

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

William E. Chapman (U.S.A.) v. United Mexican States

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of highwaymen. made highwaymen of the two members of the crew of the train referred to, and rendered them deserving of the extreme penalty. Notwithstanding, they were sentenced to six years' imprisonment only and released provisionally on March 6, 1924. The Mexican Agency explained that this liberty is granted to criminals sentenced to more than two years and whose conduct has been uniformly good, (Articles 74, 75 and 98 of the Penal Code of the Federal District); but that explanation would be acceptable only in the event that the penalty of six years had been legally applied.

Reviewing briefly the foregoing the Commission finds that there was some lack of diligence in the pursuit and apprehension of the culprits during the first year; that the penalties imposed upon four of the arrested criminals do not appear to be in accord with the provisions of the Penal Code of the Federal District; that there was negligence in the pursuit of the other individuals composing the band which made the attack, from all of which it is constrained to conclude that there was to a certain extent an insufficiency in the administration of justice, for which reason, it believes an award of \$7,000.00 must be allowed.

Decision

The United Mexican States shall pay to the United States of America on behalf of Lillian Greenlaw Sewell and Vernon Monroe Greenlaw the amount of \$7,000.00 (seven thousand dollars), without interest.

WILLIAM E. CHAPMAN (U.S.A.) *v.* UNITED MEXICAN STATES

(*October 24, 1930. Pages 121-132.*)

DUTY TO PROTECT ALIENS. While a Government is not an insurer of aliens it has a duty to use such means of protection as are within its capacity to protect them against apprehended illegal acts of which it has notice.

DUTY TO PROTECT CONSULS. Claimant was an American consul in Puerto México shortly prior to the execution of Sacco and Vanzetti in the United States. Threats of death to all American diplomatic and consular officials in Mexico, if such execution were carried out, were received by the American Embassy in Mexico City. Pursuant to instructions from the American Consulate General, claimant informed the Governor of the State of Vera Cruz, Chief of the State Police at Puerto México, and the Municipal President of Puerto México, of the apprehended danger and requested adequate protection. Only the Municipal President made any reply to such requests. The Municipal President requested the local chief of police to exercise active vigilance but no additional protection whatever was extended to claimant. Just before daylight a masked man entered his home and shot him through the chest. *Held*, in the light of the special protection due consular officers under international law, lack of protection by respondent Government established. Claim *allowed*.

DENIAL OF JUSTICE.—FAILURE TO APPREHEND OR PUNISH. When investigation of crime was promptly begun by Mexican authorities and some examination of witnesses place, *held*, denial of justice not established.

Cross-references: Am. J. Int. Law, Vol. 25, 1931, p. 544; Annual Digest, 1929-1930, p. 318; British Yearbook, Vol. 12, 1931, p. 168.

Comments: Edwin M. Borchard, "Recent Opinions of the General Claims Commission, United States and Mexico", Am. J. Int. Law, Vol. 25, 1931, p. 735 at 738.

Commissioner Nielsen, for the Commission:

Claim is made by the United States of America in this case in the amount of \$50,000 gold currency of the United States, with interest, on behalf of William E. Chapman who, on July 17, 1927, was shot and seriously wounded at Puerto México, Mexico, where he was at the time stationed as Consul of the United States. The claim is predicated on allegations with respect to the failure of the Mexican authorities to give proper protection to the claimant and the subsequent failure of the authorities to take proper steps to apprehend and punish the person who did the shooting. The substance of the allegations contained in the Memorial is as follows:

The claimant, William E. Chapman, during the year 1927 was assigned by his Government to the City of Puerto México, Mexico, as Consul and was recognized as such by the President of Mexico on May 4, 1927.

