

**REPORTS OF INTERNATIONAL  
ARBITRAL AWARDS**

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**RECUEIL DES SENTENCES  
ARBITRALES**

**Hazel M. Corcoran (U.S.A.) v. United Mexican States**

13 April 1929

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the reasoning on which the conclusion is based. In my opinion the fact that a request for protection is not revealed in the record of a case involving a complaint of lack of protection can have no important bearing on the merits of such a complaint under international law. The fact that a request for protection has not been made does not relieve the authorities of a government from protecting inhabitants. Protection is a function of a State, and the discharge of that function should not be contingent on requests of the members of a community. On the other hand, in determining whether adequate protection has been afforded in a given case, evidence of a request for protection may be very pertinent in showing on the one hand that there was necessity for protection and on the other hand that warning of possible injury was given to the authorities. Of course such warning may also come in other ways as through information with respect to illegal acts.

*Decision*

The claim of the United States of America on behalf of F. M. Smith is disallowed.

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HAZEL M. CORCORAN (U.S.A.) *v.* UNITED MEXICAN STATES

*(April 13, 1929, concurring opinion by American Commissioner, April 13, 1929. Pages 211-213.)*

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JURISDICTION. CONFLICTING JURISDICTION OF SPECIAL CLAIMS COMMISSION.

Fact that murderer of American subject escaped from jail at a time when revolutionary forces were approaching did not render claim based on failure to apprehend or punish him one within jurisdiction of Special Claims Commission, United States and Mexico.

DENIAL OF JUSTICE.—FAILURE TO APPREHEND OR PUNISH.—ESCAPE OF GUILTY PARTY FROM JAIL. Murderer of American subject escaped from jail on May 7, 1920, an order to arrest him was not made until on or about May 20, 1920, information as to his whereabouts was not acted on for a month, and he was never reapprehended. Claim *allowed*.

*The Presiding Commissioner, Dr. Sindballe, for the Commission:*

In this case claim in the sum of \$50,000.00, United States currency, is made against the United Mexican States by the United States of America on behalf of Hazel M. Corcoran, an American citizen, for alleged failure of the Mexican authorities duly to prosecute one Alfredo Ibarra, who on February 28, 1920, shot and killed the husband of the claimant, Raymond A. Corcoran.

The murder took place at the Santa Gertrudis Mine in the State of Hidalgo, Mexico. The deceased was the superintendent of the Santa Gertrudis Mining Company, and the murderer was an employee of that company. Immediately after the murder Ibarra was seized by the guards of the company and delivered to the appropriate Mexican authorities. He was committed to jail at Pachuca, Hidalgo, Mexico, and criminal proceedings were instituted against him. In the morning of May 7, 1920, however, all

the prisoners of the jail at Pachuca, some 150 men, including Ibarra, escaped. It is alleged that the Obregón revolutionary forces were approaching the town at that time, and that they entered the town on the same day. The warden of the jail has testified that the guard of the prison withdrew in the morning of the said day, that he then organised his employees into a guard and requested aid of the mining companies, but that he could not prevent the prisoners, who had broken some of the padlocks, from escaping. The personnel of Court at Pachuca also testified that the padlocks were broken by the prisoners. In the course of the following months some of the prisoners were reapprehended, but Ibarra was never reapprehended.

The respondent Government argues that the present case is not within the jurisdiction of this Commission, the release of Ibarra being due to the activity of the Obregón revolutionary forces. As it is not even alleged, however, that the release of Ibarra was due to a direct act of the Obregón forces, and as no connection between the failure to reapprehend Ibarra and revolutionary movements in Mexico has been shown, the Commission is of the opinion that the case is within its jurisdiction.

The circumstances surrounding the release of Ibarra would hardly justify the Commission in giving an award in the present case. But in view of the failure to reapprehend Ibarra the Commission is of the opinion that an award should be given. It appears that an order to arrest Ibarra was not issued until May 20, 1920, or one of the immediately preceding days. It further appears that on September 8, the American Chargé d'Affaires in Mexico City informed the Mexican authorities that the murderer was in Pachuca, but this communication was not brought to the knowledge of the local Mexican authorities until a month afterwards, and there is no evidence to show that steps, with a view to reapprehend Ibarra, were actually taken, although it would seem reasonable to assume that if serious efforts had been made, some report regarding the result thereof would have been given to the American Embassy, which made inquiries several times, and was promised information about the result of the proceedings.

The Commission is of the opinion that the amount to be awarded can be properly fixed at \$6,000.00, United States currency.

*Nielsen, Commissioner:*

I concur in the award of \$6,000.00. I should not want to be understood to take the view that the release of Ibarra is an immaterial point in the case. In my opinion that release and the absence of action to reapprehend and punish the murderer clearly revealed a situation with respect to the administration of justice that is below the standards prescribed by international law.

From records before the Commission it appears that some eighteen prisoners were reapprehended and tried on a charge of escape. The general tenor of the evidence given by these persons is that they walked out of jail freely, the doors being opened and there being no impediment to their departure. It appears that on motion of the *Ministerio Publico* persons who thus left the jail were acquitted by a judge of the charge of escape on the ground that they simply without restriction left jail.

For example, one prisoner, serving a sentence for the crime of homicide, testified that the vice president of the prison caused all the prisoners to enter into formation in the court yard and stated that orders had been received to open the doors of the jail for the purpose of releasing every one. He further testified that all the prisoners, leaving in an orderly manner,

passed through the warden's office where they found the warden who said nothing.

*Decision*

The United Mexican States shall pay to the United States of America on behalf of Hazel M. Corcoran \$6,000 (six thousand dollars) United States currency, without interest.

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ADOLPH DEUTZ and CHARLES DEUTZ (A CO-PARTNERSHIP)  
(U.S.A.) *v.* UNITED MEXICAN STATES

(April 17, 1929. Pages 213-216.)

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NATIONALITY, PROOF OF. Evidence of birth, residence, voting and jury service in the United States *held* sufficient proof of American nationality.

CONTRACT CLAIMS.—NECESSITY OF TENDER OF DELIVERY. Refusal of delivery of part of order of goods by Mexican Government *held* sufficient basis for claim for refusal to accept entire order. When, however, no tender of delivery whatever of any part of an order of goods was shown, claim *disallowed*.

MEASURE OF DAMAGES. LOSS OF PROFITS. Claimants contracted to deliver certain merchandise to the Mexican Government and, although partial delivery was tendered, the latter refused to accept the same. Claimants thereafter sold such goods for less than cost and ceased further deliveries under the contract. *Held*, as to the delivered goods, claimants are entitled to the difference between the contract price and cost price of the goods plus the losses sustained on resale, and, as to the undelivered goods, their loss of profits measured by contract price less cost price less overhead.

*The Presiding Commissioner, Dr. Sindballe, for the Commission:*

In this case claim in the sum of \$103,540.32, United States currency, with interest thereon, is made against the United Mexican States on behalf of Adolph Deutz and Charles Deutz, a copartnership, doing business under the firm name of A. Deutz and Brother, for alleged failure of the Mexican Government to fulfill obligations arising out of four orders for textile merchandise placed with the claimants in 1920 by departments of the Mexican Government.

Both of the claimants stated in affidavits that they were born in the United States, and there is further evidence to show that during a long period of time they have been residents of the United States and that they have exercised the privilege of voting at various elections and of serving on several juries. The Commission is of the opinion that this sufficiently establishes the American citizenship of the claimants.

The orders placed were as follows: