AD HOC ARBITRATION

S. S. “I'M ALONE” (CANADA, UNITED STATES OF AMERICA)

JOINT FINAL REPORT

05 January 1935

RIAA

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The Honourable the Secretary of State for the United States of America; and

The Right Honourable the Minister of External Affairs for Canada.

EXCELLENCIES:

The Commissioners appointed respectively by the High Contracting Parties pursuant to Article IV of the Convention of the 23rd of January, 1924, between His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, and the President of the United States of America, did, on the 30th of June, 1933, present an interim report and recommendations concerning the matters submitted to them for consideration.

The interim report and recommendations are before Your Excellencies.

The Commissioners therein returned answers to certain preliminary questions set forth in a direction given by them on the 28th of January, 1932, in relation to which the agents and counsel of the High Contracting Parties had submitted briefs and oral argument.

Only questions numbered One and Three and the answers given thereto are now material. These are stated in the interim report as follows:

"The question numbered one is in the following terms:—

The first question is whether the Commissioners may enquire into the beneficial or ultimate ownership of the I'm Alone or of the shares of the corporation that owned the ship. If the Commissioners are authorized to make this enquiry, a further question arises as to the effect of indirect ownership and control by citizens of the United States upon the Claim; viz., whether it would be an answer to the Claim under the Convention, or whether it would go to mitigation of damages, or whether it would merely be a circumstance that should actuate the claimant Government in refraining from pressing the claim, in whole or in part."

"The answer given to this question is as follows:—

The Commissioners think they may enquire into the beneficial or ultimate ownership of the I'm Alone and of the shares of the corporation owning the ship; as well as into the management and control of the ship and the venture in which it was engaged; and that this may be done as a basis for considering the recommendations which they shall make. But the Commissioners reserve for further consideration the extent to which, if at all, the facts of such ownership, management and control may affect particular branches or phases of the claim presented."

"The question numbered three is in the following terms:—

The third question is based upon the assumption that the United States Government had the right of hot pursuit in the circumstances and was entitled to exercise the rights under Article II of the Convention at the time when the Dexter joined the Wolcott in the pursuit of the I'm Alone. It is
also based upon the assumption that the averments set forth in paragraph eight of the Answer are true. The question is whether, in the circumstances, the Government of the United States was legally justified in sinking the *I'm Alone.*

"The answer given to this question is as follows:—

On the assumptions stated in the question, the United States might, consistently with the Convention, use necessary and reasonable force for the purpose of effecting the objects of boarding, searching, seizing and bringing into port the suspected vessel; and if sinking should occur incidentally, as a result of the exercise of necessary and reasonable force for such purpose, the pursuing vessel might be entirely blameless. But the Commissioners think that, in the circumstances stated in paragraph eight of the Answer, the admittedly intentional sinking of the suspected vessel was not justified by anything in the Convention."

The preliminary questions having been answered, the Commissioners made the following recommendations as to the future conduct of the case:

"First: that the agents be instructed by their respective Governments to prepare and submit to the Commissioners separate statements setting forth in detail the contentions of their respective Governments as to the ultimate beneficial interests in the vessel and in the cargo, together with specifications of the documents and witnesses relied upon to substantiate their respective contentions:

"Second: that the agents be similarly instructed to submit to the Commissioners either a joint statement or separate statements (in either case specifically itemized) of the sums which should be payable by the United States in case the Commissioners finally determine that compensation is payable by that Government."

Statements were submitted to the Commissioners pursuant to these recommendations; and, on the 28th of December, 1934, the Commissioners convened for the purpose of hearing further evidence and oral argument touching the matters in dispute; and the hearing was concluded on the 3rd of January, 1935. The Commissioners now present their joint final report.

It will be recalled that the *I'm Alone* was sunk on the 22nd day of March, 1929, on the high seas, in the Gulf of Mexico, by the United States revenue cutter *Dexter.* By their interim report the Commissioners found that the sinking of the vessel was not justified by anything in the Convention. The Commissioners now add that it could not be justified by any principle of international law.

The vessel was a British ship of Canadian registry; after her construction she was employed for several years in rum running, the cargo being destined for illegal introduction into, and sale in, the United States. In December, 1928, and during the early months of 1929, down to the sinking of the vessel on the 22nd of March of that year, she was engaged in carrying liquor from Belize, in British Honduras, to an agreed point or points in the Gulf of Mexico, in convenient proximity to the coast of Louisiana, where the liquor was taken from her in smaller craft, smuggled into the United States, and sold there.

We find as a fact that, from September, 1928, down to the date when she was sunk, the *I'm Alone*, although a British ship of Canadian registry, was

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de facto owned, controlled, and at the critical times, managed, and her movements directed and her
cargo dealt with and disposed of, by a group of persons acting in concert who were entirely, or nearly
so, citizens of the United States, and who employed her for the purposes mentioned. The possibility that
one of the group may not have been of United States nationality we regard as of no importance in the
circumstances of this case.

The Commissioners consider that, in view of the facts, no compensation ought to be paid in respect of the
loss of the ship or the cargo.

The act of sinking the ship, however, by officers of the United States Coast Guard, was, as we have already
indicated, an unlawful act; and the Commissioners consider that the United States ought formally to
acknowledge its illegality, and to apologize to His Majesty's Canadian Government therefor; and, further,
that as a material amend in respect of the wrong the United States should pay the sum of $25,000 to His
Majesty's Canadian Government; and they recommend accordingly.

The Commissioners have had under consider ation the compensation which ought to be paid by the
United States to His Majesty's Canadian Government for the benefit of the captain and members of the
crew, none of whom was a party to the illegal conspiracy to smuggle liquor into the United States and sell
the same there. The Commissioners recommend that compensation be paid as follows:

For the captain, John Thomas Randell, the sum of.. 57,906.00

For John Williams, deceased, to be paid to his proper representatives............... 1,250.50

For Jens Jansen............... 1,098.00

For James Barrett.......... 1,032.00

For William Wordsworth, deceased, to be paid to his proper representatives......... 907.00

For Eddy Young.............. 999.50

For Chesley Hobbs.............. 1,323.50

For Edward Fouchard............ 965.00

For Amanda Mainguy, as compensation in respect of the death of Leon Mainguy, for the benefit of herself
and the children of Leon Mainguy (Henriette Mainguy, Jeanne

Mainguy and John Mainguy) the sum of..... 10,185.00