On June 29, 1927, the claimant received a communication dated June 27, 1927, from the American Consulate General at Mexico City containing the information that some unknown person or persons had transmitted to the American Embassy at Mexico City a threatening communication. The writer or writers of that communication declared the intention to effect the destruction by dynamite of all American Embassies and the death of all American principal diplomatic and consular officials, if two men, named respectively Sacco and Vanzetti, were executed as the result of a verdict against them in connexion with a charge of murder which was then pending in courts of the United States. The instruction from the American Consulate General directed the claimant and other consular officers stationed in Mexico to apprise the Mexican authorities in their respective districts of the receipt of this threat and to request such action on the part of the local Mexican authorities as might be necessary to insure the safety of American Consular personnel and property.

On June 30, 1927, the claimant addressed letters to the Governor of the State of Vera Cruz, the *Jefe de la Policia Judicial* at Puerto México, and the *Presidente Municipal* of Puerto México, furnishing the information that a threat had been made against the Consulate to which he had been assigned and requesting that adequate protection be granted to him and to the property of the Consulate.

The letters addressed to the Governor of the State of Vera Cruz and to the Chief of the State Police at Puerto México, were not answered. However, the *Presidente Municipal* at Puerto México transmitted to the claimant a carbon copy of a communication addressed to the Chief of Municipal Police. In addition to the letters addressed to these officers, the claimant on numerous occasions, spoke to the Chief of the State Police and to the *Presidente Municipal* in regard to the matter of the threats, but none of these authorities manifested more than a passing interest in the situation. No provisions of any nature were made to furnish the Consulate or the claimant with any protection other than that which had customarily been accorded previous to that time.

On July 17, 1927, just before daylight, a masked man entered the American Consulate and shot the claimant through the chest. Mr. Chapman immediately informed Dr. J. J. Sparks, a British Vice-Consul stationed in Puerto México, and also a practicing physician. Dr. Sparks immediately came to the claimant, rendered first aid and later treated the claimant for the wound which he had received. The bullet directed at the claimant entered his chest a few inches from the heart and pierced his lung, its exit being under the left arm about eight and a half inches from the point of entry. As a result of this wound the claimant constantly suffered great pain and discomfort for a period of three or four months, and ever since that time has experienced difficulty in taking a deep breath, and he is and will remain in a seriously weakened and permanently impaired condition. Prior to the time of the attack in question he enjoyed good health.

Within a period of fifteen minutes after the claimant was shot a police officer of Vera Cruz came to the claimant's residence and left within a few minutes apparently for the purpose of pursuing and apprehending the person who was guilty of the shooting and who had been described to the officer. Shortly thereafter the *Presidente Municipal* called on the claimant and was informed of all of the details with reference to the attack and the shooting. About three days thereafter two men identifying themselves as detectives from Mexico City called on the claimant and were shown all of the evidence which had been left by the criminal, but beyond mere investigations at the site of the crime no efforts were made by them to apprehend the person who had shot the claimant.

The Memorial also furnishes figures showing the expenses of medical attendance which the claimant incurred.

This Commission and other international tribunals have often given application to the general principles invoked in the instant case that a government is required to take appropriate steps to prevent injuries to aliens and to employ prompt and effective measures to apprehend and punish offenders who have committed such injuries. The Commission has also considered the subject of the special protection due to a consular officer. That matter is of some importance in the instant case, since it is contended that the claimant was entitled to such protection. However, the subject is presented in an aspect in which it reveals no real difficulties. Citation is made by the American Agency to statements found in numerous works on international law and in diplomatic correspondence to the effect that consular officers are entitled to special protection. But the argument particularly stressed in the instant case is that the claimant was entitled to such protection because serious threats had been made against his safety; that such threats had been brought to the attention of the appropriate Mexican authorities; and that the Consul had received assurances that protection would be given. Of course a request for protection in a case of threatened danger may be appropriate in any case involving the safety of an alien having no official status, and compliance with such a request will be prompted by the desire of authorities of a government to take action with a view to avoiding any just grounds for complaint by the government to which the alien belongs.

In the presentation of the instant case there was some discussion of the scope and application of the rule with respect to the protection of aliens. A government obviously is not an insurer of the safety of such persons, and the same may be said relative to the safety of a consular officer, even though due account be taken of his special position.

