War Series: The 1923 Arbitration on War-Risk Premiums

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The case of **War-Risk Insurance Premium Claims** presented a unique challenge for the **United States-Germany Mixed Commission**. At its core, it revolved around whether premiums paid by American companies for war-risk insurance during World War I could be recovered from Germany. These premiums were for protection against potential war hazards that, ultimately, did not materialize into actual losses. The Commission's analysis, delivered by Parker, Umpire, and concurred by both American and German Commissioners, hinges on the fundamental principles of **proximate cause and liability** in international law.

Historical Context and Challenges

At the outbreak of World War I, the **United States was neutral**, facing myriad uncertainties in maritime commerce. American nationals, whose businesses were entrenched in international shipping, had to navigate through a web of risks including contraband, blockades, mines, and belligerent activities. The war had disrupted normal trading routes, and the shifting sands of international law on contraband and blockades added layers of complexity.

In response, the U.S. sought agreement from belligerent nations to adhere to the **Declaration of London (1909)**, a set of laws governing naval warfare. Germany and her allies acquiesced, but the British and her allies only partially adopted these rules, introducing significant modifications. This led to a precarious situation for American shippers who found themselves vulnerable to seizures and detentions of their cargoes by the British, and to German declarations of war zones that endangered even neutral ships.

Insurance as a Protective Measure

Amidst these hazards, **American companies turned to war-risk insurance** to safeguard their shipments. Initially, American insurers struggled to provide coverage due to the unprecedented nature of the risks. However, the **U.S. Congress quickly established the Bureau of War Risk Insurance** within the Treasury Department, which began writing policies at more reasonable rates compared to private insurers.

Despite this protection, the question arose: should these premiums be reimbursed by Germany as part of war reparations? The **Commission's role** was to determine if these insurance costs constituted a loss directly attributable to German acts under the **Treaty of Berlin**.

Examination of Claims

The Commission examined three representative claims:

1. **United States Steel Products Company**
2. **Costa Rica Union Mining Company**
3. **South Porto Rico Sugar Company**

Each company had paid war-risk premiums to protect their shipments or facilities against potential war-related hazards. Notably, none of these companies experienced actual losses from the insured risks; the shipments arrived safely, and the facilities were unmolested.

The Principle of Proximate Cause

The central legal question was whether the **premiums paid for war-risk insurance** could be considered a loss proximately caused by German actions. The **Treaty of Berlin** required Germany to compensate for losses directly caused by its acts or those of its agents. However, the premiums in question were for potential risks that did not result in actual damage or loss of property.

The Commission concluded that these premiums did not meet the criteria for compensation under the Treaty. They were **precautionary expenses** against hypothetical risks, not losses caused by specific acts of Germany. The concept of **proximate cause** necessitates a direct causal link between an act and the resultant loss, which was absent in these cases.

The Broader Implications

This decision underscores a critical aspect of **international arbitration**: the distinction between **direct losses** and **indirect or consequential damages**. War inherently introduces uncertainties and risks that cannot always be clearly traced to the actions of a single belligerent party. The **Treaty of Berlin** does not extend to cover every conceivable financial impact of the war on neutral parties.

Conclusion

In denying the claims for reimbursement of war-risk insurance premiums, the Commission reinforced the principle that **liability under international law** requires a demonstrable, direct causal connection between the act of a belligerent and the loss suffered by the claimant. This decision not only clarified the limits of **war reparations** but also provided a precedent for interpreting similar claims in future conflicts.

The **War-Risk Insurance Premium Claims case** serves as a reminder of the complexities inherent in international disputes and the importance of adhering to established principles of **proximate cause and direct liability**. It highlights the necessity for nations and their nationals to navigate the legal and commercial uncertainties of war with prudence, recognizing that not all war-related costs are compensable under international treaties.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com