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**RECUEIL DES SENTENCES
ARBITRALES**

J. N. Henriquez Case

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tribunal may order such further investigation, fixing the time and place therefor, and if the commissioners are then agreed, the decision may be rendered as provided in the first part of this section.

XI

No one may attend the sittings of the tribunal except the agents or other representatives of their respective Governments, the official secretaries, and the secretary to the umpire, the claimants or their representatives, and such other persons as first obtain the authorization of the tribunal either verbally or in writing.

XII

The secretaries will keep, besides the register mentioned in Section IV, a book in which they will enter a record of the proceedings and the decisions of the tribunal in each case, and another in which they shall enter the minutes of the sittings. These books will be kept in duplicate, one copy in Dutch and the other in Spanish, and will be verified, approved, and signed from time to time by the tribunal.

XIII

The representative or agent of the respective Governments will have the right at any time before a case is taken up for final consideration to present oral or written arguments in connection therewith, but no person will be entitled to recognition before the Commission except such representative or agent.

XIV

The secretaries will be charged with the custody of all records submitted to them, and will not deliver them to anyone save the members of the Commission, taking his receipt therefor. All papers will be indorsed by them with the date of filing. If, at any time, the Government submitting the same shall demand it, it will be entitled to receive from the secretaries a copy duly certified by them of any documents or papers filed before the Commission. Documents belonging to the archives of either the Dutch legation or the Venezuelan Government and presented to substantiate any claim shall, however, remain in the custody of the parties who have presented them.

XV

All documents and records shall be considered confidential.

OPINIONS IN THE NETHERLANDS-VENEZUELAN COMMISSION

J. N. HENRIQUEZ CASE

In accordance with the accepted principles of international law, to hold a government responsible for the seizure of goods or property such seizure must be made by the government itself, through its proper authorities, or by those who had a right to act in its name or behalf; it must be made by some one having authority to express the governmental will and purpose.

A government can not be held responsible for contract obligations incurred by the authorities of an unsuccessful revolution.

A government to be considered a *de facto* government must be one that is recognized as the ruling or supreme power. It is not one temporarily in authority in a district or state in revolution against the *de facto* and *de jure* government of the nation.

The Government of Venezuela is responsible to aliens, commorant or resident, for injuries they receive in its territory from insurgents or revolutionists whom the Government could control and not otherwise. That the Government was negligent in a given case must be alleged and proved.

PLUMLEY, *Umpire*:

In this case the commissioners failed to agree, and it came to the umpire for his opinion and decision.

The umpire finds that the claimant was the sole owner of the firm of Henriquez, Cadet & Co., doing business as a merchant under that name in the city of Coro, capital of the State of Falcón, Republic of Venezuela, and that he was a subject of the Netherlands, at and during the time of the happening of the events herein complained of.

His claim is for the sum of 19,250 bolivars.

The sum of 13,513 bolivars and 4 centimos was for goods and cash voluntarily loaned or delivered to revolutionary chiefs or their official subordinates, commencing with the so-called de facto government of General Rivera, in the State of Falcón, in June, 1902.

The sum of 5,737.20 bolivars is for cash and goods — mostly cash — furnished the present Government from November, 1899, to June, 1900. This sum is admitted to be lawfully due from the Republic of Venezuela to the claimant.

It is not questioned by either party that General Rivera was in control of that portion of the Republic of Venezuela of which the claimant was an inhabitant during the time mentioned, and that he was a revolutionary chieftain warring against the constitutional Government. Neither party questions that it was a revolution in fact, nor that the funds and effects furnished General Rivera and his subordinates went for the support and the benefit of the revolutionary forces only. But the claimant insists that it was the de facto government of the State of Falcón; that he was obliged to recognize its authority, and that, being a de facto government, the Republic of Venezuela is responsible for the loans and goods furnished to the superior powers then in control of that State. It is not claimed, however, that General Rivera held any office de facto or de jure under the authority or by the consent of the Republic of Venezuela. Indeed, it is recognized and admitted that such government as there was under him was in direct opposition to the constitutional Government, and was seeking the life of that Government. So far from having the authority to pledge the Government of the Republic of Venezuela for moneys or goods, every dollar received in value by General Rivera was to be used for the destruction of the Government, which it is now sought to charge with its payment. There is no claim or proof that the loan of the money or the delivery of the goods was in fact compulsory. It was placed upon other grounds. If, however, the claimant had been compelled to pay out this money and to deliver the effects mentioned, under such circumstances that in law it would amount to the seizure of them by General Rivera, or his subordinate officers, it would not then occupy such relation to the constitutional Government as would require its payment out of the treasury of such Government.

