

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Mrs. Elmer Elsworth Mead (Helen O. Mead) (U.S.A.) v. United Mexican States

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Decision

The claim of the United States of America on behalf of Jane Joynt Davies and Thomas W. Davies is disallowed.

MRS. ELMER ELSWORTH MEAD (HELEN O. MEAD) (U.S.A.) *v.*
UNITED MEXICAN STATES

(October 29, 1930. Pages 150-157.)

DUTY TO PROTECT ALIENS.—RELEVANCY OF REQUESTS FOR PROTECTION.—FAILURE TO PROTECT.—CAPACITY TO GIVE PROTECTION.—DUTY TO PROTECT IN REMOTE TERRITORY. Claimant's husband was murdered by bandits December 14 or 15, 1923, in a somewhat sparsely populated territory in which conditions of lawlessness had existed since 1910. The region was known to be infested with bandits and frequent acts of lawlessness occurred. It did not appear whether protection was requested of the authorities. *Held*, (i) whether or not requests for protection are made does not relieve authorities from their duty to protect, such requests are pertinent merely to the need for protection, and (ii) failure to protect for which respondent Government should be responsible was not established, in view of facts that place of murder was about eighty miles from Saltillo and that raiders, who committed a robbery three months previous to events complained of, were pursued into the hills and scattered.

DENIAL OF JUSTICE.—FAILURE TO APPREHEND OR PUNISH.—CURSORY INVESTIGATION.—FAILURE TO ARREST OR TRY KNOWN SUSPECTS. Following murder of claimant's husband a cursory search was made for assailants. Two members of searching patrol were indicated to have been engaged in previous robberies. Some arrests were made but no one was ever tried or punished for the crime. A voluntary witness reported to the authorities the name of the alleged criminal but no action thereon was ever taken by the authorities. Claim *allowed*.

EVIDENCE BEFORE INTERNATIONAL TRIBUNALS.—ADMISSIBILITY OF EVIDENCE OF FACTS OCCURRING SUBSEQUENTLY TO FILING OF CLAIM. Evidence of facts bearing on alleged denial of justice occurring after filing of claim *held* admissible and relevant.

Cross-references: Am. J. Int. Law. Vol. 26, 1932, p. 633; Annual Digest, 1929-1930, pp. 169, 455.

Comment: Edwin M. Borchard "Recent Opinions of the General Claims Commission, United States and Mexico", Am. J. Int. Law. Vol. 25, 1931, p. 735 at 738.

Commissioner Nielsen for the Commission:

Claim in the amount of \$25,000.00 gold currency, with interest, is made in this case by the United States of America against the United Mexican States on behalf of Mrs. Elmer Elsworth Mead (Helen O. Mead), widow

of Elmer Elsworth Mead, who was murdered in the State of Zacatecas, Mexico, in 1923. The claim is grounded on allegations relative to the failure of Mexican authorities to give proper protection to the claimant and the failure of the authorities to take suitable steps to apprehend and punish the persons who committed the crime. The allegations of the Memorial are in substance as follows:

At the time this claim arose Elmer Elsworth Mead was a resident of the State of Zacatecas, Republic of Mexico, where he was employed by the Santa Rosa Mining Company at or in the vicinity of Concepción del Oro. The locality in which the Santa Rosa mines were located was known to be infested with bandits who frequently committed acts of lawlessness including robbery. Although this situation was well known to the authorities they failed to suppress and to punish the bandits and to protect the residents of that vicinity from the acts of the bandits.

In September 1923, bandits entered and robbed stores belonging to the mining company. On the night of December 14, 1923, or in the early morning of December 15, 1923, bandits again entered the stores of the company and on this occasion assaulted and brutally murdered Elmer Elsworth Mead.

