REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

De Lemos Case (first reference to umpire) (interlocutory)

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property therein. The measure of duty resting upon the Government, through its officers, in this regard may determine the question of its liability in this case.

The umpire is aware that he has not touched upon many questions that might well be raised to assist in the determination of the issues in this case, and it has not been his purpose to write exhaustively thereon but to pass only upon such points as seemed to him certainly material and probably helpful in the final settlement of the case. It may be stated in general to be the position of the umpire that everything which helps to determine the primary question of a wrongful seizure under the facts and circumstances of this case so related to the Government of Venezuela that it is responsible therefor, and has admitted its liability concerning in Article III of the protocol, are properly before the Commission for its discussion and determination, and whether or not the facts and circumstances of this claim —

> constitute a case of *force majeure*, a necessary calamity in view of the exceptionable circumstances under which the country where he (claimant) resided was, and that the responsibility of Venezuela should not be declared, as an antijuridical precedent would thus be created,

as contended by the learned agent for Venezuela in the conclusion of his answer, or a rightful duty and responsibility be cast upon Venezuela to recompense the claimant for his losses, will all depend upon the answer to the questions involved, in the consideration and decision of which the opinions of the umpire here expressed may be in some degree helpful and determinative.

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De Lemos Case

Meaning of " injury " in the protocol

CONTENTION OF BRITISH AGENT — PRELIMINARY OBJECTION TO THE ANSWER

The Venezuelan agent is not entitled to set up any matter of principle as an answer to this claim, any such answer being against the terms of the protocol of February the 13th, 1903, which expressly provides for such cases:

> Article III. The Venezuelan Government admit their liability in cases where the claim is for injury to * * * property, and consequently the questions which the Mixed Commission will have to decide will only be:
>
> (a) Whether the injury took place, * * * and (b) if so, what amount of compensation is due?

Grisanti, *Commissioner* (claim referred to umpire):

I regret to differ from the British agent's interpretation of the protocol signed at Washington on the 13th of February last, as stated in his preliminary objection in which he states that the Venezuelan agent has no right to introduce any matter of principle in his objections to Mr. Ch. de Lemos' claim.

In my opinion, the Venezuelan Commissioner, as well as the agent of the Republic, always has the right of setting up the philosophical and juridic principles applicable to the case under examination, so that it is morally impossible that Great Britain, which ranks deservedly among the most enlightened nations of the world, should obtain a juridic decision, abstracting therefrom the principles of justice and the postulates of law, which comprise the most precious treasure of civilization.

The Venezuelan and British Claims Commission is a court, and to exclude justice, right, and equity from its deliberations is the same as depriving a man

of the essential attributes of his being, and nevertheless to continue considering him as a man.

The analysis of the language of the protocol strengthens the opinion held by the underwriter.

Article 3 of the protocol says in the second paragraph: " The Government of Venezuela admits their liability in cases where the claim is for injury to or wrongful seizure of property," etc. By this expression it is understood that we rely on some principle, cause, or reason; therefore the claim which has no legitimate foundation, and is not supported by juridic principles which regulate the conduct of civilized countries is inadmissible, and the tribunal of which I have the honor to be a member must reject it. The second clause says " or wrongful seizure of property." The Commission, therefore, has a right to decide with regard to the justice or injustice of embargoes.

The meaning given by the British agent to article 3 of the protocol would convert this tribunal into a mere appraiser of damages, causing it ipso facto to lose its powers of deliberation. I have shown clearly that the Venezuelan and British Claims Commission has the right and is bound to examine and decide in each case whether the claim is legitimate and whether Venezuela is bound to pay it or not; I consequently will proceed to explain the principles and reasons why the claim of Consul Ch. de Lemos is not a just one and therefore inadmissible.

A part of the troops at Ciudad Bolívar, having revolted against the National Government, the latter was under the unavoidable obligation of subduing the insurgents in order to reestablish order and make the people submit to the constitutional order from which they had suddenly withdrawn, which submission was absolutely essential for the well-being of the Republic, and to the security of national and foreign interests. The town was attacked with that object and naturally national and foreign interests were damaged. Among the latter, according to Mr. Consul de Lemos, his wife was injured.