The umpire has already held in the case of *James Crossman v. the Republic of Venezuela*,¹ in the British Mixed Commission, now sitting in Caracas, that to hold the Government of Venezuela responsible for seizure of goods or property, it must be made by the Venezuelan Government through its proper authorities or by those who had a right to act in the name of and on behalf of the Government of Venezuela; that it must be done by some one having authority to

¹ Vol. IX of these Reports, p. 356.

express the governmental will and purpose. Such, in the opinion of the umpire, is the inflexible rule of international law as held by text writers, and by courts and mixed commissions, in all cases where the revolution or insurrection had passed beyond the control of the Government.

Wharton's International Law Digest, sec. 223, quoted in Moore, 2951 :

The sovereign is responsible to alien residents for injuries they receive in his territory from belligerent action or from insurgents whom he could control. * * *

Hall's International Law, 4th ed., pages 231-2 lays down the law as follows :

When a government is temporarily unable to control the acts of private persons within its dominions, owing to insurrection or civil commotion, it is not responsible for injury which may be received by foreign subjects in their person or property in the course of the struggle, either through the measures which it may be obliged to take for the recovery of its authority, or through acts done by the part of the population which has broken loose from control. When strangers enter a State they must be prepared for the risks of intestine war, because the occurrence is one over which from the nature of the case the Government can have no control; and they can not demand compensation for losses or injuries received, both because, unless it can be shown that a State is not reasonably well ordered, it is not bound to do more for foreigners than for its own subjects, and no government compensates its subjects for losses or injuries suffered in the course of civil commotions, and because the highest interests of the State itself are too deeply involved in the avoidance of such commotions to allow the supposition to be entertained that they have been caused by carelessness on its part which would affect it with responsibility toward a foreign State.

Ralston, umpire, in the case of *Sambiaggio v. Venezuela*, before the Italian-Venezuelan Mixed Commission, now sitting in Caracas, held upon this question in part as follows :¹

1. Revolutionists are not the agents of government, and a natural responsibility does not exist.
2. Their acts are committed to destroy the government, and no one should be held responsible for the acts of an enemy attempting his life.
3. The revolutionists were beyond governmental control, and the Government can not be held responsible for injuries committed by those who have escaped its restraint.

Duffield, umpire, in the case of *Kummerow v. Venezuela*, before the German-Venezuelan Mixed Commission, late sitting in Caracas, concerning the late civil war in Venezuela, held as follows :²

From its outset it went beyond the power of the Government to control * * *. Under such circumstances it would be contrary to established principles of international law, and to justice and equity, to hold the Government responsible.

See decisions of Thornton, umpire, in the United States-Mexican Commission, Moore's International Arbitration, pages 2977-8-9-80. See the United States-Spanish Commission of 1871, *Ib.* pages 2981-2. See United States and British Claims Commission of 1871, *Ib.* 2982, 2987, 2989. See United States-Mexican Commission of 1849, *Ib.* page 2972. See United States-Mexican Claims Commission of 1868, *Ib.* pages 2973, 2902, 2900. See also *Ib.* pages 2900-2901.

Such would be the position of the present claim if the claimant was allowed to be considered as one having suffered from the taking or seizure of his property and goods by force and against his will. This is the strongest position to which

¹ *Supra*, p. 499.

² *Supra*, p. 370.

his claim can be assigned, and if in that position it is not well founded much less could it be when resting upon a basis of contract voluntarily entered into between him and those who as revolutionists had received his money and goods. As resting on such voluntary contract it would have no standing whatever before this Commission. Hence, in placing his claim for the purpose of investigation upon the same ground as though the property had been seized or forcibly taken, it is being considered from the best point of advantage possible to be given it.

A de facto government which would give this claim a position before this Commission must be one recognized as such for the Republic of Venezuela, and not one temporarily in authority in a State or district under revolution and against the will and purpose of the de jure and de facto government of the nation. Such a rule may work occasional hardship in the individual case, but it is the unvarying rule of international law, and taken as a whole works beneficially to the nation at large. Insurrections and revolutions are to be deplored, and the cases of especial hardship resulting within the territory subject to such conditions may call for sympathy, but they can have no right of compensation from the national treasury. Insurrections and revolutions more than all other forms of belligerency are always against the will of the constituted government and originate without its ability in any way to prevent them. To hold the Government responsible for the means by which its life is sought would be destructive of all governmental conditions.