The facts relative to the murder of Mead were immediately brought to the attention of the appropriate authorities of the State of Zacatecas with a view to the apprehension and punishment of the persons responsible for the crime. On the day following the murder a representative of the American Consulate at Saltillo, called upon General Manuel López, *Jefe de Operaciones Militares*, and urged that energetic steps be taken to capture and punish the bandits. Instructions were given for a patrol to be sent from Concepción del Oro to pursue the criminals. This patrol returned within a few days with the report that no trace of the assailants could be found. Notwithstanding urgent representations made by officials of the Government of the United States in Mexico to the authorities of that Republic no further serious efforts on the part of the authorities looking to the apprehension and punishment of these bandits were made, and the persons responsible for the murder have not been apprehended or punished.

At the time of his death Elmer Elsworth Mead was 43 years of age, in the prime of life, in excellent health and actively engaged in the earning of a livelihood. He was receiving a monthly salary of at least \$200 United States currency, a large portion of which he contributed to the support of his wife, the claimant, who was entirely dependent upon him for support.

Evidence accompanying the Memorial and the Answer gives some support to the charge of lack of protection. That evidence includes reports of an American Consular officer at Saltillo, Mexico, communications written by E. Harris, Superintendent of the Santa Rosa mines, and Mexican records of proceedings in relation to the investigation of the killing of Mead.

There is information that an unfortunate condition of lawlessness, beginning in 1910, existed in the locality in question during a considerable period of time. It appears that a local military commander found himself unable effectively to combat these conditions because as he declared, his forces were diminished by the withdrawal of troops for military operations in another section of the country. The sparsely settled condition of this locality and military exigencies are emphasized in the Mexican Brief as a defense to the complaint of lack of protection.

The Commission has taken account of such matters in considering the subject of the capacity to give protection. But there are of course limits

to the extent to which they can justify a failure effectively to deal with lawlessness. And conditions such as it appears existed in this region may also reveal both the necessity for urgent measures as well as a censurable failure of efforts on the part of authorities to deal with lawlessness. The plea of the military commander as to the scarcity of soldiers under his command is not altogether convincing in view of the fact that it appears that he found himself able to send troops to the mines on one occasion prior to the murder of Mead and also subsequent to that tragic occurrence. And the statement of Harris in a communication accompanying the Memorial to the effect that persons in charge of the mine were given some rifles to form a guard of their own suggests at least that protection might have been furnished through agencies other than that of the army.

The subject of requests for protection was discussed by counsel on each side. It was said in the Mexican Brief that evidence was not produced on the point whether protection was demanded. In normal conditions, in the absence of untoward occurrences or unusual situations giving indication of possible illegal acts prompting precautionary measures for the prevention of such acts, requests of aliens to authorities for protection may obviously be very important evidence of warning as to the need of such measures. But the protection of a community through the exercise of proper police measures is of course a function of authorities of a State and not of persons having no official functions. The discharge of duties of this nature should not be contingent on requests of members of the community. And obviously the fact that requests for protection are not made in a given case does not relieve authorities from their solemn responsibilities. In the determination of questions of international responsibility, evidence in relation to requests for protection has a bearing merely on matters pertaining to the need for protection and the warning conveyed by such requests.

It would seem that the conditions existing in the locality in which the mines were located, and particularly the robbery committed in September 1923, may reasonably be considered as warning as to the need of protection, not only for the physical properties but for persons employed in the mines.

There is evidence of unusual difficulties confronting the authorities in the region in question. The mines were located approximately eighty miles from Saltillo. In the light of somewhat scanty evidence, it may be proper to take note of a statement contained in a communication sent by the American Consular officer at Saltillo to the Department of State at Washington in which it was said that the British Vice Consul at that place declined to act upon a request from Harris for protection for the British-owned mines. There is also evidence showing that the Mexican authorities were not utterly indifferent with respect to their duties to endeavor to give suitable protection. Harris states in a communication accompanying the Memorial that the raiders who committed the robbery in the month of September 1923 were pursued into the hills by soldiers and were scattered, and that the robbers abandoned their horses and threw away their rifles. The Commission, in view of the character of evidence which it has deemed to be necessary to justify pecuniary awards in cases of this nature, refrains from sustaining the charge of non-protection.

The complaint with respect to non-prosecution of the persons who killed Mead we consider is well founded.

