that the Ottoman Bank has paid nothing; it "urgently requests the Sublime Porte to kindly give to the proper person categorical orders for the payment, without further delay, of the above-mentioned sums."

After the Sublime Porte had announced in May, 1901, that the Department of Finance had been urged to settle the balance of the indemnity during the course of the month, the Ottoman Bank at last advised the Russian Embassy on February 24 and May 26, 1902, that it had received and was holding at the order of the Embassy 42,438 Turkish pounds on the balance of 43,978 pounds.

The Embassy, in acknowledging receipt of this notice two months later, on June 23/July 6, 1902, remarked to the Sublime Porte "that the Imperial Ottoman Government has taken more than twenty years to discharge, and then incompletely, a debt the immediate settlement of which was required from every point of view, a balance of 1,539 Turkish pounds still remaining unpaid. Referring, therefore, to its notes of September 23, 1881, February 15/27, 1887, and December 31, 1890/January 12, 1891, on the matter of interest to run on the said debt, remaining so long in suspense," the Embassy transmitted a petition by which the claimants claim, in substance, compound interest at 12 % from January 1, 1881, to March 15, 1887, and at 9 % from the latter date, when the legal rate of interest was reduced by an Ottoman law. The sum claimed by the petitioners amounted to some twenty million francs in the spring of 1902 on an original principal of about 6,200,000 francs. The note concluded as follows:

The Imperial Embassy is pleased to believe that the Sublime Porte will not hesitate to recognize in principle the just grounds for the claim set forth in this petition; in case, however, the Sublime Porte should raise objections to the amount of the sum claimed by the Russian subjects, the Imperial Embassy would see no reason why examination of the details should not be referred to a commission composed of Russian and Ottoman delegates.

The Sublime Porte replied on the 17th of the same month, July, 1902, that Article V of the Treaty of Peace of 1879 and the Protocol of the same date do not provide for interest, and that in light of the diplomatic negotiations which have taken place on the subject, it was far from expecting to see such demands advanced by the claimants at the last moment, the effect of which would be to reopen a question which was happily closed. The Embassy replied on February 3/16, 1903, insisting "upon payment of the interest-damages claimed by its subjects. Only the amount of the damages could be a matter for investigation." To a notification dated August 2/15, 1903, the Sublime Porte replied on May 4, 1904, maintaining its point of view and declaring itself, however, disposed to submit the question to arbitration at The Hague, in case there should be insistence upon the claim.

At the end of four years the Embassy accepted this suggestion by a note of March 19-April 1, 1908.

The *compromis* of arbitration was signed at Constantinople on July 22/August 4, 1910. As to the small sum of 1,539 Turkish pounds, it was, in December, 1902, placed by

the Ottoman Bank at the disposal of the Russian Embassy, which refused it, and it remains deposited at the disposal of the Embassy.

II.

AS TO LAW

1. The Imperial Russian Government bases its demand upon “the responsibility of States for the non-payment of pecuniary debts”; this responsibility implies, according to it, “the obligation to pay interest-damages and especially interest on sums unduly withheld”; “the obligation to pay moratory interest” is “practical proof, in the matter of monetary debts,” of the responsibility of States (Russian Reply, pp. 27 and 51). “The disregard of these principles would be as contrary to the very notion of international law as it would be dangerous for the security of peaceful relations; in fact, by declaring a debtor State not liable for the delay which it causes its creditor, it would be accepted by that very fact that it need only follow its own whim in making payments; ... the creditor State, on the other hand, would be obliged to resort to violence against such a presumption ... and to expect nothing from a so-called international law manifestly incapable of assuring respect for a pledged word.” (Russian Case, p. 29.)

In other words, and still in the opinion of the Imperial Russian Government, “it is not at all a question here of conventional interest, that is to say, arising from a particular stipulation ...” but “the obligation incumbent upon the Imperial Ottoman Government to pay moratory interest arises from the delay in payment, that is to say, from the partial non-fulfilment of the Treaty of Peace; this obligation arose indeed, it is true, from the Treaty of 1879, but it proceeds *ex post facto* from a new and accidental cause, which is the failure of the Sublime Porte to fulfil obligations whereto it had pledged itself.” (Russian Case, p. 29; Russian Reply, pp. 22 and 27.)

