

**REPORTS OF INTERNATIONAL  
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES  
ARBITRALES**

Mixed Commission established under the Convention concluded between the  
United States of America and Costa Rica on 2 July 1860

**Case of Accessory Transit Company v. Costa Rica,  
decision of the Umpire, Commander Bertinatti, dated 31 December 1862**

Commission mixte établie en vertu de la Convention conclue entre les  
États-Unis d'Amérique et le Costa Rica le 2 juillet 1860

**Affaire concernant l'Accessory Transit Company c. le Costa Rica,  
décision du Surarbitre, Commandant Bertinatti, datée du 31 décembre 1862**

31 December 1862

VOLUME XXIX, pp.78-82



NATIONS UNIES - UNITED NATIONS  
Copyright (c) 2012

tion and a proof of a determined and constant intention to become a *bona fide* citizen of the United States.

“The residence of a man”, says Hon. Judge Daly, “is the place where he abides with his family, or abides himself, making it the chief seat of his affairs and interests.” Now, the residence of Crisanto Medina for many years previous to 1856 had been, no doubt, at Costa Rica, where he abode with his family and made it the seat of his business. During that year he visited New York, declared there his intention to become a citizen of the United States, and immediately went back to Costa Rica, where he continued to abide and to have the seat of his business. Moreover, he engaged there in business requiring his presence for many years to come, and accepted the office of consul resident for Ecuador.

Three years after that declaration the said claimant made another visit to New York, took out his naturalization papers and went back to reside in Costa Rica. That he left or did not leave his family in New York or in any other part of the United States during those three years between 1856 and 1859 is immaterial. In fact, he did not reside in the United States either five years or three years; nor even one year in the State of New York. Had this been represented to Hon. Judge Daly, he could not have granted the certificate of naturalization; and should the case be legally brought now before that learned judge he could not hesitate a moment to set aside that certificate. . . .

In conclusion, my opinion is that the claimants have no standing before this commission, and therefore, without prejudice to their rights and actions against the Government of Costa Rica, to be asserted before the ordinary tribunals, I hereby dismiss their demand.

**Case of Accessory Transit Company v. Costa Rica, decision of the  
Umpire, Commander Bertinatti, dated 31 December 1862\***

**Affaire concernant l'Accessory Transit Company c. le Costa  
Rica, décision du Surarbitre, Commandant Bertinatti, datée du  
31 décembre 1862\*\***

Recognition of government—new government of Nicaragua, born from a revolution and piratical in its origin, became the only *de facto* government of that State—recognition by the United States of the *de facto* government as belligerent and as the regular government of Nicaragua.

---

\* Reprinted from John Bassett Moore (ed.), *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. II, Washington, 1898, Government Printing Office, p. 1560.

\*\* Reproduit de John Bassett Moore (éd.), *History and Digest of the International Arbitrations to Which the United States has been a Party*, vol. II, Washington, 1898, Government Printing Office, p. 1560.

Nature of the war—war of Costa Rica against the *de facto* government was a public and regular war which was fought as such on both sides and according to the civilized usages of warfare with the mutual recognition of all rights of belligerents.

Treaty interpretation—meaning of “belligerent” under the Convention of 2 July 1860—treaty provisions showed that negotiators acknowledged that the war between Costa Rica and Nicaragua was a public war—once concluded the Convention formed a *jus constitutum*.

*Jure bellicum*—destruction and capture of wharf and steamers used in a war, regardless of the owners’ nationality, considered as necessary operation of war.

Reconnaissance de gouvernement—le nouveau gouvernement du Nicaragua, issu d’une révolution et d’origine irrégulière, est devenu le seul gouvernement *de facto* de cet État—reconnaissance par les États-Unis du gouvernement *de facto* comme belligérant et comme gouvernement régulier du Nicaragua.

Nature de la guerre—la guerre du Costa Rica contre le gouvernement *de facto* était une guerre publique et régulière qui a été menée comme telle par les deux parties, en conformité avec les usages civilisés de la guerre et dans la reconnaissance mutuelle de tous les droits des belligérants.

Interprétation des traités—signification du terme “belligérant” dans le cadre de la Convention du 2 juillet 1860—les dispositions conventionnelles démontrent que les négociateurs reconnaissaient que la guerre entre le Costa Rica et le Nicaragua représentait un conflit public—une fois conclue, la Convention constituait un *jus constitutum*.