From a despatch written by the American Vice Consul at Saltillo, it appears that after the murder of Mead the Vice Consul requested of General Manuel N. López, *Jefe de Operaciones Militares*, that steps be taken looking

to the capture and punishment of the assailants. It further appears that a patrol was sent and made what the Vice Consul calls "a make believe search", and that the patrol returned after two days and reported that no trace of the assailants could be found. There is unrefuted evidence in the record indicating very strongly that the persons relied upon to afford protection were of an unreliable character. Among such evidence is information that included in the patrol were two men who had been engaged in previous robberies.

A Memorandum with respect to this claim was filed by the United States on July 7, 1925, almost exactly a year and a half after the murder of Mead. The Memorandum states the bases of the claim as set forth in the Memorial, namely, lack of protection and the absence of suitable steps to apprehend and punish the criminals. From records presented by Mexico it appears that some time after September 25, 1925, which was shortly subsequent to the filing of the Memorandum, four men were arrested on suspicion of having been guilty of the murder of Mead and another man, C. D. Hudson by name, who it appears was killed in 1924. It appears that about this time a man by the name of Rodríguez came voluntarily before the authorities and furnished much information regarding lawlessness in the locality of the mines, and particularly regarding numerous criminal practices of one Adolfo Sánchez, who the witness testified, confessed his crimes, including that of the murder of an American mechanic in the Santa Rosa mines in connection with which he was assisted by three other men. Clearly it was the murder of Mead to which Sánchez referred. Rodríguez further testified that he had brought to the attention of local authorities crimes committed by Sánchez and one Manuel Herrera, and that the authorities took no action.

The Mexican Answer was filed July 19, 1927, but it contains no evidence indicating that the men arrested were ever tried.

The Commission has often pointed out that obviously the mere arrest of suspects either promptly after the commission of a crime, or as in the instant case, a long time afterwards, is not a defense to a charge of failure to meet international obligations. Situations of this kind are discussed in the Commission's opinion in the *Gorham* case, Docket No. 258,¹ and in the cases there cited.

Counsel for Mexico contended in oral argument that when the Memorandum of the United States was filed on July 7, 1925, the claim had been "crystallized"; that it could not be grounded on any facts developing subsequent to that date. He stated that in this view of the Mexican Agency was the explanation why the Agency had not presented evidence bearing on the punishment of the accused men, the absence of which evidence was emphasized by counsel for the United States.

A claim may be said to be something asked for or demanded on the one hand, and not admitted on the other hand. An international tribunal in dealing with a claim of course concerns itself with the assertion of legal rights by a claimant government, the denial of such assertions on the part of a respondent government, and the evidence and legal contentions presented by each party in support of its contentions. It is pertinent to note in this case that, although counsel for Mexico contends that the claim was crystallized with the filing of the Memorandum on July 7, 1925, and that therefore account should not be taken of facts brought forward by the American Agency subsequent to that date, all the evidence upon which the Mexican

¹ See page 640.

Agency relies for its defense, apart from a brief reference made in a communication to some unsuccessful steps taken to apprehend the murderers of Mead at the time the crime was committed, relates to occurrences subsequent to the filing of the Memorandum. It is obviously proper for the Commission to give all proper weight to that evidence. And in spite of any conclusions which the Commission might reach with respect to improper delays or negligence on the part of the authorities after the killing of Mead up to the date of the filing of the Memorial, it would seem to be very doubtful that it could properly make a pronouncement of the existence of a denial of justice, if the evidence which is produced with the Answer filed in 1927 had revealed proper punitive measures against the slayers of Mead.

The Commission has heretofore considered the question as to the relevancy of evidence respecting occurrences arising subsequent to the filing of a claim. Undoubtedly it is proper for the Commission to give due weight to all evidence properly presented to it with a Memorial, an Answer, and a Reply, or through a stipulation for additional evidence. The relevancy or weight of any evidence in matters of claims as well as in matters of defense, must of course be determined with respect to each case in which it is presented. Clearly on several occasions the Commission has been assisted in making a disposition of a case in the light of evidence of facts arising subsequent to the presentation of a claim.