Supposing that such a statement were proved, the Republic would not be compelled to repair the damage caused by the shells on the two houses of the above-mentioned lady. The attack on the city and the subsequent damage occasioned were not a deliberate act of the authorities, but a necessity imposed upon them in an unavoidable manner by the course of events.

Let us consult some renowned authors and eminent statesmen on international law.

363. Les gouvernements sont-ils ou non responsables des pertes et des préjudices éprouvés par des étrangers en temps de troubles intérieurs ou de guerres civiles? Cette question a été longuement discutée et finalement résolue par la négative.

Avant de fournir les preuves pratiques de notre assertion, nous développerons ici sur cet important sujet quelques considérations générales.

Admettre dans l'espèce la responsabilité des gouvernements, c'est-à-dire le principe d'une indemnité, ce serait créer un privilège exorbitant et funeste, essentiellement favorable aux États puissants et nuisible aux nations plus faibles; établir une inégalité injustifiable entre les nationaux et les étrangers. D'un autre côté, en sanctionnant la doctrine que nous combattons on porterait, quoique indirectement, une profonde atteinte à un des éléments constitutifs de l'indépendance des nations, celui de la juridiction territoriale; c'est bien là en effet la portée réelle, la signification véritable de ce recours si fréquent à la voie diplomatique pour résoudre des questions que leur nature et les circonstances au milieu desquelles elles se produisent font rentrer dans le domaine exclusif des tribunaux ordinaires.

364. A l'appui de cette doctrine nous citerons tout d'abord l'opinion exprimée en 1849 par M. le baron Gros, lors de sa mission spéciale en Grèce pour le règlement des célèbres réclamations pécuniaires de Don Pacífico. " En général," disait ce diplomate dans une de ses dépêches au gouvernement français qui a été plus tard

communiquée au parlement anglais, " il est admis en principe, et ce principe est conforme à l'équité, qu'il ne peut exister d'intervention diplomatique dans les différends où *l'autorité locale* ne se trouve pas en cause; c'est aux tribunaux et conformément aux lois du pays que la partie lésée, quelle que soit sa nationalité, doit recourir et demander justice."

Lord Stanley, traitant la même affaire au sein du parlement britannique, s'exprima ainsi: " Je ne crois pas que les gouvernements soient tenus, dans toute la rigueur de ce mot, d'indemniser les étrangers qui ont éprouvé des pertes ou des préjudices par suite de circonstances de force majeure. Tout ce qu'ils peuvent faire dans les cas semblables, c'est de protéger par tous les moyens en leur pouvoir les nationaux et les étrangers résidant sur leur territoire contre des actes de spoliation ou de violence." (Calvo. Le Droit international théorique et pratique. 3e édition, Vol. I, p. 434.)

Fiore, after establishing the principles which ought to guide the responsibility of the State for damage caused to foreigners in its territory, says:

674. Maintenant, nous allons indiquer l'application des règles que nous venons d'exposer à certains cas particuliers. Nous nous occuperons surtout de l'obligation qui incombe à l'Etat de réparer les préjudices soufferts par les particuliers pour les faits de guerre.

La règle générale qui nous paraît devoir servir à résoudre toute difficulté à ce sujet, c'est que la responsabilité des gouvernements par rapport aux étrangers ne peut pas être plus étendue que celle des souverains étrangers à l'égard de leurs propres citoyens. On ne pourrait pas, en effet, prétendre que les devoirs d'hospitalité pourraient limiter l'entier exercice du droit qui appartient à la souveraineté d'employer tous les moyens légaux pour pourvoir à la conservation de l'Etat, ou que les étrangers pourraient obtenir une position privilégiée, être exempts des conséquences fâcheuses des calamités publiques et être garantis de tout dommage qui pourrait résulter de la force majeure et de l'impérieuse nécessité de veiller à la sûreté de la chose publique.

675. Supposons qu'un pays soit agité par la révolution et par la guerre civile, et que le gouvernement pour réprimer le désordre emploie les moyens de répression requis pour sauvegarder les intérêts de l'Etat et qui ne sont pas absolument défendus par le droit international. Si par ce fait les étrangers éprouvaient un préjudice le gouvernement ne pourrait pas être déclaré responsable, ni être tenu de les indemniser du dommage par eux éprouvé. Si un gouvernement négligeait de faire tout le nécessaire pour protéger la propriété et les biens des étrangers, s'il ne s'occupait pas de réprimer les violences et les offences causées par les citoyens, il serait tenu de répondre des conséquences de sa négligence coupable; mais si le préjudice était résulté de la force majeure il n'existerait aucune responsabilité légale. L'action d'un gouvernement ne pourrait pas être paralysée par la nécessité de protéger les droits des étrangers. (Fiore, *Nouveau Droit international public*, 2e ed., vol. I, p. 582.)

1231. Les habitants des pays envahis ou occupés, quoique ne prenant pas une part directe à la lutte, ont été atteints dans leur biens. Ils ont subi des dommages matériels ou des réquisitions, payé des contributions de guerre ou des amendes. Ont-ils droit à une indemnité, et, en cas d'affirmative, à qui peuvent-ils s'adresser pour l'obtenir?

Divisons la question.

Quant aux *dommages* résultant des faits de guerre, des actes de violence et de lutte, des combats, des assauts, des bombardements, des dévastations, des incendies, du pillage, des vols commis par les soldats, etc., etc., aucun recours n'est ouvert pour leur réparation. Le droit international ne peut admettre le principe d'une action. La guerre est pour le simple particulier un cas de force majeure. Elle est pour lui un mal inévitable comme l'est une grêle, une inondation. Il est victime d'un fléau, non d'une injustice, dit Bluntschli. Juridiquement, il n'a droit à aucune indemnité. (Bonfils, *Manuel de Droit international public*, 3e éd., p. 680.)

In 1849 England claimed of Austria compensation for losses sustained by some of Her Britannic Majesty's subjects at the assault of Leghorn, and in this connection Count Nesselrode said (May 2, 1850):

According to the rules of public law, as understood by the Russian Government, it can not be admitted that a State (compelled by a revolt to repossess itself of a town occupied by the insurgents) is bound to indemnify foreigners who may have suffered damages by reason of the attack. The foreigner who settles in a country accepts, voluntarily and in advance, the risks to which the country is exposed, and as he enjoys the advantages which the natives enjoy so also must he share their misfortunes. Foreign and civil war are clearly in the same category. (Calvo, Vol. III, p. 145; Seijas, Vol. III, p. 553.)

It would not be amiss to mention the principles of the law of nations, which have been strengthened by reason of the claims founded upon the bombardment of Valparaiso, March 31, 1866. An Anglo-American firm established there experienced losses due to the burning of their goods from the cannonading. The question arose as to whether they had any right to reclaim indemnity of Spain or Chile for the injuries done. The question was referred to the attorney-general, who decided in the negative. In his opinion he states that the act, although one of extreme severity, was an act of war and can not be said to have been contrary to the laws which regulate it. It is a well-established rule in international law that the alien who resides in a belligerent country can not claim indemnification for the losses suffered on his property due to acts such as those under consideration. The attorney afterwards states the case of the bombardment of *Copenhagen by the English in 1807, in which Great Britain did not allow any claim, although the foreigners of that town suffered very serious losses, and notwithstanding that there had been no previous declaration of war to Denmark nor any justifiable motive for the bombardment.*

He also called attention to the bombardment of San Juan de Nicaragua effected by the sloop *Cyane*, to the detriment of the French residents there — through their minister at Washington — but without the express sanction of the Imperial Government they presented a claim for indemnification. Mr. Marcy, then Secretary of State, replied:

> The undersigned is not aware that the principle that foreigners domiciled in a belligerent country must share with the citizens in that country in the fortunes of war has ever been seriously controverted or departed from in practice. (Marcy, Secretary of State, to M. de Sartiges, Feb. 26, 1857.)

This maxim being the one which was proclaimed in the law of March 6, 1854, with respect to political disturbances; that which was projected in the law of Colombia of April 19, 1865; that which was the purpose of the Convention made by Mr. Toro in Santander in 1861; that which is found adopted by the treaty which this gentleman made with Italy in June of the same year, it is not understood why it has been protested against in some cases. The whole difference consists in the fact that there it was applied to a war between two States and here it is confined particularly to internal disturbances. Moreover all difficulty disappears if it is remembered that the latter either have a certain extent and other circumstances, and they are then called civil war, and they are governed by the same laws as those of international war; or they do not reach this importance, and in this supposition constitute only a private wrong such as an injury, pillage, robbery, for which no nation has ever thought to make other nations responsible. In the controversies which have given rise to the frequent claims made against Venezuela, no rule so just as well as suitable, has ever been invoked. (Report of Foreign Relations of Venezuela, 1869.)

The conduct of governments has been in perfect accord with the principles stated. The United States, in 1851, owing to the claims made by Spain in consequence of the disorders which took place in New Orleans on account of the war that harassed the Republic from 1861 to 1865; England (case above cited), in 1807; Spain, in 1850, owing to the claims of some of her subjects against Venezuela; France, in 1830, 1848, and 1871; Belgium, with regard to her struggles with Holland to obtain her independance, from 1830 to 1832 — none

of these nations has admitted that they were under the obligation of indemnifying aliens for damages caused by the wars sustained in the above-mentioned years.

371. C'est encore ce même principe ou cette même jurisprudence que l'on a vu observer lors du dernier soulèvement de la Pologne, et durant le cours de la formidable lutte intestine qui a déchiré la République des Etats-Unis d'Amérique de 1860 à 1865.

Dans ces deux circonstances un grand nombre d'étrangers ont éprouvé de cruelles pertes, et pourtant aucune nation européenne n'a songé à en faire peser la responsabilité sur les gouvernements respectivement intéressés. (Calvo, *Le Droit international théorique et pratique*. 3e éd., vol. I, p. 438.)

Referring now, more precisely, if possible, to the attack of Ciudad Bolívar, as this was occasioned by an unavoidable necessity, absolutely against the will of the Government, it clearly shows *force majeure*, which exempts the State of all responsibility for damages caused in its dominions.

I consider it very opportune to quote here what Calvo says on this point. It is as follows:

Relativement aux droits de personnes appartenant à une nationalité neutre et résidant sur le territoire d'un belligérant, les jurisconsultes anglais, en 1870, pendant la guerre entre la France et l'Allemagne, exprimèrent l'opinion que les sujets anglais ayant des propriétés en France n'avaient pas droit à une protection particulière pour leurs propriétés, ou à l'exemption des contributions militaires auxquelles ils pouvaient être astreints solidairement avec les habitants de l'endroit où ils résidaient, ou bien où leurs propriétés étaient situées, et qu'ils n'avaient non plus, en toute justice, aucune raison de se plaindre des autorités françaises parce que leurs propriétés étaient détruites par une armée d'invasion.

Une famille de sujets anglais demeurant dans la commune de La Ferté - Imbault, à l'approche des troupes prussiennes hissa le drapeau anglais au-dessus de la porte du château qu'elle habitait, espérant que la présence de ces couleurs neutres la protégerait contre toute violence; mais elle n'en eut pas moins à souffrir de pillage, de menaces et de mauvais traitements de la part de la soldatesque. Elle adressa à ce sujet une plainte à lord Granville, qui lui répondit que, bien que le gouvernement anglais regrettât vivement les tracas et les pertes qu'elle avait éprouvés, il n'était pas en son pouvoir de lui faire obtenir aucune réparation.