2. The Imperial Ottoman Government, while acknowledging in explicit terms the general principle of the responsibility of States in the matter of the non-fulfilment of their obligations (Counter-Reply, p. 29, No. 286, note, and p. 52, No. 358), maintains, on the contrary, that in public international law moratory interest does not exist “unless expressly stipulated” (Ottoman Counter-Case, p. 31, No. 83, and p. 34, No. 95); that a State “is not a debtor like other debtors” (*ibid.*, p. 33, No. 90), and that, without presuming to maintain “that no principle which is observed between individuals can be applied between States” (Ottoman Counter-Reply, p. 26, No. 275), the position *sui generis* of the State as a public power must be taken into account; that various legislative acts (for example, the French law of 1831, which establishes a period of five years for the outlawing of State debts; the Roman law which lays down the principle “*Fiscus ex suis contractibus usuras non dat*”, Lex 17, paragr. 5, *Digest* 22, 1) admits that the debtor State stands in a privileged position (Ottoman Counter-Case, p. 33, No. 92); that in allowing for one State an implied obligation, not stipulated expressly, in extending for example to a debtor State the principles of a formal demand for payment and its effect in private law, this State would be made a “debtor to a greater extent than it would have desired, and would risk compromising the political life of the State, by injuring its vital interests, overturning its budget, by preventing it from defending itself against an insurrection or foreign attack.” (Ottoman Counter-Case, p. 33, No. 91.)

Contingently and in case responsibility should rest upon it, the Imperial Ottoman Government concludes that this responsibility consists solely in moratory interest, and that only from the regular formal demand for payment. (Ottoman Counter-Reply, pp. 71 *et seq.*, Nos. 410, *et seq.*)

It presents, in opposition, the exceptions of *res judicata*, of *force majeure*, of the gift

character of the indemnities, and of the tacit or express renunciation by Russia of the benefit of the demand for payment.

3. The questions of law involved in the present dispute, which has arisen between States as public powers subject to international law, and these questions being within the province of public law, the applicable law is public international law, or the law of nations, and the Parties rightly agree upon this point. (Russian Case, p. 32; Ottoman Counter-Case, Nos. 47 to 54, pp. 18-20; Russian Reply, p. 18; Ottoman Counter-Reply, p. 17, Nos. 244 and 245.)

4. The demand of the Imperial Russian Government is founded on the general principle of the responsibility of States, in support of which it has cited a large number of arbitral awards.

The Sublime Porte, without denying this general principle, claims to escape its application by asserting the right of States to an exceptional and privileged position in the special case of responsibility in the matter of monetary debts.

It declares that the majority of the arbitral precedents cited are not on point, as they do not apply to this special category.

The Imperial Ottoman Government remarks, in support of its point of view, that in theory there is a distinction between various responsibilities, according to their origin and according to their scope. These differences are connected especially with the theory of responsibilities in Roman law and in systems of law inspired by Roman law. The Ottoman Case calls attention to the following distinctions, some of which are classic: Responsibilities are, in the first place, divided into two categories, according to whether they arise from a delict or from a quasi-delict (*responsabilité délictuelle*), or from a contract (*responsabilité contractuelle*). Within contractual responsibilities there is a further distinction, according to whether it is a question of obligations concerning a benefit of some kind other than a sum of money, or a question of benefits of a purely pecuniary nature, of a monetary debt properly described. These different categories of responsibilities are not regarded in absolutely the same manner in civil law, the circumstances giving rise to the responsibility, as well as its consequences, being variable. While no formality whatever is necessary in the matter of responsibilities for delicts, a demand in due form is always required in the matter of contractual responsibilities. While in the matter of obligations regarding a benefit other than one involving a sum of money, as likewise in the matter of delicts, the reparation for the damage is complete (*lucrum cessans* and *damnum emergens*), in the matter of monetary debts, this reparation is restricted legally to interest on the sum due, which interest runs only from the demand in due form. The *interest-damages* are called *compensatory* when they are compensation for damage resulting from a delict or from the non-fulfilment of an obligation. They are called *moratory interest-damages*, though they still represent compensation, when they are the consequence of delay in the fulfilment of an obligation. Finally, writers call *moratory interest* interest legally allowed in case of delay in the payment of monetary debts, thus distinguishing this from other interest which is sometimes added to fix the total amount of an indemnity, to the monetary valuation of damages, this last being called *compensatory interest*.

These distinctions in civil law can be explained: In the matter of contractual responsibility one has the right to require greater promptness on the part of the other contracting party than the victim of an unforeseen delict could expect. In the matter of monetary debts, the difficulty of estimating the consequences of the demand explains why the amount of the damages has been fixed legally.

The argument of the Imperial Ottoman Government consists of asserting that in public

international law, special responsibility, consisting of the payment of moratory interest in the event of delay in the settlement of a monetary debt, does not exist for a debtor State. The Sublime Porte does not dispute the responsibility of States if it is a question of compensatory interest-damages, or of interest that might enter into the calculation of these compensatory interest-damages. The responsibility which the Sublime Porte repudiates is that which may result, in the form of interest for delay or moratory interest in the strict sense, from delay in the fulfilment of a pecuniary obligation.

It is important to find out whether these various terms, these labels invented by commentators, correspond to intrinsic differences in the very nature of law, to differences essentially juridical in the conception of responsibility. – The Tribunal is of the opinion that interest-damages are always reparation, compensation for culpability. From this point of view all interest-damages are compensatory, no matter what name they may be given. Legal interest allowed to a creditor for a sum of money from the date of the demand in due form for payment is the legal compensation for the default of a debtor in arrears exactly as interest-damages or interest allowed in case of a delict, of a quasi-delict or the non-fulfilment of an obligation are compensation for the injury suffered by the creditor, the monetary value of the responsibility of the delinquent debtor. – To exaggerate the consequences of civil-law distinctions in responsibility is less admissible because in much recent legislation there appears to be a tendency to lessen or abolish the mitigation under Roman law and its derivatives allowed in the matter of responsibility as to monetary debts. – It is certain, indeed, that all liability, whatever its origin, is finally valued in money and transformed into obligation to pay; it all ends, or can end, in the last analysis, in a monetary debt. – It is not possible for the Tribunal, therefore, to perceive essential differences between various responsibilities. Identical in their origin, the culpability, they are the same in their consequences, reparation in money.

The Tribunal is, therefore, of the opinion that the general principle of the responsibility of States implies a special responsibility in the matter of delay in the payment of a monetary debt, unless the existence of a contrary international custom is established.

The Imperial Russian Government and the Sublime Porte have introduced into their pleadings a series of arbitral awards, which have accepted, affirmed and sanctioned the principle of State responsibility. The Sublime Porte considers nearly all of these awards as not applicable to the present case, and eliminates even those in which the arbitrator has expressly allowed interest on sums of money. The Imperial Ottoman Government is of the opinion that in these cases it is a question of compensatory interest and sets them aside as having no bearing on the present litigation. The Tribunal, for the reasons indicated above, is, on the contrary, of the opinion that there is no reason to disregard the strong analogy which exists between the different forms of responsibility; this analogy appears particularly close between *interest* called moratory and *interest* called compensatory; the analogy appears complete between the allowance of interest from a certain date upon valuing the responsibility in money, and the allowance of interest on the principal determined by agreement and remaining unpaid by a debtor in default. The only difference is that, in one case, the interest is allowed by the judge since the debt was not due, and that in the other the amount of the debt was determined by agreement and the interest becomes payable automatically in the event of due demand for payment.

To weaken this close analogy, it would be necessary for the Sublime Porte to prove the existence of a custom, of precedents in accordance with which moratory interest in the strict sense of the word has been refused *because it was moratory interest*, the existence of a custom that departs from, in the matter of a monetary debt, the general principles of responsibility. – The Tribunal is of the opinion that such proof not only has not been given, but on the contrary, that the Imperial Russian Government has been able to strengthen its case

by several arbitral awards in which moratory interest has been allowed to States, in some cases, it is true, with slight differences, and to a certain extent debatable (*Mexico-Venezuela*, October 2, 1903, Russian Case, p. 28 and note 5; Ottoman Counter-Case, p. 38, No. 107; *Colombia-Italy*, April 9, 1904, Russian Reply, p. 28 and note 7; Ottoman Counter-Reply, p. 58, No. 368; *United States-Choctaws*, Russian Reply, p. 29; Ottoman Counter-Reply, p. 59, No. 369; *United States-Venezuela*, December 5, 1885, Russian Reply, p. 28 and note 5). There should be added to these cases the award rendered on July 2, 1881, by His Majesty the Emperor of Austria in the Case of the Mosquitia, in the sense that the arbitrator did not at all refuse moratory interest as such, but simply declared that the allocation of the principal being in the nature of a gift, this, in the judgment of the arbitrator, excluded interest for deferred payment (Russian Reply, p. 28, note 4; Ottoman Counter-Reply, p. 55, No. 365, note).

