

Annex III. Selected Pre-1950 Cases (various international courts and tribunals)

Case (in descending chronological order)	Facts	Claims	Main Findings
<p><i>Corfu Channel (United Kingdom v. Albania)</i>, International Court of Justice, Judgment of 15 December 1949 (‘Assessment of the Amount of Compensation’)</p> <p>(1949) ICJ Reports, 244 <www.icj-cij.org></p>	<p>On 22 October 1946, explosions occurred in Albanian waters leading to damage and loss of vessels belonging to the United Kingdom as well as to people on board the vessels.</p>	<p>The UK sought compensation for the losses sustained as a result of the explosion under three heads:</p> <ol style="list-style-type: none"> 1. Replacement of the destroyer <i>Suarez</i> which was a total loss as a result of the explosions in the Corfu Channel – the amount claimed was equal to the replacement value of the ship at the time of its loss (less any usable parts – equipment and scrap) and the value of lost stores. 2. Damage sustained by the destroyer <i>Volage</i>. 3. Deaths and injuries of naval personnel. 	<p>The Court first found that Albania was responsible for the explosions and for the damage and loss of human life that resulted. The only question left was that of fixing the amount of compensation.</p> <p>The Court held that the correct measure of compensation under the first head was the replacement cost of the ship.</p> <p>The Court appointed experts to examine the figures and estimates produced by the United Kingdom. The expert view was that the figures produced could be held as an exact and reasonable estimate of the damage sustained and these were the figures used for the second and third heads of damage.</p> <p>The Court therefore ordered Albania to pay the UK a total compensation of £843,947.</p>

De Sabla Case (USA v Panama), Ad hoc Tribunal, Award of 29 June 1933.

RIAA, Vol VI, 358-70
<<http://www.un.org/law/riaa/>>

The De Sabla family owned the land known as Bernardino in the Province of Panama since 1843.

From 1910-28, the land authorities adjudicated to private individuals 40 separate tracts of land all of which, the claimant contended, were within the boundaries of Bernardino. Further, from 1917-30, the land authorities granted temporary licences to private individuals to cultivate land on Bernardino.

The adjudication and grants were purported to be made pursuant to public laws enacted in Panama but the laws only gave power to the authorities to make such grants on government land (baldios).

Claimant claimed compensation for constructive total loss of property because breaking up the continuity of the estate by adjudications, coupled with the damage done to forests and soil by the licencees, rendered impracticable any development of the land.

The Commission concluded that the adjudications and licences granted by the authorities on Bernardino constituted wrongful acts for which the Government of Panama was responsible internationally, it being axiomatic that the acts of a government in depriving an alien of his property without compensation imposes international responsibility.

On the question of damages, the Commission noted that Mrs De Sabla still retained title to the land. However, it acknowledged that as there were conflicting titles in relation to the adjudicated land, it considered this land as permanently lost to the claimant.

Tribunal awarded the claimant the full value of the property which had been adjudicated to third parties.

The Commission then decided that the Government of Panama was obliged to pay US\$76,646.25 in total on behalf of Marguerite de Joly de Sabla.

Interest

No interest awarded

Case (in descending chronological order)	Facts	Claims	Main Findings
<i>Lena Goldfields (Lena Goldfields Ltd v USSR)</i> , Ad hoc Tribunal, Award reported on 3 September 1930	In 1925, Lena Goldfields Ltd received an exploring, mining and transportation concession in the USSR. There followed a class war against the company's employees for serving a capitalist enterprise. The employees resigned and the Company was disorganised.	Two alternative claims: 1. Damages for breach of contract – the present value of the future profits lost by reason of the Soviet Government's acts and defaults. 2. Restitution of the full present value of the company's properties by which the Government had become unjustly enriched. Under this claim, the heads of damages were:	The Tribunal held that the Soviet Government's conduct amounted to a breach of contract and that consequently Lena was entitled to relief from any further obligations from the contract and to compensation for the value of the benefits of which it had been wrongfully deprived. However, the Tribunal preferred to base its award on the principle of 'unjust enrichment' with the opinion that the monetary result would be the same as that for breach of contract.
A Nussbaum, 'The Arbitration Between the Lena Goldfields, Ltd and the Soviet Government' (1950–51) 36 <i>Cornell LQ</i> 36; <i>The Times</i> , 3 September 1930	In December 1929, the Soviet Government carried out a raid at Lena's establishments and employees were seized and searched and technical plans and reports taken away, including confidential documents. The Company discontinued operation of the plants and these together with secret technical documents were taken over by the Soviet Government.	a) cost of prospecting, development and equipment b) costs incidental to obtaining the concession c) cost of acquisition of shares of old companies d) interest.	The Tribunal dissolved the concession and ordered the Soviet Union Government to pay Lena £8,500,000 plus 12 per cent interest payable from the date of the award. The amount was based on the Concession Agreement which stipulated that the purchase price was to be 'determined by multiplying the average annual income by the number of years remaining to the end of the concession, with discount of incomes intended to be paid in advance of 5 per cent per annum'.
	The Company had £3,500,000 invested in the concessions at the time the Soviet Government took over.		
	In February 1930, under the arbitration clause in the Concession Agreement, Lena sued the Soviet Government for £13,000,000.		

The Soviet Government and Lena appointed arbitrators and both parties agreed on a chairman for the Tribunal. On 5 May 1930, the Soviet Government declared that the arbitral tribunal 'had ceased to function' because Lena had ceased operations. The arbitration tribunal continued with two arbitrators.

Case (in descending chronological order)	Facts	Claims	Main Findings
<p><i>Schufeldt Claim (USA v Guatemala)</i>, Ad hoc Tribunal (sole arbitrator), Award of 24 July 1930</p> <p>RIAA, Vol II, 1079–1102 <http://www.un.org/law/riaa/></p>	<p>On 4 February 1922, the Government of Guatemala and Messrs. Francisco Nájera and Víctor Morales concluded a contract for the extraction of chicle in public land in Department of Peten. The period of the concession was ten years subject to extension for five more years by mutual agreement.</p> <p>On 11 February 1922, Nájera and Morales assigned all their rights and obligations without reservation whatsoever to Percy W Schufeldt a US citizen.</p> <p>On 22 May 1928, the Legislative Assembly of Guatemala passed Decree No. 1544 which disapproved and cancelled the contract.</p>	<p>The Arbitrator had to decide two questions:</p> <ol style="list-style-type: none"> 1. Whether Schufeldt had the right to claim a pecuniary indemnification given the facts. 2. If the arbitrator decided that Schufeldt had the right to a claim, what was the amount that the Government of Guatemala should pay to the US Government for the account of Schufeldt? 	<ol style="list-style-type: none"> 1. The Tribunal found that Schufeldt had a right to claim pecuniary indemnification. 2. The Arbitrator found that compensation should be awarded both for damage suffered and profits lost: <i>damnum emergens</i> and <i>lucrum cessans</i>. <p>He went on to say that the <i>damnum emergens</i> is always recoverable but the <i>lucrum cessans</i> must be the direct fruit of the contract and not too remote or speculative.</p> <p><i>Lucrum cessans</i></p> <p>The arbitrator calculated profits lost on the basis of profits gained in the six years during which the contract was in operation. The amount \$101,660 which was less than the \$400,000 claimed by the US Government. (The US Government claimed that profits would have increased as a result of improved infrastructure and Schufeldt's release from a contract with Wrigley & Co)</p>

Walter Fletcher Smith Claim (USA v Cuba), Ad hoc Tribunal, Award of 2 May 1929

RIAA, Vol II, 913-8
<<http://www.un.org/law/riaa/>>

In 1916 Captain Walter Fletcher Smith, an American citizen, owned all the stock of the Marianao Beach Company which owned properties in Marianao Beach.

Prior to 1919, Captain Smith sold all the stock of the Marianao Beach Company to the Playa Company except two parcels of land.