Un autre sujet anglais, M. Lawrence Smith, qui habitait Saint-Ouen, s'étant plaint que, quoiqu'il eût arboré le drapeau anglais sur sa maison, des soldats prussiens étaient venus loger chez lui, lui avaient pris toutes ses provisions, avaient tiré une décharge de coups de fusil dans une cave où sa famille s'était réfugiée, avaient mis le feu à sa maison et forcé sa famille de se sauver à moitié vétue dans un bois à travers la neige. Lord Granville répondit que le gouvernement anglais ne pensait pas en droit strict que la famille Smith fût autorisée à demander une indemnité au gouvernement prussien, mais qu'il était évident que la destruction de la propriété était un acte de violence commis par les troupes prussiennes par suite du relâchement de la discipline. En pareil cas il était d'avis que les faits pourraient être portés officiellement à la connaissance du gouvernement allemand, en exprimant l'espoir qu'il jugerait à propos d'ordonner aux autorités militaires de procéder à une enquête et d'ordonner, comme acte de justice, une indemnité pour les dommages commis sans raison. (Calvo, *Le Droit international théorique et pratique*, 3e éd., vol. III, p. 227, sec. 1942.)

Hence the principles of justice prohibit the admission of Consul de Lemos' claim.

There is one more reason for rejecting it; said claim is not legally proved. In the files are to be found as proofs:

First. Consul de Lemos' affidavit made on the 15th of January of the current year in presence of Mr. John Dennis Sellier, notary public. As a general rule

the testimony of a person in support of a fact is not admissible when that person is greatly interested in the establishment of said fact.

Second. The testimony of Benjamin Waithe and Antonio Villalobo, delivered in presence of the Consul de Lemos himself, is absolutely void. The fact is, that said consul can not be a judge of his own cause, and in receiving and authorizing those declarations, he has sought to be one, trying to assume two positions entirely incompatible.

Besides, in the taking of the proofs, the universally acknowledged and respected rule of *locus regit actum*, by which these declarations of witnesses should have been made before a territorial judge, has been violated.

PLUMLEY, *Umpire*:

Charles Herman de Lemos is a naturalized British subject, and at the time of the happening of the events hereinafter stated was, with his wife, Guillermina Dalton de Lemos, resident of Ciudad Bolívar, and His Majesty's consul at that city.

On the 20th, 21st, and 22nd of August 1902, the unfortified parts of Ciudad Bolívar were shelled by the Venezuelan gunboats *Bolivar* and *Restaurador*, throwing some 1,400 to 1,500 shells into the very heart of the city. Guillermina Dalton de Lemos was then the owner of two buildings situate in the said city of Bolívar, one in the Calle Miscelánea and the other in Calle Amor Patria, which buildings were then severally damaged by the said shells striking and breaking upon them, at an estimated damage of £300, for the payment of which this claim is presented to the Mixed Commission.

To this claim the learned agent for Venezuela made answer of June 18, 1903, which was presented to this tribunal on 26 June. In this answer there was no denial that the damage was inflicted substantially as in the claim presented, but these facts were alleged: A garrison in the capital of the State of Bolívar rebelled against the National Government, and the National Government, on account of the persistent rebellious attitude of the revolutionists, ordered the attack named in the claimant's statement in virtue of the right of defense and in fulfillment of its duties as such National Government for the purpose of recovering possession and control of the city, and it was in consequence of this attack and during this bombardment that the two buildings belonging to the wife of Consul de Lemos were injured. The insurrection of the forces at Ciudad Bolívar and the resulting attack on the city by the Government took place at the time when a revolution against the Government broke out in the country. Based upon the facts stated, it was claimed by the learned agent for Venezuela that the action complained of was a necessary and rightful act of the Venezuelan Government under the circumstances and conditions stated, and that the damage to the plaintiff's buildings was a natural and unavoidable damage; that this action of the Venezuelan Government was perfectly justifiable, and that there was in consequence no valid claim against his Government for the damages suffered by the claimant.

The learned agent for Venezuela made a further statement in his answer as follows:

> As regards the claim, it is unacceptable under the light of principles of public law universally accepted. One of the principles is that the foreigner who establishes himself in a country accepts spontaneously beforehand the dangers and eventualities to which said country may be subjected, and in the same way that he partakes of the advantages of the natives, so he must submit to suffer the calamities that the natives suffer. To support arguments to the contrary would be establishing for the foreigner a privilege against the national sovereignty and absolutely unsupportable in accordance with principles of equity.

