

**REPORTS OF INTERNATIONAL  
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ARBITRALES**

**The Lottie May Incident (Great Britain, Honduras)**

18 April 1899

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## THE *LOTTIE MAY* INCIDENT

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**PARTIES: Great Britain, Honduras**

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**COMPROMIS: Agreement of 20 March 1899**

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**ARBITRATOR: A. Beaupré, Chargé d'Affaires of the United States  
at Guatemala**

**AWARD: 18 April 1899**

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Insurrection—Detention of neutral merchant ship and arrest of its captain—Whether unlawful under international law—Neutrality—Effective blockade—State responsibility—Act of State officials—Doctrine of obedience and rule of *respondeat superior*—Application of military measures to aliens—Compensation for loss or damage resulting from—Measure of damages suffered by ship and its captain.

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Insurrection — Détention d'un navire de commerce neutre et arrestation de son capitaine — Caractère et conséquences juridiques — Neutralité — Blocus effectif — Responsabilité de l'Etat — En raison des actes de ses fonctionnaires — Théorie de l'obéissance et règle de *respondeat superior* — Application aux étrangers des mesures militaires — Indemnité pour perte ou dommage en résultant — Evaluation des dommages subis par le navire et son capitaine.

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## SYLLABUS <sup>1</sup>

In July, 1892, the British schooner *Lottie May* put into Roatán, a port in the island of Roatán, off the coast of Honduras, unloaded a cargo of provisions and asked for a clearance for Great Caiman, from whence it had come. Clearance was refused, because of revolutionary troubles prevailing on some part of the Honduras coast, and subsequently the captain of the schooner was arrested, because, as alleged and denied, he used insulting and vile language to the authorities. He was kept in jail, to the injury of his health, as alleged, for six days, and the vessel detained during that time, at the end of which time he was permitted to go. The British Government claimed damages to the amount of £300 for the captain and £200 for the vessel. The Honduran Government maintained that it was not responsible for damages of any amount. By an Agreement signed on 20 March 1899, the two Governments referred the case to the determination of M. Arthur Beaupré, *Chargé d'Affaires ad interim* of the United States of America at Guatemala, who rendered his award on 18 April 1899.

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<sup>1</sup> *Papers relating to the Foreign Relations of the United States*, 1899, p. 371.



AGREEMENT OF 20 MARCH 1899 <sup>1</sup>

Angel Ugarte, *Chargé d'Affaires* of the Government of Honduras, and George Jenner, Resident Minister of Her Britannic Majesty, both specially appointed by their respective Governments to arrange arbitration and take appropriate steps to settle the *Lottie May* dispute between Honduras and Great Britain, having exhibited their respective full powers, found in good due form, have agreed on the provisions set forth in the following articles:

1. Mr. Arthur Beaupré, Consul-General and Secretary of Legation and, at present, *Chargé d'Affaires ad interim* of the United States of America is hereby appointed Arbitrator to take cognizance of and decide the question.

2. The representatives of Honduras and Great Britain shall submit their statements in writing to the Arbitrator within ten days from the date hereof.

3. Each party shall give a copy of its statements to the other party for reply thereto and shall allow a period of ten days for that purpose.

4. Both parties may submit with the said statements such written evidence in support of their claims as they deem appropriate.

5. The Arbitrator shall issue his award not more than one month after receipt of the statements of both parties.

6. The representatives of Honduras and Great Britain agree to accept the Arbitrator's decision as final, to conform to it, and to carry it out in good faith without any unnecessary delay.

In witness whereof they hereby sign the present Agreement, in the Spanish and English <sup>2</sup> languages, on this 20th day of March 1899.

(Signed) ANGEL UGARTE

(Signed) G. JENNER

As evidence that he accepts the duties of Arbitrator, Mr. Beaupré hereby signs this instrument together with the above-mentioned parties.

(Signed) A. M. BEAUPRÉ

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<sup>1</sup> Spanish text in: *Incidente "Lottie May", Arbitramento entre la República de Honduras y la Gran Bretaña*, Tegucigalpa, Honduras, 1899, p. 3. Translation by the Secretariat of the United Nations.

<sup>2</sup> English text not available.



## ARBITRAL AWARD RENDERED ON 18 APRIL 1899<sup>1</sup>

THE UNDERSIGNED (by office Secretary of Legation and Consul-General, and at the time of submission of this incident to arbitration *Chargé d'Affaires ad interim* of the United States of America in Guatemala City, although acting in the present case in a personal capacity),

HAVING BEEN APPOINTED by the duly accredited and authorized representatives of their respective Governments as Arbitrator in the claim by Her Britannic Majesty's Government against the Government of Honduras for compensation owed by the latter to the former in respect of the alleged detention in 1892 of the schooner *Lottie May* and the arrest of its master by the authorities of Roatán, capital of an island of the same name, adjacent to the north coast of Honduras,

HAS DULY CONSIDERED the evidence and the arguments submitted by the parties, and, being fully acquainted therewith, has rendered the following award:

The case presented by Her Britannic Majesty's Government submits the following points to the Arbitrator:

1. The refusal to grant clearance to, and the detention of, the English schooner *Lottie May*.

2. The unlawful arrest, imprisonment and ill-treatment of Captain E. Bodden, master of the *Lottie May*.

In the light of the arguments adduced and the evidence submitted, the legality of the measures taken by the Honduran authorities in respect of the ship and its master and the admissibility of Her Britannic Majesty's Government's claim must be considered from three points of view, namely:

(1) Were the Honduran authorities legally entitled, in the circumstances, to refuse clearance to the *Lottie May* and to detain it for six days?

(2) Were there reasonable and lawful grounds for the arrest and imprisonment of Captain Bodden?