It remains to examine whether the Sublime Porte has grounds for maintaining that a State is not a debtor like other debtors, that it cannot be a “debtor to a greater extent than it may have wished,” and that to impose upon it obligations which it has not stipulated, for example the responsibilities of a private debtor, would risk compromising its finances and even its political existence.

When the Tribunal has accepted that the various responsibilities of States are not distinguishable from each other by essential differences, that all are resolved or finally may be resolved in the payment of a sum of money, and that international custom and precedents accord with these principles, it must be concluded that the responsibility of States can be denied or accepted only in its entirety and not in part; it would not then be possible for the Tribunal to declare this responsibility in the matter of monetary debts inapplicable without extending this inapplicability to all the other categories of responsibilities.

If a State is condemned to compensatory interest damages because of a delict or for the non-fulfilment of an obligation, it is a debtor to a degree which it may not have voluntarily stipulated, even more so than in the case of delay in the payment of a conventional monetary debt. – As to the consequences of these responsibilities upon the finances of a debtor State, they might indeed be just as serious, if not more so, if it were a question of interest damages which the Sublime Porte calls compensatory, as when it is simply a question of moratory interest in the strict sense of the word. Moreover, however little the responsibility may imperil the existence of the State, it would constitute a case of *force majeure* which could be pleaded in public international law as well as by a private debtor.

The Tribunal is, therefore, of the opinion that the Sublime Porte, which has explicitly accepted the principle of State responsibility, has no grounds for demanding an exception to this responsibility in the matter of monetary debts by pleading its character of public power and the political and financial consequences of this responsibility.

5. To determine what this special responsibility, which is incumbent upon a State owing a conventional debt due and demandable, consists of, it is now expedient to examine, proceeding by analogy as was done in the arbitral awards cited, the general principles of public and private law in this matter, as much from the point of view of the extent of this responsibility as of the contrary exceptions.

All the private legislation of the States forming the European concert accepts, as Roman law did previously, the obligation to pay at least interest for delayed payments on the ground of legal indemnity when it is a question of the non-fulfilment of an obligation consisting of the payment of a sum of money fixed by convention, due and demandable, such

interest to be paid at least from the date of the demand made upon the debtor in due form. Some legislation goes further and considers that the debtor is already in default from the date of maturity, or even allows complete reparation for damages instead of simple legal interest.

If most legislation has, according to the example of Roman Law, required an express demand for payment in due form, it is because the creditor is at fault on his part for lack of diligence inasmuch as he does not demand payment of a clear and demandable sum.

The Imperial Russian Government (Case, p. 32) itself admits, in favor of the necessity of a demand in due form for payment, that, in equity, it may be advisable “not to take a debtor State liable to moratory interest by surprise, when no notice has been given to remind it to observe its obligations.” Writers (for example, HEFFTER, *Droit International de l’Europe*, paragraph 94) remark that, in “the execution of a public treaty, it is necessary to proceed with moderation and equity, according to the maxim that we must treat others as we wish to be treated ourselves. It is necessary, therefore, to grant reasonable extensions, so that the obligated party may suffer the least possible injury. The obligated party may await the creditor’s demand for payment in due form before being held responsible for delay, provided it is not a question of benefits of which the performance is stipulated in a definite manner for a fixed time.” See also MERIGNHAC, *Traité de l’arbitrage international*, Paris, 1895, p. 290.

A considerable number of international arbitral awards have allowed that, even when it is a question of moratory *interest-damages* for deferred payments, there is no occasion to have it always run from the date of the damageable fact (*United States v. Venezuela, Orinoco*, award of The Hague of October 25, 1910, protocols, p. 59; *United States v. Chile*, May 15, 1863, award of His Majesty the King of the Belgians LEOPOLD I, LAFONTAINE, *Pasicrisie*, p. 36, column 2 and page 37, column 1; *Germany v. Venezuela*, Arrangement of May 7, 1903, RALSTON & DOYLE, *Venezuelan Arbitrations*, Washington, 1904, pp. 520 to 523; *United States v. Venezuela*, December 5, 1885, MOORE, *Digest of International Arbitrations*, p. 3545 and p. 3567, Vol. 4, etc.).

There is then no reason, and it would be contrary to equity, to presume a responsibility of a debtor State more burdensome than that imposed upon a private debtor in the great body of European legislation. Equity requires, as the doctrine indicates and as the Imperial Russian Government itself admits, that there shall be notice, demand in due form addressed to the debtor, for a sum which does not bear interest. The same reasons require that the demand for payment in due form shall expressly mention the interest, and concur to set aside responsibility for more than simple legal interest.

It appears from the correspondence submitted that the Imperial Russian Government has expressly and in absolutely categorical terms demanded payment from the Sublime Porte of the principal and “of the interest,” by a note of its Embassy at Constantinople, dated December 31, 1890/January 12, 1891. Between States, diplomatic channels constitute the normal and regular means of communication for their relations in public international law; this demand for payment is, therefore, regular and in due form.

The Imperial Ottoman Government must, consequently, be held responsible for the interest for delayed payments from the date of the receipt of this demand for payment.

The Imperial Ottoman Government pleads, in case responsibility is imposed upon it, various **exceptions**, the scope of which remain to be examined:

6. *The exception of force majeure*, cited as the most important, may be pleaded in opposition in public as well as in private international law; international law must adapt itself to political necessities. The Imperial Russian Government expressly admits (Russian Reply, p.

33 and note 2) that the obligation of a State to fulfil treaties may give way “if the very existence of the State should be in danger, if the observance of the international duty is ... ‘self-destructive.’”

It is indisputable that the Sublime Porte proves, by means of the exception of *force majeure* (Ottoman Counter-Reply, p. 43, Nos. 119 to 128, Ottoman Counter-Reply, p. 64, Nos. 382 to 398 and p. 87) that Turkey was, from 1881 to 1902, in the midst of financial difficulties of the utmost seriousness, combined with domestic and foreign events (insurrections, wars) which forced it to make special disposition of a large part of its revenues, to submit to foreign control of a part of its finances, to even grant a delay in payment to the Ottoman Bank, and, generally, it could satisfy its obligations only through delay and postponements, and even then at great sacrifice. But it is asserted, on the other hand, that during this same period and especially following the establishment of the Ottoman Bank, Turkey was able to obtain some loans at favorable rates, to redeem other loans, and, finally, to pay off a large part of its public debt, estimated at 350,000,000 francs (Russian Reply, p. 37). It would clearly be exaggeration to allow that the payment (or the securing of a loan for the payment) of the comparatively small sum of about six million francs due the Russian claimants would imperil the existence of the Ottoman Empire or seriously compromise its internal or external situation. **The exception of *force majeure* cannot, therefore, be accepted.**

7. The Sublime Porte maintains next “that the acknowledgement of a debt bearing interest to the Russian claimants constituted a *gift* agreed upon for their benefit between the two Governments” (Counter-Reply, No. 253, p. 19; No. 331, p. 44; No. 365, p. 55, and conclusions, p. 87). It remarks that the German Civil Code, paragraph 522, the Germanic common law, Austrian jurisprudence and Roman law, cited on suppletory grounds (Law 16 *præmium*, *Digest* 22, 1) forbid the imposition of moratory interest in the case of a donation. It cites, especially, the arbitral award rendered on July 2, 1881, by His Majesty the Emperor of Austria in the Mosquitia case between Great Britain and Nicaragua.

In this case Great Britain had renounced, by a treaty of 1860, its protectorate over the Mosquitia territory and the city of Grey Town (San Juan del Norte) and had recognized the sovereignty of Nicaragua in the Mosquitia territory, stipulating that this Republic should pay an annual sum of 5,000 dollars to the chief of the Mosquito Indians for ten years, to facilitate the establishment of self-government in his territories, which annuity soon ceased to be paid. In the opinion of the arbitrator, the chief of the Mosquitians was receiving the benefit of a veritable gift, claimed on his behalf from Nicaragua by Great Britain, which had made political sacrifices in giving up its protectorate and the port of Grey Town. – In the opinion of the Tribunal, the Russian claimants themselves suffered damages, were victims of acts of war; Turkey bound itself to make good the amount of these damages to all the Russian victims who might prove their injury to the satisfaction of the commission set up at the Russian Embassy at Constantinople. The decisions of this commission were not contested and it is not incumbent upon the Arbitral Tribunal to revise them nor to determine whether or not they were too liberal. If the indemnification by Turkey of the Russian victims of war operations was not obligatory in the common law of nations, it is in no way contrary to that law and may be considered as the transformation of a moral duty into a juridical obligation by a treaty of peace, under conditions analogous to a war indemnity properly so called. In all the diplomatic correspondence exchanged for thirty years over this case, the Russian victims of war operations have always been considered by the two parties signatory to the agreements of 1878/1879 as claimants and not as donees. Finally, Turkey has obtained value for its so-called gift by the fact that hostilities have ceased (Russian Reply, p. 50, paragraph 2). **It is, therefore, not possible to accept the existence of an act of generosity, and still less of a**