To this answer, at a sitting of this tribunal of June 26, the learned agent for the British Government made reply by filing an objection thereto as follows:

CLAIM OF DE LEMOS — PRELIMINARY OBJECTION TO THE ANSWER

The Venezuelan agent is not entitled to set up any matter of principle as an answer to this claim, any such answer being against the terms of the protocol of February 13, 1903, which expressly provides for such cases:

" ARTICLE III. The Venezuelan Government admit their liability in cases where the claim is for injury to * * * property, and consequently the questions which the Mixed Commission will have to decide will only be —

(a) Whether the injury took place * * * and

(b) if so, what amount of compensation is due."

At a sitting of this tribunal on the 11th day of July the honorable Commissioner for Venezuela replied in writing to this preliminary objection, insisting that his Government had the right under the protocol and before the Commission always to adduce " the philosophical and juridical principles applicable to the case under examination," and —

that it is morally impossible that Great Britain, which deservedly ranks among the most enlightened nations of the world, should accomplish a juridical act proscribing therefrom the principles of justice, the postulates of law, which form the wealthiest treasure of civilization.

The Venezuelan and British Claims Commission is a tribunal, and to exclude justice, right, and equity from its deliberations is the same as depriving a man of the essential attributes of his being, and, nevertheless, to continue considering him as a man.

The analysis of the dead lettering of the protocol strengthens the opinion held by the undersigned.

Article 3 of the protocol says, in the second paragraph: " The Government of Venezuela admits its responsibility in the cases in which the claim is founded on damages caused to property or on unjust seizure thereof," etc. By *founded* it is understood we rely on some principles, cause, or reason; therefore the claim which has no legitimate base and is not authorized by juridical canons which regulate the conduct of civilized countries is unacceptable, and the tribunal of which I have the honor to be a member must revoke it. The second clause says " or on unjust seizure thereof." The Commission, therefore, has a right to decide with regard to the justice or injustice of embargoes.

The sense given by the British agent to Article III of the protocol would convert this tribunal into a mere appraiser of damages, causing it *ipso facto* to lose its deliberative faculties. I have shown clearly that the Venezuelan and British Claims Commission possesses the right and is bound to examine and decide in each case whether the claim is legitimate and whether Venezuela is bound to pay it or not; consequently I will proceed to explain the principles and reasons why the claim of Consul C. H. de Lemos is not a just one and therefore unacceptable.

On the 15th of July, at a session of the tribunal, the learned agent for Great Britain made an oral reply to the parts of the reply of the honorable Commissioner for Venezuela that have been quoted herein, those being the parts which he considered germane to the preliminary issue by him raised, and reasserted his position as stated in the preliminary objection, and said, among other things, that it was intended in the protocol to do away with the necessity for long discussion on such points as were made in this case, and that the protocol was drawn with a view to its exclusion, and insisting that where in any case —

it was a question as to injury to property it was intended that the only question that was to be raised was to whether the injury took place.

He also said that in the reply of the Venezuelan Commissioner there had been brought in the word " founded," which was not in the protocol as written and

signed by the high contracting parties, and that so much of the position of the honorable Commissioner for Venezuela as rested upon that was not well taken.

Following this oral reply, at the same sitting of the tribunal, the issue as made was submitted to the honorable Commissioners, who after discussion failed to agree. It was then passed to the umpire for his examination and decision.

Upon the preliminary case thus stated the undersigned, umpire by virtue of his appointment under said protocol, holds and decides as follows:

There can be no fair doubt that the language of the protocol contained in Article III and quoted by the learned agent for the British Government limits the discussion and determination of each case falling within its scope to the question of injury to the property of the claimant by the Venezuelan Government and the resultant compensation if injury is found.

As the case stands inquiry is limited to an interpretation of these expressions:

> The Venezuelan Government admit their liability in cases where the claim is for injury to * * * property, and consequently the questions which the Mixed Commission will have to decide will only be:
>
> (a) Whether the injury took place * * *.