In May 1919, the municipality of Marianao granted the Playa Company a concession for urbanization which included the parcels of land reserved by Mr. Smith. Subsequently Smith's land was expropriated.

A diplomatic solution failed and the US Government and Government of Cuba agreed to have the matter resolved by a sole arbitrator.

The arbitrator was asked to resolve the following questions which were contained in the Agreement of Arbitration:

1. Should land be restored to Smith?
2. If restored what damages should he receive in addition to restoration of land?
3. If land not restored, what amount would Smith receive in complete settlement?

1. The arbitrator found that the defendant company had not acquired clear title of the property in question and that it would not be inappropriate to find that the property should be restored to the claimant.

2. The Arbitrator decided to award compensation without restoring the land in the best interests of both parties and the public.

3. The parties' valuations of the property were hugely divergent (claimant – more than \$200,000; defendant – less than \$35,000). The Arbitrator found that the claimant should receive compensation for the value of the land, the buildings and personal effects contained therein, the deprivation of the use of the property and in consideration of the expense of defending his rights in the total amount of \$190,000.

Case (in descending chronological order)	Facts	Claims	Main Findings
<p><i>Factory at Chorzów (Germany v Poland)</i>, Permanent Court of International Justice, Judgment of 13 September 1928.</p> <p>(1928) PCIJ, Ser A, No 17 www.icj-cij.org</p>	<p>On 15 March 1915, a contract was concluded between the German Empire and the Bayerische Stickstoffwerke A.G. (Bayerische) to establish a nitrate factory in Chorzów, Upper Silesia. The Reich owned the factory and Bayerische was responsible for managing it. On 24 December 1919, a new company, the Oberschlesische Stickstoffwerke A.G. (Oberschlesische), was formed. This Company bought the factory at Chorzów from the Reich and was entered as its owner in the Chorzów land registry. Bayerische and Oberschlesische remained separate companies with Oberschlesische owning the factory and Bayerische retaining the management and working of the factory.</p> <p>On 15 May 1922, Germany and Poland signed the Geneva Convention, which regulated expropriation in Upper Silesia. On 1 July 1922, a Polish Court declared the registration of Oberschlesische as the owner of</p>	<p>In terms of compensation, the German Government claimed for damage suffered by the Oberschlesische and Bayerische (separately) as a result of the Polish Government taking possession of the factory at Chorzów on 3 July 1922.</p>	<p>In a separate earlier judgement, the Court had found that Poland had breached the Geneva Convention and this was <i>res iudicata</i> with respect to the hearing on indemnities.</p> <p>The Court then considered three fundamental questions:</p> <ol style="list-style-type: none"> 1. The existence of the obligation to make reparation. 2. The existence of the damage which must serve as a basis for the calculation of the amount of the indemnity. 3. The extent of this damage. <p>Held:</p> <ol style="list-style-type: none"> 1. It is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation. 2. Poland conceded the damage to Bayerische and the only disagreement between the parties was the extent of damage caused and the

the factory at Chorzów null and void and ordered the Polish Treasury to be entered as the owner of the factory which was done on 3 July 1922.

The German Government took the case to the Permanent Court of International Justice and there ensued a series of judgments from that Court including Judgment No.7, which determined that the Government of Poland's actions were not in conformity with the Geneva Convention.

At the time of the Court's deliberations on indemnity, the parties were agreed that it was impossible to restore the factory to Oberschlesische.

method of reparation. With respect to Oberschlesische, Poland claimed that Oberschlesische's ownership of the Factory was not valid so it had suffered no damage and claim should be dismissed. The Court rejected this claim because the validity of the ownership of the factory at Chorzów by Oberschlesische had already been determined in a previous judgment (No. 7).

Court also observed that: 'In estimating damage caused by an unlawful act, only the value of property, rights and interests which have been affected and the owner of which is the person on whose behalf compensation is claimed, or the damage done to whom is to serve as a means of gauging the reparation claimed, must be taken into account.'