*Jure bellicum*—la destruction et la capture d’embarcadères et de bateaux à vapeur utilisés pour la guerre sont considérées comme une opération militaire nécessaire, quelle que soit la nationalité de leurs propriétaires.

\*\*\*\*\*

In this case the original demand was for \$68,000 and interest, damages arising from the burning of a wharf at Virgin Bay in Nicaragua. Very lately an additional demand was presented to the commission for \$305,000 and interest, damages derived from the capture of fourteen steamers on the river San Juan and on the Lake Nicaragua. The commissioner for Costa Rica rejected both demands, while the other commissioner thought of awarding the claimant, for damages and interest, the total of \$493,542, declaring at the same time that he had been unable to discuss, as he had desired all the points, in consequence of the case having been submitted to the commission only thirty-six hours before its time expired. Called by the disagreement of the commissioners to decide this case, I have carefully examined all the documents, briefs, and observations which were presented; given opportunity to both parties for new observations, in order to make up for the shortness of time complained of by the commissioner for the United States, and read the new briefs presented

to me by the parties, which were communicated to each other by me, as also to the commissioners, both of whom I have heard on the controverted points. The claimant is a citizen of the United States, but appears as a receiver of the "Accessory Transit Company", which was a corporation created by and under the law of the Government of Nicaragua by corporators who were qualified in the charter as "all citizens of the United States".

It appears that many and serious difficulties existed between the said company and the Government of Nicaragua in 1854, and that the party then in power was "distinguished for its hostility to the citizens of the United States." That company saw with satisfaction a revolution which overthrew that government and established a new one by the aid of a small band of adventurers commonly called "filibusters"; they were almost all citizens of the United States, led by a William Walker, he also a citizen of the United States.

The Atlantic and Pacific mail and passenger steamers, in connection with the transit route of said company, continually carried aid of men, arms, and ammunition to the filibusters, contributing greatly to their success. The complicity of the "Accessory Transit Company" with the filibusters from the beginning of their enterprise in Nicaragua, is satisfactorily proven in this case.

The new government of Nicaragua, commonly called Rivas-Walker, was inaugurated in October 1855, and, though illegitimate and piratical in its origin, it was in fact and continued long to be the only government of that state. At the beginning of March 1856 Costa Rica declared war against that government, with a view to drive the filibusters out of Central America and save herself from impending danger.

Whatever may have been the language adopted by Costa Rica in regard to Nicaragua, Rivas-Walker and the filibusters, the fact, which is more eloquent than words, shows that it was a *public war and a regular war*, fought as such on both sides according to the civilized usages of warfare, during about two years, which witnessed victories and reverses on both sides, as also the mutual recognition of all the rights of belligerents. In the mean time the United States recognized the Rivas-Walker government, not only as *belligerent*, but as the regular government of Nicaragua. To make new investigations, as was done in the two briefs last submitted to me, about the character of the war between Costa Rica and Nicaragua, in order to know if it was *public* or of other kind, and deduce from the knowledge this or that consequence in favor of the claimant, seems to me all lost work. It is enough to read the convention of July 2, 1860, and take it in connection with the rules of interpretation laid down by the best publicists, and forcibly applied by the learned and distinguished Crittenden in regard to the meaning of the phrases used in a public treaty (see official opinions of the Attorneys-General, vol. 5, p. 331 and seq.), in order to see that the question has there been resolved. The high contracting parties, before concluding the convention and when the matter was *de jure constituendo*, were at liberty to investigate the nature of that war, inquiring if it was public or if it was just, in order to give it an appropriate character; they could also have