In the *Galván* case, in which the Commission rendered an award against the United States because of the non-prosecution of a man who in 1921 killed a Mexican subject by the name of Galván, the United States produced evidence, including the statement of a prosecuting attorney to the effect that certain proceedings had been continued from time to time until April 1927. The Mexican Memorial in that case was filed August 24, 1925. The Commission's conclusions with respect to improper prosecution were grounded on delays covering a period of six years, that is, from the date of the killing to 1927, about two years after the filing of the claim by a Memorial. *Opinions of the Commissioners, Washington, 1927*, p. 408. If the Commission, instead of having evidence respecting a postponement, had had notice that the slayer of Galván had been sentenced to be executed in April, 1927, it would assuredly have been pertinent to take cognizance of such important information.

In the *Sewell* case, Docket No. 132,¹ a denial of justice was predicated in part on the failure of the court of last resort in Mexico to pass upon an *amparo* proceeding instituted on July 31, 1922. The Memorandum in this case was filed April 20, 1925. On September 22, 1930, the Mexican Agency introduced evidence showing that the *amparo* proceedings were decided by the court on January 18, 1928, and the United States withdrew this particular complaint.

In the *Charles Nelson Company* case, Docket No. 2309, in which the Memorandum was filed on August 29, 1925, and the Memorial on April 1, 1927, the Mexican Agency introduced evidence on October 1, 1930, showing a financial settlement which the claimant accepted on May 8, 1929, and the claim was withdrawn.

The point raised by counsel for Mexico is not without interest, but in the light of record in the instant case it has no bearing on the question whether a denial of justice has been clearly established.

¹ See page 626.

Decision

The Government of the United Mexican States shall pay to the Government of the United States of America on behalf of Mrs. Elmer Elsworth Mead (Helen O. Mead) the sum of \$,8000.00 (eight thousand dollars), without interest.

JOSEPH A. FARRELL (U.S.A.) *v.* UNITED MEXICAN STATES

(October 29, 1930. Pages 157-161.)

DENIAL OF JUSTICE.—CORRECTION OF ERRORS OF LOWER COURT BY COURT OF LAST RESORT.—ILLEGAL ARREST.—MISTREATMENT DURING IMPRISONMENT.—DETENTION *Incomunicado*.—INTERNATIONAL STANDARD. Claimant was arrested on several charges, convicted on one of these, but acquitted by Supreme Court of the State of Zacatecas and thereafter released. American Agency contended that such decision of the final court could not correct errors of arresting claimant without probable cause, mistreatment during imprisonment, and detention *incomunicado* for twenty days. *Held*, denial of justice not established in view of final acquittal of claimant, and errors referred to by American Agency not established. In so far as the detention *incomunicado* was concerned, since some communication was permissible subject to certain safeguards and since it did not totally prevent the accused from having an attorney to defend him, such detention did not fall below the international standard.

Cross-references: Am. J. Int. Law, Vol. 26, 1932, p. 639; Annual Digest, 1929-1930, p. 256.

Comments: Edwin M. Borchard, "Recent Opinions of the General Claims Commission, United States and Mexico", Am. J. Int. Law, Vol. 25, 1931, p. 735 at 738.

Commissioner Fernández MacGregor, for the Commission:

The United States of America, on behalf of Joseph A. Farrell, an American citizen, claims from the United Mexican States the amount of \$10,000.00, United States currency, alleging that he was unlawfully arrested and subjected to harsh and severe treatment during the period of his imprisonment by Mexican authorities.

The claimant was the master mechanic of the "La Fe Mining Company" which operated in Guadalupe, Zacatecas, Mexico. On October 22, 1910, the claimant was on duty inspecting the raising and lowering of a tank. One of the Mexican laborers named Calvillo executed his task improperly for which he was reprimanded by the claimant who also struck him on the shoulder; this resulted in a dispute which culminated in two consecutive physical encounters between the two men. On the following day Calvillo went to the Company's warehouse which was in charge of a French citizen named Langot, asking his permission to speak to the claimant, which Langot refused. Calvillo became threatening whereupon Langot went to the claimant and asked him for his revolver; Farrell advised him to call the police, which he did; but as the police did not arrive and as Calvillo's attitude