The Court determined that the assessment of damages with respect to the undertaking would be considered together (for the two companies) because their interests were complementary and this would avoid double compensation. The compensation ordered would therefore be a lump-sum amount. The Court noted that if it had been considering an act that affected persons independent of each other, it would have considered the damages separately.

Case (in descending chronological order)	Facts	Claims	Main Findings
			<p data-bbox="318 181 577 495">3. Poland's actions 'were not an expropriation'. If there had been an expropriation it could have been rendered lawful by the payment of fair compensation. The actions were a 'seizure of property, rights and interests' which could not be expropriated even with compensation except under the exceptional conditions fixed by Article 7 of the Geneva Convention.</p> <p data-bbox="604 181 889 495">It therefore followed that compensation due to the German Government was not limited to the value of the undertaking at the moment of dispossession plus interest to the day of payment. This limitation would only be allowed if Poland had the right to expropriate and if its wrongful act consisted merely in not paying the two Companies the just price of what was expropriated.</p> <p data-bbox="916 181 1032 495">The Court explained the proper approach to the assessment of compensation as follows: 'The essential principle contained in the actual notion of an illegal act – a</p>

principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals – is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it – such are the principles which should serve to determine the amount of compensation due for an act contrary to international law. The Court ordered two expert inquiries. The *first* was to find the monetary value, both of the object which should have been restored in kind and of the additional damage, on the basis of the estimated value of the undertaking including stocks at the moment of taking possession by the Polish Government, together with any probable profit that would have accrued to the undertaking between the date of taking possession and that of the expert opinion. The *second* was to ascer-

Case (in descending chronological order)	Facts	Claims	Main Findings
			<p data-bbox="318 176 483 495">tain the present value (in current Reichmarks) of Chorzów if it had remained in the hands of Bayerische and Oberschlesische and had remained as it was in 1922 or developed in proportion to Bayerische's other factories.</p> <p data-bbox="506 195 600 495">The choice between the two options was never made because the parties reached an out of court settlement.</p>

SS Wimbledon (Great Britain, France, Italy and Japan with Poland intervening v Germany), Permanent Court of International Justice, Judgment of 17 August 1923

(1923) PCIJ, Ser A, No 1
<www.icj-cij.org>

English steamship 'Wimbledon' chartered by a French Company, took on munitions and artillery stores destined for the Polish Naval Base at Danzig.

On 21 March 1921 the vessel presented itself at the Kiel Canal but the German authorities refused to let it pass. A request by France to allow the SS Wimbledon through the Canal according to Article 380 of the Treaty of Versailles failed. The French Company ordered the captain of the vessel to go to Danzig via the Danish Straits. The vessel was detained for 11 days to which were added 2 days for deviation.

The Claimants sought compensation for the prejudice sustained as a result of denying access to the Kiel Canal estimated at 174,042 Frs 86 centimes including:

- Demurrage – 111,956.20 Frs;
- Cost of deviation;
- Fuel;
- Contribution of the vessel to general expenses and stamp duty.

Interest at 6 per cent from 20 March 1921

The Court concluded that Germany had wrongfully refused passage to the SS 'Wimbledon', and was therefore responsible for the loss occasioned by this refusal and had to compensate the French Government on behalf of the Company known as Les Affreteurs Reunis which sustained the loss.

The Court disallowed the fourth item of the claim for the reason that the expenses in question were not connected to the refusal of passage.

The Court allowed 6 per cent interest running from the date of the judgment and not from the day of arrival of the SS 'Wimbledon' at the Kiel Canal.