investigated the causes of that war, considered it from a political or military point of view, established the nationality of the combatants and showed the final object of the same war. This was the work for the negotiators of the said convention, and the matter for their discussions. What may have been the practical result of such investigations, what may have been the conclusions of the negotiators, in regard to the legal and international consequences of the same war, it can be inferred, now that the treaty has been concluded, forming a *jus constitutum*, only from the words used in that instrument. These words are quite clear: "No claim," says the proviso of the 1st article, "of any citizen of the United States who may be proved to have been a belligerent during the occupation of Nicaragua by the troops of Costa Rica or the exercise of authority by the latter within the territory of the former, shall be considered as one proper for the action of the board of commissioners herein provided for." The expression "belligerent," with the consequences depending upon it; the expression "occupation by forces"—*occupatio bellica*—with the rights belonging to the military occupant; the acknowledgment of the authority of Costa Rica in the territory of Nicaragua; the penalty against the belligerent consisting in depriving him of action for indemnity before this commission, all concur to show that the negotiators acknowledged the war between Costa Rica and Nicaragua as a *public war* and a *just war* on the part of Costa Rica, and thus acknowledged also the rights arising from the same. Consequently Costa Rica has no question of right to discuss with the *belligerent*, in accordance with said convention. For her the proof of the fact of belligerency is enough in order to oppose [*i.e.*, set up] the want of any right of action, and say that the claimant has *no locum standi in judicio*.

Now it being shown by Costa Rica that the burning of the wharf complained of was a necessary operation of war, and that such also was the capture of the steamers, I find it useless to discuss here the effects of the *domicil* in Nicaragua in regard to this claim; for either as a corporation existing only as a moral being assimilated to a natural person in the state of Nicaragua, or as an *actual belligerent* there against Costa Rica, said company has no standing before this commission. It is alleged, however, in behalf of claimant that the "Accessory Transit Company," as a Nicaraguan corporation, ceased to exist in February 1856, when the Rivas-Walker government of Nicaragua revoked its charter, seized its property and sold it for the benefit of the state to another company, which took out a new charter and continued the business on its own account. It was this new company that made itself liable to the charge of belligerency during the occupation of Nicaragua by Costa Rica. It seems that Costa Rica ignored that mysterious transaction, by which the old company was dissolved and a new one formed by the members of the first, without any apparent change, except more determined efforts in favor of the filibusters. It was immaterial, however, for Costa Rica to know who were the owners of the wharf and steamers used in a war against her; she destroyed the first and captured the others *jure bellico*.

Apart from other considerations, if it be true that the wharf when burnt and the steamers when captured did not belong to the "Accessory Transit Company," because this did not exist and they had been disposed of to another company, I can not see how an action for damages can be maintained in the name of the extinct company, if it is not against those members of the old company who formed the new one and bought the said property. Upon them would fall the responsibility, if the justice of the transaction could not be sustained before a competent tribunal. Costa Rica has nothing to do with that question. I can not see also how the theory of the things retaken by neutrals from a pirate can be applied to this case. First of all, the wharf was not retaken, but burnt, and the steamers also mostly perished in the continued struggle for their possession, what remained of them would hardly pay the expense of capture. Second, as I have observed before, the Rivas-Walker government was the only one existing at Nicaragua, and was recognized as a regular government. Third, the proceedings of that government against the "Accessory Transit Company" were not acts of violence or open injustice; on the contrary they were marked by a show of strict legality and accompanied by an exposé of motives making a strong case in favor of that government.

In regard to the steamers, however, it is alleged by the claimant that President Mora, of Costa Rica, agreed to capture them with his own forces and then deliver them to Cornelius Vanderbilt, president of the "Accessory Transit Company." I deem it useless to investigate the effects which this unilateral convention might have had; for its existence is not proved. Vanderbilt says that he dispatched an agent to aid in the capture of said steamers, with the idea of coming to some arrangement afterward, and this agent says that when he requested President Mora to give up the captured steamers, he gave first an evasive answer and afterward declined, though showing an inclination to treat, probably, for their sale when the war should be over. Costa Rica had sufficient motive to capture those steamers even without the invitation of Vanderbilt, and perfect right to do so without his consent. Now, if Vanderbilt cooperated by his agent with Costa Rica, he may at all events be entitled to a compensation, which seems to have already been paid to his agent. It seems beyond probability that President Mora should have agreed to deliver those lawful prizes to Vanderbilt while the war continued to rage and the possession of those steamers was all important to obtain victory.

Another obstacle to the admission of the demand relative to the steamers arises from the fact that it was presented too late. The jurisdiction of this commission has been limited to the claims which were duly presented before July 2d, 1860. In conclusion, my opinion is that the "Accessory Transit Company," by David Colden Murray, receiver, has no standing before this joint commission, and I hereby dismiss the demand in this case.