It of course is an important point whether authorities have been put on notice with respect to apprehended illegal acts. On June 29, 1927, the claimant received from the American Consul General in Mexico City, a communication dated June 27, 1927, which reads in part as follows:

"The Embassy has transmitted to the Consulate General a copy of an unsigned communication, dated June 23, 1927, at Mexico City, threatening the destruction by dynamite of American Embassies in Latin America and the death of principal diplomatic and consular officers if Sacco and Vanzetti are executed. The text of the communication is appended to this circular.

"The Foreign Office has been requested by the Embassy to take appropriate action here and in places where American consular offices are established in Mexico. You are directed to apprise the Mexican authorities in your respective district of the existence of this threat, the first of its kind to be received by the Embassy, in order that adequate measure may be taken for the protection of the consular personnel and property."

The threatening anonymous communication to which reference was made by the Consul General reads as follows:

"We make known to the personnel of that Embassy, that in case of the execution in Boston, Mass., of Sacco and Vanzetti, we have definite instructions in all our societies in Latin America to dynamite the buildings of the North American Embassies, including that in the Republic of Mexico, with the object of killing the principal representatives, Ambassadors and Consuls." (Translation from Spanish)

On June 30, 1927, the claimant took action in compliance with the instructions received from the Consul General. On that day the Consul wrote three letters: one to the Municipal President of Puerto México, another to the Chief of the Judicial Police at that place, and another to the Governor of the State of Vera Cruz. The Consul in his letter to the Municipal President referred to the Sacco and Vanzetti affair and to the instructions received from the Consul General and requested that provision be kindly made for effective protection in case the Governor of Massachusetts should allow the execution of the death sentence pronounced against the two convicted men. More specifically, the Consul said:

"According to my memory I saw a press despatch that the court had fixed the 9th of next July as the day of the execution, but on any day the Governor can make his decision to execute them or not, and in the event he does the danger will run from then, but naturally more immediately after the execution.

"As you know it will not be difficult to protect this Consulate against any attempt, but only by placing policemen in front and at the back of the house and in a case of such a strange nature as this one they should be men in whom is lodged the utmost confidence, ready to confront whoever dares to commit a crime of the category stated in the note which was received by the American Embassy at Mexico City."

The Consul in his letter to the Governor enclosed a copy of his communication to the Municipal President at Puerto México, and further said:

"Attentively I request you to issue your respectable orders for the purpose of guaranteeing the protection which with absolute certainty would be given by the American authorities to the Mexican Consuls and Consulates in the United States in a similar case.

"I know that the Mayor of Puerto México is considered kindhearted, but at the same time the town is poor he can not keep more than a few policemen to keep order and on some occasions he himself patrols at night to assure the town against bandits a thing which deserves much appreciation by the public.

So that in a crisis like this in which criminals plan to impose in the event of the execution of Sacco and Vanzetti I think it will be necessary to have the aid of the State police stationed at this port."

The Consul in his communication to the Chief of the State Police at Puerto México, said:

"Attentively I request of you the kindness to take the steps necessary to guarantee the protection which under definite instructions of my superior, the American Consul General at Mexico City, I am asking."

The Consul's action was justified and was in proper form. With respect to this point it is immaterial whether it may be considered that what the Consul requested was special protection due to the indication of unusual danger, or special protection required by the Consul's position. From the instructions given by the Consul General at Mexico City, it appears that the attention of the Mexican Foreign Office had been called to the threat against American representatives. It appears that the Consul received no acknowledgment from either the Governor or the Chief of the State Police. However, there was sent to him by the Municipal President what appears to have been a copy of instructions transmitted by the latter to the Chief of Police. These instructions read in part as follows:

"Mr. William E. Chapman, North-American Consul in this city, in his attentive note of June 30 past, tells me that, in compliance with instructions of the Consul-General of the United States in the City of Mexico, he calls to the attention of our authorities the fact that the Embassy of the United States in the Capital of the Republic, has received a threatening note, without signature, that is to say an anonymous communication, dated the 23rd of the same month of June ultimo, which textually is as follows:

"With a view to avoiding any attempt of the nature of that suggested against the person of the Consul of the United States at this port or against the interests which the said Consulate has in this port, please exercise active vigilance by day as well as by night at the Consulate of reference, establishing a secret service which can prohibit any danger which could be aimed at the edifice cited or the Consul."

The Municipal President therefore evidently recognized the propriety of the Consul's request and issued proper directions, as is shown particularly by the reference to use of "a secret service".

Some argument was advanced by counsel for Mexico with respect to the nature of the warning which the authorities received, and the extent of apprehension which it might naturally occasion. It was argued that imminent danger calling for immediate action was not necessarily prompted by what the Consul disclosed, and furthermore, that it was not conclusively shown that Chapman was shot by some Sacco-Vanzetti sympathizer, since he might have been wounded by some one who felt a personal grievance against the claimant.

As against contentions of this kind, counsel for the United States argued, among other things, that it could be reasonably assumed that, had protection been given the Consul would not have been injured. In a case such as that under consideration the matter of warning obviously is important in connexion with the question of responsibility. The arguments of counsel for Mexico would have force if it could be shown that there is a substantial basis for the views he expressed as to the nature of the warning communicated to the authorities. It seems to be clear from the evidence in the record that the person who shot the Consul did not enter the Consulate for the purpose

of robbery. And in the course of an investigation by Mexican authorities the Consul observed that he was on good terms with the people of Puerto México, and that he had no enemies among them. He referred to a business concern as probably being unfriendly to him. However, neither in what he says nor in anything said or done by the authorities is there a suggestion of suspicion that this concern employed an assassin. The Municipal President, in the course of the investigation, referred to the information he had received from the Consul as to threats to kill all diplomatic and consular representatives in Latin American countries as a reprisal for the sentences pronounced on Sacco and Vanzetti, and he further referred to instructions which he gave with regard to the protection of the Consular premises in response to the Consul's request.

With respect to the point as to the imminence of danger conveyed by the warning which the authorities received, it is pertinent to bear in mind that the Consul, in his letter to the Municipal President, stated that according to his (the Consul's) recollection "the court had fixed the 9th of next July as the day of the execution" of the two convicted men, and the Consul added "but on any day the Governor can make his decision to execute them or not, and in the event he does the danger will run from then, but naturally more immediately after the execution". This was certainly an explicit warning of possible immediate danger. It may not be altogether without bearing on this subject of warning that beginning as early as the spring of 1926 there had been serious activities directed against American representatives and American property in different parts of the world by sympathizers of the two convicted men. Considerable information on this subject is given in the record.

A point was raised in behalf of Mexico with respect to the capacity of authorities to give protection. Correlative rights and obligations on the part of each member of the family of nations are derived from international law. It would be difficult plausibly to contend that an unreasonable request was made by the Consul, or that the Mexican authorities would have found it impracticable to comply with it. The Consul's request and the instructions which it appears were given by the Municipal President really had the same purport. It may be concluded that there would have been no great inconvenience in stationing a small guard at the Consular premises for a while, until the Consul considered it to be unnecessary, or it might be said, until the authorities had good reason to assume that it was no longer required. In international practice use is undoubtedly frequently made of such a form of protection for foreign representatives as a matter of comity and with a view to meeting international obligations.

The question of capacity to give protection has been considered in different aspects. In the case of the *Home Missionary Society*, presented by the United States against Great Britain under an arbitral agreement signed August 18, 1910, the tribunal referred to the difficulty of affording on a few hours notice "full protection to the buildings and property in every isolated and distant village". In this case the tribunal considered principles applicable to the responsibility for acts of insurgents. This Commission in the *Solis* case, *Opinions of the Commissioners, 1929*, p. 48, and in the *Coleman* case, *ibid.*, p. 56, emphasized with respect to similar questions as to the responsibility for acts of insurrectionists "the capacity to give protection, and the disposition of authorities to employ proper measures to do so". Obviously, however, any question as to capacity to give protection in cases of this character

is very different from any question of this nature that might be raised in the instant case.