Case (in descending chronological order)	Facts	Claims	Main Findings
<p><i>Norwegian Shipowners Claim (Norway v United States)</i>, Permanent Court of Arbitration, Award of 13 October 1922</p> <p>RIAA, Vol I, 307–46 <http://www.un.org/law/riaa/></p>	<p>Claims for damages sustained in 1917 when the United States Shipping Board Emergency Fleet Corporation requisitioned fifteen shipbuilding contracts, including contracts for two ships under construction, material in shipyards and certain unexecuted contracts all belonging to Norwegian subjects.</p>	<p>15 claims in total presented against the United States by the Kingdom of Norway on behalf of the individual claimants.</p> <p>It was common ground between the parties that just compensation should be liberally awarded and that it should be based upon net value of the property taken.</p> <p>Compound interest with half-yearly adjustments was also claimed.</p>	<p>The Tribunal found that whatever its intentions, the US actions amounted to a taking. Further, the claimants were forever deprived of their property which amounted to a requisitioning by the exercise of the power of the eminent domain according to US municipal law.</p> <p><i>Valuation</i> The Tribunal found that it was difficult to fix the real market value of some of the shipbuilding contracts and said that the value had to be assessed <i>ex aequo et bono</i>.</p> <p>The Tribunal held that 'just compensation' should have been paid to the claimants:</p> <ul style="list-style-type: none"> • Either for use of property during the war and for retention after the state of emergency had ceased, or • Full compensation for destruction of Norwegian property. <p>Tribunal selected the net market</p>

value of the property as a measure of compensation and in reaching a figure took account of factors such as date of each contract and sub-contract, technical characteristics and qualities of each contract, legal value of the contract, namely the liens, rights and interests in each contract, the original contract price, the date of delivery, degree of completion of the tangible objects, etc.

Interest

Compound interest refused as not having been granted in previous arbitration cases and no sufficient reason having been advanced in this case. A lump sum for interest was included in the total amount of compensation awarded.

Case (in descending chronological order)	Facts	Claims	Main Findings
<p><i>Company General of the Orinoco (France v Venezuela)</i>, Venezuela Mixed Claims Commission, Award of 31 May 1905</p> <p>RIAA, Vol X, 184–285 <http://www.un.org/law/riaa/></p>	<p>French Company obtained from Venezuelan Government concessions to exploit minerals and develop a transport network over a large area in which Venezuela believed it had sovereignty. However, much of the area covered by the concession contracts was claimed by Colombia. Colombia strongly protested the granting of concessions by Venezuela and demanded the return of the area concerned. Venezuela wishing to avert imminent danger of armed conflict felt obliged to rescind the concessions and grant back to Colombia the land that the latter claimed.</p> <p>The Company General of the Orinoco had attempted to pass its properties, franchises, rights and privileges to a British Company, but the Venezuelan Government would not permit it.</p> <p>This led to a dispute between the Venezuelan Government and the Company General of the Orinoco.</p>	<p>Company claimed 7,616,098.62 bolivars, including:</p> <ul style="list-style-type: none"> - Money expended: 5,616,098.62 bolivars; - Benefits not realised: 2,000,000 bolivars. 	<p>Commission accepted Venezuela's argument that it was forced to annul the concessions because of the real danger of war that they posed. Umple Plumley ruled that in the exceptional circumstances of the case it was lawful under international law for the Venezuelan Government to rescind the concessions. He agreed that the Company was entitled to compensation for the consequences of an act which was internationally lawful but severely detrimental to its interests.</p> <p>The Commission held that damages awarded would be equal to the value of the concession at the time, which in turn was equal to the amount the British Company was prepared to pay for the concessions. That amount was equal to the General Company of the Orinoco's indebtedness (1,636,078.17 francs) to which was added 25,000 francs as the sum representing the expense of</p>

the contract with the British Company.

Interest

The umpire also held that interest for 15 years (approximate length of time the payment was in default) should be added (interest rate not indicated).