(3) Was it permissible to resort to the diplomatic channel in this case without first having taken legal action in the Honduran courts?

*Firstly:* This is clearly a question of international law in accordance with which a long series of decisions maintain almost without exception that a Government cannot normally close any of its ports which are in the hands of a foreign enemy or of insurgents except by an effective blockade and that it must pay compensation if its authorities refuse to grant neutral ships clearance for ports where no such blockade exists. In this respect, a *de jure* Government in conflict with insurgents must be responsible for the payment of compensation, in exactly the same way as a Power at war with another Power. If the exigencies of war give rise to interference with neutral merchant ships other than in connexion with the blockade or with arrest

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<sup>1</sup> Spanish text in: *ibid*, p. 103. Translation by the Secretariat of the United Nations.



at sea for carrying contraband of war, appropriate compensation for any loss suffered must be paid.

There is another element which must be taken into consideration in connexion with this point: Captain Bodden asserts that he first of all asked for clearance for a port in the northern part of the island of Roatán which was not occupied by the insurgents, and that later he asked for clearance for Grand Caiman, an English port. This is confirmed by *Comandante Fuentes* as far as the first request is concerned, and no better evidence could be desired.

It is my opinion that the testimony of the interested parties must be accepted as evidence and that its veracity must be determined in the light of the other testimony and of the circumstances of the case.

After due consideration of the evidence, my conclusion is that the detention of the ship was irregular and unlawful and that adequate compensation should be paid to its owner for the loss and damage suffered by him on account of the actions in question, and I so find.

*Secondly*: It appears that the detention of the ship and the arrest of the master were merely parts of the same act, as the temporary *Comandante* believed that the latter action was necessary in order to ensure the former. I must believe that throughout the whole incident Mr. Fuentes kept clearly in mind his superiors' orders not to allow any ship to leave for six days so that no intelligence could reach the enemy. He stated that Captain Bodden requested, and was refused, clearance for the north coast of the island, and then requested clearance for Trujillo, which was also refused in accordance with the orders referred to. It is not claimed that any part of the island of Roatán was in the hands of the insurgents.

The evidence is conflicting regarding the time of the arrest, whether or not the Captain used insulting language, and what he really said. Although I can easily understand that an angry seaman might on such an occasion use vulgar and even offensive expressions, nevertheless the evidence which I have before me does not convince me that the Captain was arrested for a deliberate insult to the flag, but rather that he was arrested for threatening to leave without clearance and that the expedient of imprisoning him was resorted to in order to detain the ship. In that case, if the detention of the *Lottie May* was unlawful, then the arrest of its Captain was unlawful also, and I must so find concerning this second point.

*Thirdly*: The rule that persons who go to a foreign country in order to reside or engage in business there must obey its laws and submit themselves to its established tribunals in good faith, or that when merchant ships of one country visit ports of another country for trading purposes they owe temporary allegiance to and are subject to the jurisdiction of that country, hardly enters into consideration in this case.

When the incidents in question took place, the guarantees of individual liberties had been suspended in Honduras, and the law applying a state of siege had been substituted for civil law. For this reason, it has been held that the *Comandante* had full authority to make the arrest without having recourse to the courts. It was therefore an official act carried out by him by virtue of the powers invested in him as a military servant of the Nation. It was an act of the Government, carried out under an order of the Government on its behalf, and the doctrine of obedience and the rule of *respondeat superior* makes the Government responsible for the detention of the ship and the arrest of its captain. An individual cannot be held liable in his private capacity as an offender or a criminal for an act committed *jure belli* on the

authority of his Government. The contention that a Government is not obliged to pay for loss or damage resulting from the application of military measures, including arrest or imprisonment, to foreigners when public policy calls for such a procedure cannot be accepted under the principles of International Law. The detention of the *Lottie May* was the result of an executive order of the Government: the *Comandante* carried out the order in his own name and the arrest of the captain was a concomitant part of the incident.

In cases such as this, I am of the opinion that it is not essential to have resort to the local tribunals before using the diplomatic channel, and that the claim has consequently been submitted in good and due form.

The question of the amount of damage suffered is not easy to decide. The correspondence which I have before me shows that although Her Britannic Majesty's Government set this amount at a total of £500, namely: £200 for the owner and £300 for the master of the ship, the matter was never discussed, the Honduran Government always maintaining that it was not responsible for damages of any amount.

The demurrage is *ex-delicto*, as I assume that it must be determined in the light of all the circumstances, taking into account the usual earnings of the ship on its customary voyages and its expenses such as wages and provisions, depreciation and overheads. No evidence has been presented regarding these points. The *Lottie May* was a schooner of little value, with a registered tonnage of only 22 tons, and I cannot believe, in the absence of any evidence on this particular point, that its actual losses could amount to £200 in six days. In consideration of all the facts and circumstances, however, I am compelled to rule that £100 is due to the owner of the ship for its detention.

To arrest an innocent person and confine him for six days in prison is undoubtedly a very serious matter, and he is entitled to compensation. Although Captain Bodden appears to be innocent of any technical offence under international law, or, to state it more clearly, although the evidence is not conclusive enough to warrant the finding that his arrest was justified, there are nevertheless circumstances which militate against the award of heavy damages. I am of the opinion that £150 would be ample compensation, and I so find.

Consequently, in view of the foregoing the Government of Honduras must pay Her Britannic Majesty's Government, in the form and manner laid down in the *Compromis* relating to this incident, the sum of two hundred and fifty pounds (£250)—£100 for the owner of the *Lottie May* and £150 for Captain E. Bodden.

Done at Guatemala City this 18th day of April 1899.

(Signed) A. M. BEAUPRÉ