It seems clearly to be proper to take some account of the argument made with respect to the special position of a consular officer. Consular officers do not enjoy immunities such as are accorded to diplomatic officers with respect to matters pertaining to exemption from judicial process and from taxation. But undoubtedly international law secures to them protection against improper interference with the performance of their functions. And it is well recognized that under international law and practice they have a right to communicate with local administrative authorities with respect to protection of their nationals. Moore, *International Law Digest*, Vol. V, pp. 61, 101. Assuredly a Consul is privileged to communicate with such officials regarding the protection of himself and the property of his Government.

In the instant case we are concerned only with requests made to officials of this character. Apart from any question as to the propriety of communicating with military authorities, as it was suggested in argument in behalf of Mexico that the Consul should have done, it must be concluded that obviously, especially in times of peace in a community such as that at Puerto México, the Consul communicated with the proper officials.

Writers on international law have repeatedly stated that consular officers are entitled, to use the language of Phillimore, to "a more special protection of international law than uncommissioned individuals". *Commentaries upon International Law*, Vol. 2, 3rd ed., p. 270. See also Vattel, *Law of Nations*, Chitty's Edition, Chapter 6, Section 75; Oppenheim, *International Law*, Vol. 1, 3rd ed., pp. 599-601. In a message sent to the Congress of the United States on December 2, 1851, President Fillmore, in referring to an attack on a Spanish Consular officer in New Orleans in 1851, interestingly mentioned the importance of consular officers in the relations of states, and observed that they as well as diplomatic officers "are objects of special respect and protection, each according to the rights belonging to his rank and station". Moore, *International Law Digest*, Vol. VI, p. 813.

It is unnecessary to give any detailed consideration to the appropriate application of generalities of this kind to individual cases. In the instant case the argument with regard to special protection is concerned with a situation in which there was a threat against the personal safety of a consular officer; some assurances of protection of that kind were received by the Consul; he was warranted in relying on them; but no such protection was given.

In the *Mallén* case decided by this Commission, *Opinions of the Commissioners*, Washington, 1927, p. 254, consideration was given to the special position of a consular officer and to the protection due to him because of his public character. Account was taken in this case of the element of warning of possible danger to a consular officer.

In behalf of Mexico it was contended that the United States was under obligation to give special protection to Mr. Mallén, Mexican Consul at El Paso, both because of his character of Consul and because protection had been asked for him by the Government of Mexico. In this case the Commission took into consideration, among other things, an act on the part of a deputy constable, Franco by name, which was considered to be a private act committed by this magistrate, who either slapped the Consul in the face or knocked off his hat. For this act Franco was fined \$5.00. No international delinquency was predicated on this occurrence, but the view was taken, in connection with a subsequent serious assault committed by

Franco on the Consul, that the authorities having had warning of Franco's animosity toward the Consul had acted imprudently and improperly in maintaining Franco in office and in not protecting the Consul by some proper method against the possibility of an assault such as occurred. Liability was also fastened on the United States on additional grounds.

A warning of imminent danger was communicated to Mexican authorities in the instant case. One official evidently took note of the warning and issued suitable instructions to meet the situation. These instructions were not carried out. Evidence in the record in connection with an investigation into the shooting of Mr. Chapman, including testimony given by the Municipal President himself, clearly shows that no such vigilance as that directed by the former was exercised. Perhaps less than what both of them suggested might have sufficed, but it appears from the evidence that no special precaution was taken.

In the light of the facts revealed by the record and in accordance with the applicable principles of law, the Commission is constrained to sustain the charge of lack of protection made by the United States in this case.

With respect to the second complaint set forth in the Memorial, there unfortunately is before the Commission but meagre information. We have only the sworn testimony of the Consul and a short record of investigations made by the Chief of the Judicial Police and by the Judge of First Instance in Puerto México.