Austin speaks of it [a government de facto] as one which presumably commands the habitual respect and obedience of the bulk of the people.

Halleck describes it as a government submitted to by the great body of the people and recognized by other States. (Halleck, p. 127.)

* * * * *

It has been held in England that the courts of that country will not take notice of a foreign government not recognized by the Government of Great Britain. (*City of Berne v. Bank of England*, 9 Ves., 347.)

The Supreme Court of the United States in noting the features by which a government de facto is to be discriminated, mentions as one of these, recognition by a foreign power. (*Thorington v. Smith*, 8 Wallace, p. 9.)

This power has been elsewhere styled the ruling — the “supreme power” of the country. (*Nesbitt v. Lushington*, 4 Term, 763.)

(See Moore's Int. Arb., pp. 3553-3554.)

While the government of General Rivera might have been a de facto government for certain municipal purposes within the State or District, when, for the time his was the supreme force he had power to compel respect and obedience, it lacked all of the characteristics of a de facto national government that could speak and act in the name of Venezuela.

The umpire holds concerning the responsibility of Venezuela for the acts of unsuccessful revolutionists that the Government of Venezuela is responsible to aliens, commorant or resident, for injuries they receive in its territory from insurgents or revolutionists whom the Government could control, and not otherwise. That the Government of Venezuela was negligent in a given case must be alleged and proved.

So held by the present umpire¹ in the case of the Aroa Mines, Limited, supplementary claim, recently decided by him in the British Mixed Commission, now sitting in Caracas.

See authorities supra. Also see the treaties of Italy-Venezuela, 1861;²

¹ Vol. IX of these Reports, p. 402.

² British Foreign and State Papers, Vol. 54, p. 1330.

Italy-Colombia, 1892; Spain-Venezuela, 1861;¹ Spain-Ecuador, 1888;² Spain-Honduras, 1895; Belgium-Venezuela, 1884;³ France-Mexico, 1886;⁴ France-Colombia, 1892;⁵ Germany-Mexico; San Salvador-Venezuela, 1883.⁶

These are identical in principle with the one between Germany and Colombia of date 1892, which is here quoted:

It is also stipulated between the contracting parties that the German Government will not attempt to hold the Colombian Government responsible, unless there is due want of diligence on the part of the Colombian authorities or their agents, for the injuries, vexations, or exactions occasioned in time of insurrection or civil war to German subjects in the territory of Colombia, through rebels, or caused by savage tribes beyond the control of the Government.

The umpire allows the sum of 6.164 bolivars, which is the sum of 5,737.20 bolivars for which he holds the Government of Venezuela responsible, including interest for two years and six months at 3 per cent, and disallows the claim of 13,513.04 bolivars. and judgment may be entered accordingly.

BEMBELISTA CASE

No compensation will be allowed for injuries received in the course of battle, and in the rightful and successful endeavor of the Government to repossess itself of one of its important towns.

It will always be presumed that the Government will be careful in the direction of the fire of the troops.

The general rule is that the bombardment of an open city is not admissible.

PLUMLEY, *Umpire*:⁷

This case came to the umpire on the disagreement of the Commissioners.

This claim is founded upon injuries to the claimant's dwelling house, furniture, and ware service by the Government troops in the engagement which took place at Puerto Cabello on the 11th day of November, 1899, which damages the claimant estimates at 1,900 bolivars.

The proofs show that the house was situated about 12 meters distant from one of the intrenchments of that town, and that it sustained serious injuries by the bullets during the severe fight which resulted in the taking of said town by the Government forces under the command of Gen. Ramón Guerra, the town being defended by the troops under General Paredes. The proofs further show that this house was at one of the points where the attack upon the town had been most formidable.

There seems to be no question as to the facts being as alleged by the claimant. but these facts indisputably show that the injuries complained of were received at a time and under such conditions as to forbid any recovery from the Government by the claimant. His injuries were received in the course of battle and in the rightful and successful endeavor of the Government to repossess itself of one of its important towns and ports. The Government owed a duty to the

¹ Idem, Vol. 53, p. 1050.

² Idem, Vol. 79, p. 632.

³ Idem, Vol. 75, p. 39.

⁴ Idem, Vol. 77, p. 1090.

⁵ Idem, Vol. 84, p. 137.

⁶ Idem, Vol. 74, p. 298.

⁷ For a French translation see Descamps-Renault *Recueil international de traités du XX^{eme} siècle, 1903*, p. 874.