donation, and it becomes, consequently, superfluous to inquire whether in public international law donors should receive the benefit of exemption from moratory interest, established for their profit by certain private legislation.

8. The Sublime Porte pleads the *exception of res judicata*, supporting its position upon the fact that three claimants have asked the commission set up at the Russian Embassy at Constantinople for interest until complete payment, that the commission set aside their request, and that this negative action would still more certainly have intervened as regards other claimants who have not demanded such interest. (Ottoman Counter-Reply, p. 86.)

This exception cannot be accepted because, even granting that the Constantinople commission may be considered as a tribunal, the question now pending is this, namely, whether interest damages are due, *a posteriori*, by reason of the dates on which the indemnities fixed from 1878/81 by the commission were paid; that commission did not decide and could not have decided this question.

9. The Sublime Porte pleads, as a last exception, the fact “that it was understood, tacitly and indeed expressly, in the course of the eleven or twelve last years of diplomatic correspondence, that Russia did not claim interest or interest-damages of any kind which would have been a burden upon the Ottoman Empire,” and “that the Imperial Russian Government, once the entire principal was placed at its disposal, could not validly alter in a one-sided manner the understanding agreed to on its part.” (Ottoman Counter-Reply, pp. 89-91.)

The Imperial Ottoman Government remarks, justly, that if Russia sent to Constantinople, through diplomatic channels, on December 31, 1890/January 12, 1891, a regular demand for payment of the principal and interest, it follows, on the other hand, from the **subsequent** correspondence, that at the time of the payments on account, no reservation as to interest appeared in the receipts given by the Embassy, and that the Embassy never considered the sums received as interest. It also follows that the Parties not only outlined plans to bring about payment, but abstained from making mention of interest for about ten years. It follows, above all, that the two Governments interpreted in like manner the term **balance** of the indemnity; that this term, used for the first time by the Ottoman Ministry of Foreign Affairs in a communication of March 27, 1893, frequently recurs thereafter; that the two Governments have continually meant by the word **balance** the portion of the principal remaining due at the date of the exchange of notes, which disregards moratory interest; that the Russian Ambassador at Constantinople wrote on May 23/June 4, 1894: “I am obliged to insist that the **total of the balance** due Russian subjects, **which amounts to 91,000 Turkish pounds**, be, without further delay, paid to the embassy, in order to furnish satisfaction to the just complaints and claims of those interested ... and thus really, to use Your Excellency’s expression, put an end to the incidents to which it had given rise”; that this sum of 91,000 Turkish pounds was exactly the sum which then remained due on the principal and that thus moratory interest was not considered; that on October 3rd of the same year, 1894, Turkey, on the point of paying on account 50,000 pounds, announced to the Embassy, without meeting with any objections, that the Ottoman Bank “will guarantee the payment of the **balance of 41,000 Turkish pounds**”; that on January 13/25, 1896, the Embassy again used the same term, balance of the indemnity, in protesting against the handing over by Turkey to the Ottoman Bank assignments of revenues already pledged to the Imperial Russian Government for the payment of the war indemnity; – that on February 11th of the same year, 1896, at the time of the discussion of the resources to be furnished to the Ottoman Bank, the Sublime Porte mentioned, in a note addressed to the Embassy, “the 43,978 Turkish pounds, representing **the balance of the indemnity**”; – that some days later, February 10/22, the