Case (in descending chronological order)	Facts	Claims	Main Findings
<p><i>Robert May Case (USA v Venezuela)</i>, Ad hoc Tribunal, Award of 16 November 1900</p> <p>RIAA, Vol XV, 47–75 http://www.un.org/law/riaa/</p>	<p>Robert May, a US citizen, entered into a contract with the Government of Guatemala to operate the Guatemala Northern Railroad for the period of one year. He was given possession of the railroad on 16 April 1898.</p> <p>On 21 September 1898, the Government received notice that the operations on the railroad had stopped due to the Government's default on payments. It was alleged that on 23 September 1898, May verbally agreed to a rescission of certain conditions but there was no written record of this agreement.</p> <p>On 19 October, information was circulated that there was a new concessionaire and on 20 October May was asked to deliver the railroad which he did under threat of force. No formal surrender was made, inventory was taken and no arrangement as to the settlement of May's accounts was made.</p>	<p>Compensation from the Venezuelan Government for Mr May's ejection from the railroad.</p>	<p>Tribunal noted that in a contractual agreement, parties are liable to compensate for damages which result directly or indirectly from the non-fulfilment or infringement by default or fraud of the party concerned. This compensation should include damages incurred (<i>damnum emergens</i>) and profit lost (<i>lucrum cessans</i>).</p> <p>Damnum emergens</p> <p>The Tribunal noted that there was a speculative element to May's investment and that the contract under damages awarded should therefore be confined to what was considered a sufficient amount to cover his actual expenses and losses.</p> <p>Lucrum cessans</p> <p>Tribunal held that May was entitled to compensation for the profits which he would have received up until the end of the term of the concession (April 1898). Lost profit was calculated from the average net monthly profit that he had already received.</p>

On 26 November 1898, May was offered \$31,374.33 as partial settlement of the debt owed to him but he declined as the bills had depreciated. On 10 January 1899, May's power of attorney received \$10,000 on account of the amount previously decreed as partial settlement.

On 23 February 1900, the parties reached an agreement to submit the question to arbitration.

Case (in descending chronological order)	Facts	Claims	Main Findings
<i>Delagoa Bay (USA and Great Britain v Portugal)</i> , Ad hoc Tribunal, Award of 29 March 1900.	In 1883 an American citizen, MacMurdo, obtained a railway concession from the Portuguese Government. He transferred his concession to a Portuguese company in return for fully paid shares and cash. The rights of this company were in turn acquired by an English company. On 25 June 1889, the Portuguese Government issued a decree cancelling the concession and ordering the taking of possession of the whole enterprise, in pursuance of which the railway was seized.	Great Britain claimed £1,138,500 in compensation for the confiscated property of the British Company. The US Government made a similar claim amounting to 760,000 on behalf of MacMurdo's widow who was a US citizen.	Applicable law was Portuguese law and it was noted that it did not contain any provisions that would depart from the general principles of the common law of modern nations. <i>Compensation</i> The Tribunal looked at three options for the nature and calculation of the compensation. 1. Reparation for an injury done unlawfully – compensation is in the nature of damages (dommages et intérêts) ie it must make up an equivalent for damages suffered (<i>damnum emergens</i>) and profits missed (<i>lucrum cessans</i>). 2. Interest claimants would have had in carrying out a contractual engagement with the – compensation equal to the proceeds of the sale of the railway by auction. 3. Entitlement to a sum which if not returned would amount to unjust enrichment of the respondent – compensation equal to the estimated value of the property taken, computed either by an
MM Whiteman, <i>Damages in International Law</i> , Vol 3 (US Govt, Washington DC 1943) 1694–1703	The Portuguese Government admitted its liability to pay compensation, and the parties submitted to arbitration the task of fixing the amount of compensation to be paid by the Portuguese Government to the claimants.		

appraisal or on the basis of the useful and natural expenses of the former owners for the creation or acquisition of said property with or without deductions.

The Tribunal held that the first method (*damnum emergens* plus *lucrum cessans*) was the most appropriate. It further held that the State was bound to make full reparation for the dispossession of private persons of their rights and privileges of a private nature.

Quantification

The Tribunal held that an appraisal of the line should be made to determine the indemnity and that this should be reckoned according to capitalized income and would also take into account a gradual increase in income. The Tribunal adopted the length of the concession (35 years) as the period during which *lucrum cessans* should be calculated.

Interest

Tribunal awarded interest of 5 per cent simple interest, as stipulated in the Portuguese Commercial code, starting from 25 June 1899 to the day on which payment was made.