The protocol bears proof throughout of the great care in its preparation and especially in the choice of words which with legal exactness and certainty state the several matters it contains. The importance of the document as a solemn agreement between independent nations and, in certain parts of it, the law of this Commission would be a warrant to assume all this; and examination confirms and emphasizes the assumption. It has also the qualities of conciseness, clearness, and brevity. These qualities may and in the part before us do compel a careful study of the text to determine the full force and significance of the language selected.

It is the opinion of the umpire that the word " injury " was chosen because of its legal adaptation and significance and not in its colloquial sense. To think otherwise would be to hold that the seizure of property occupied in the minds of the high contracting parties and should occupy before this Commission a position different from that of injury to property, a holding not consistent, for both are governed by the same general rules and spring from similar general conditions. To make a ruling that any injury to property and none but wrongful seizure of it was the purpose and purport of the protocol does not address itself to sound judgment.

The character of the signatory parties, the importance of the document, the evident care and skill with which it was drawn, its conciseness and precision, its rigor of expression, deny the assumption of a careless and indifferent use of words where care and discrimination was most required. It is therefore the opinion of the umpire that the word " injury " was taken by the signatory parties to import a legal wrong, and in accordance with its fixed and determinate use in law as involving and importing ipso facto an *intentional wrongdoing* on the part of those responsible therefor. This supplies the conditions concerning injury to property which are found in the protocol concerning the seizure of the same, and brings the two to a common level where in the judgment of the umpire they were placed by the high contracting parties. Without this reading of the word " injury " the two parts are dissimilar without reason, and with it they are similar with reason.

To give the word its common use would impel it over any and every damage, hurt, harm, mischief, or loss that might occur to property, whether accidental, incidental, proximate or remote, wrongful or otherwise, with or without intent, good or bad, indifferently and equally. This conclusion could find no basis of sensible acceptance if we had not the assistance of the other part of the clause

where responsibility and admitted liability are limited to wrongful seizure, but with this aid the conviction of its untenability is irresistible.

Seizure of property may be rightful or wrongful according to circumstances, hence it was necessary to define the character of seizure concerning which liability was admitted. The admission was intended to cover wrongful seizure only, and therefore it was so written down. The same limitation was intended in the expression " injury to property " and " injury " was selected because in itself it expressed that limitation. It is not to be considered there was intended a difference in responsibility to attach to these acts, and by the umpire's interpretation there is no difference. Without it there would be great and inexplicable difference.

By giving to this word its meaning in law and applying it to a document of peculiar legal importance drawn and carefully considered by minds of profound scholarship and erudition in law skilled in words accurate and apt, in sentences short, clear, and trenchant, it is certain we can do no violence to the thought. By adopting any other interpretation of the language used it becomes ambiguous, indiscriminative, and inapt.

The umpire regards the section quoted from Article III of the same import and value as though it had been written:

> The Venezuelan Government admit their liability in cases where the claim is for a legal injury to property, and consequently the question which the Mixed Commission will have to decide will only be:
> (a) Whether the legal injury took place * * *.
> (b) If so, what amount of compensation is due.

The question in each case being whether by the law governing the facts in the case there has been such an injury.

The application of this holding to the case pending will admit therein discussion and determination only upon the questions thus involved. Was the shelling of Ciudad Bolivar in all the aspects of the case presented a wrongful or a rightful govermental act?

Was the result to the property of Mrs. Guillermina Dalton de Lemos under all of the facts in the case one which she must endure without recourse as a necessary sequence, or has she fixed responsibility upon Venezuela by some wrongful act or neglect of that country?

An answer to these questions determines the status of this case.

The range of inquiry and of discussion is limited but important.

To the learned and honorable gentlemen composing this Commission the umpire will not assume at this time to specify their limitations with any further particularity. A careful consideration of the question will easily determine for each the bounds within which facts and arguments are relevant, material, and competent.

De Lemos Case (second reference to umpire)

(By the Umpire:)

Evidential value of statements improperly verified

CONTENTION OF BRITISH AGENT

PART I

The umpire has decided that the question for decision in this case is whether the " legal " injury took place, which is then particularized as being the question whether Mrs. de Lemos has fixed responsibility upon the Venezuelan Government by some wrongful act or neglect.