Embassy replied, making use of the same words **pay** or **balance of the indemnity** repeatedly; and that on May 28th the Ottoman Ministry of Foreign Affairs mentioned again “the sum of 43,978 Turkish pounds representing the said balance”; – that the same was true in a note of the Embassy dated April 25/May 8, 1900, although about four years had passed between these communications and those of 1896, and that a reminder of the question of interest should have been conveyed in some way after so long an interval; that this same expression, balance of the indemnity, appears in a note of the Sublime Porte of July 5, 1900; – that, finally, on March 3/16, 1901, the Russian Embassy, after having ascertained that the Ottoman Bank had not made further deposits “for the payment of the 43,978 Turkish pounds, the amount of the **balance of the indemnity** due to Russian subjects,” requested the dispatch of unequivocal orders to the proper person “for the payment without further delay ‘of the above mentioned sums’”; – that this balance, to within a small sum, having been held by the Ottoman Bank at the disposal of the Embassy, it was only toward the end of several months, June 23/July 6, that the Embassy transmitted to the Sublime Porte a demand by “those interested,” calling for the payment of some twenty million francs for interest on account of delay, expressing the hope that the Sublime Porte “will not hesitate to recognize in principle the just grounds of the claim,” except “to refer the examination of the details to a commission,” mixed Russo-Turkish; – that in short, for eleven years and more, and up to a date subsequent to the payment of the balance of the principal, there had not only no longer been a question of interest between the two Governments, but mention had been made again and again only of the balance of the principal.

When the Tribunal recognized that, according to the general principles and custom of public international law, there was a similarity between the condition of a State and an individual, which are debtors for a definite and demandable conventional sum, it is equitable and juridical to also apply by analogy the rules of private law common to cases where the demand for payment must be considered as cleared and the benefit to be derived therefrom as extinguished. – In private law, the effects of demand for payment are extinguished when the creditor, after having made legal demand upon the debtor, grants one or more extensions for the payment of the principal obligation, without reserving the rights acquired by the legal demand (*Toullier-Duvergier, Droit français*, vol. III, p. 159, No. 256), or again, when “the creditor does not pursue the summons which he has made to the debtor,” and “these rules apply to interest-damages and also to interest due for the non-fulfilment of an obligation ... or for delay in its fulfilment” (*Duranton, Droit français*, X, p. 470; AUBRY and RAU, *Droit Civil*, 1871, IV, p. 99; BERNEY, *De la demeure*, etc., Lausanne, 1886, p. 62; WINDSCHEID, *Lehrbuch des Pandektenrechts*, 1879, p. 99; Demolombe X, p. 49; LAROMBIÈRE I, art. 1139, No. 22, etc.).

In the relations between the Imperial Russian Government and the Sublime Porte, Russia therefore renounced its right to interest, since its Embassy repeatedly accepted without discussion or reservation and mentioned again and again in its own diplomatic correspondence the amount of the balance of the indemnity as identical with the amount of the balance of the principal. – In other words, the correspondence of recent years proves that the two Parties interpreted, in fact, the acts of 1879 as implying that the payment of the balance of the principal and the payment of the balance to which the claimants had a right were identical, and this implied the renunciation of the right to interest or moratory interest-damages.

The Imperial Russian Government cannot, once the principal of the indemnity was paid or placed at its disposal, validly reconsider in a unilateral manner an interpretation that was accepted and acted upon in its name by its Embassy.

III.

IN CONCLUSION

The Arbitral Tribunal, basing its conclusion upon the statements of law and of fact which precede, is of the opinion

That in principle the Imperial Ottoman Government was liable to the Imperial Russian Government for moratory indemnities from December 31, 1890/January 12, 1891, the date of the receipt of an explicit and regular demand for payment,

But that, in fact, the benefit from this demand for payment having lapsed for the Imperial Russian Government as a result of the subsequent renunciation by its Embassy at Constantinople, the Imperial Ottoman Government is not now held liable to pay interest-damages by reason of the dates on which the payments of the indemnities were made,

And consequently,

DECIDES

a negative reply is to be made to the Question proposed in No. I of Article 3 of the *Compromis* and stated thus: “Whether or not the Imperial Ottoman Government must pay to the Russian claimants interest-damages by reason of the dates on which the said Government made payment of the indemnities determined in pursuance of Article 5 of the treaty of January 27/February 8, 1879, as well as of the Protocol of the same date?”

Done at The Hague, in the building of the Permanent Court of Arbitration, November 11, 1912.

LARDY: *President*

MICHIELS VAN VERDUYNEN: *Secretary General*

ROËLL: *Secretary*