It appears that the President of Mexico in communicating with military authorities who made some investigation in the town expressed the opinion that, in view of the smallness of that place, there seemed to be no reason why the criminal should not be apprehended. That is a reasonable conclusion, but of course the criminal may not have remained in the town. There is no record of any steps taken to capture him in any locality outside of the town where he may have gone. But it is difficult to form any conclusion as to the practicability of locating him if he left the town. The Consul emphatically expresses the view that local officials who came to the Consulate shortly after the shooting should have promptly undertaken or initiated measures of pursuit instead of lingering, as he said they did, in the Consular premises. He further expresses the confident belief that if a police officer who came to the Consulate had pursued the criminal the chances of capture would have been excellent. There seems clearly to be justification for the Consul's criticism. But conclusions of the Commission with respect to fault entailing international responsibility must be based on evidence of manifest wrong or error.

The Consul mildly criticized the inactivity of two men who he states came from Mexico City three days after the crime and represented themselves to be detectives. However, we have practically no information as to what they did.

The Consul speaks in complimentary terms of the activity of General Anayo, who it appears came to Puerto México about thirty-six hours after the shooting from San Geronimo and remained three or four days engaged in the work of investigation. The Consul speaks in similar terms about General Navarro, a local military commander. Unfortunately there is not before the Commission any record of the investigation made by the military authorities. It appears that the Judge of First Instance endeavored to obtain from General Anayo a copy of the record of that investigation, and that the General replied that it was not possible to put at the former's disposition the record of proceedings made by the office of the Chief of

Garrison at the port, since that record was of a purely military character and was made in secret. The record has not been produced by the Mexican Agency in the proceedings before the Commission. It is not clear why a report of this kind should be regarded to be of such a secret nature that it could not be produced in these proceedings for the purpose of throwing light on an important point.

From a record submitted by the Mexican Agency it appears that the crime came to the notice of the judicial police about six o'clock in the morning of July 17th, two hours after it had been committed. The Chief of the Judicial Police started to make an investigation. On the day of the crime, that is, July 17th, he took the statement of the Consul. On the following day he took a fuller statement from the Consul and also the statements of several other persons. On July 21 he turned his record over to the Judge of First Instance. The Judge of First Instance on July 25 ordered that an investigation be made with a view to apprehending and punishing the criminal. Pursuant to that order there was a re-examination of the witnesses who had already testified and of two additional witnesses. The witnesses who had previously testified merely reaffirmed their statements. The two additional witnesses contributed but slight information.

It seems to be clear that more effective measures could have been taken to apprehend the criminal, but in the light of the record before us we are not disposed to say that there was a manifest failure to meet the obligations of international law.

The Consul was seriously wounded, and it seems to be remarkable that he escaped death. His views as to the permanent character of his injuries are confirmed by his attending physician, Dr. Sparks, who, referring to the statements made by the Consul, says under oath that they are "but a mild manner of stating the facts, since manifestly a bullet could not pass through a human body as it did in this case without cutting through important tissues and leaving them in a weakened condition". The Commission considers that an award of \$15,000.00 should be made in this case.

Decision

The Government of the United Mexican States shall pay to the Government of the United States of America in behalf of William E. Chapman the sum of \$15,000.00 (fifteen thousand dollars), without interest.

SARAH ANN GORHAM (U.S.A.) *v.* UNITED MEXICAN STATES

(October 24, 1930. Pages 132-139.)

DEFINITION OF "BANDITS". There is no technical, legal definition of the term "bandits".

CONFLICTING JURISDICTION OF SPECIAL CLAIMS COMMISSION.—JURISDICTION OVER ACTS OF BANDITS. Denial of justice in respect of murder of American subject by bandits during period covered by Special Claims Convention of September 10, 1923, but not growing out of revolutionary disturbances or by groups of men operating in manner of organized banditry, *held*