

OPINION IN FRENCH-VENEZUELAN COMMISSION OF 1903

[Washington protocol.]

ACQUATELLA, BIANCHI, ET AL., CASE ^{1, 2}

In this case it was held by the Venezuelan Commissioner that a government can not be held liable to respond in damages for injuries to person or property caused by the acts of revolutionists. The umpire of the Commission, however, decided that Venezuela should make compensation for damages or injuries caused by such revolutionists.

PAÜL, *Commissioner* (claims referred to umpire):

The papers which have been presented as proofs of the facts on which the above-mentioned claims are based consist of receipts dated at Ciudad Bolívar, and signed by different revolutionary leaders, among whom are Gens. R. C. Farreras, Nicolás Rolando, and A. Villegas, and by the treasurer-general of the revolution during the period elapsing after the withdrawal of the State of Bolívar from its allegiance to the constitutional government in consequence of the uprising at the capital of said State, on the 23rd of May, 1902, which was headed by General Farreras. Of these receipts only two exist, issued at Guasipati, in favor of Pietrantoni Brothers, by Gen. M. Silva Medina, on the 13th and 15th of August, 1902, for the sums of 13,000 and 2,704.60 bolívars, respectively, said General Medina being at the time governor of the Territory of Yuruary, and were for cash and merchandise taken as a loan for the maintenance of auxiliary troops of the neighbouring State of Bolívar.

The signatures which acknowledge these receipts appear to be vouched for by the French consular agent at Ciudad Bolívar, and in all these certifications the consul states that the signers were at the time exercising the functions ascribed to them in the documents, in the absence of all legally constituted Venezuelan authorities, and certifying besides that the signatures which are subscribed to the papers are those customarily used by the signers, and that the sums mentioned therein have not been paid to the claimants, who could not avoid furnishing the goods and money therein mentioned.

Notwithstanding the respect which the Commissioner for Venezuela owes to the decision which has been rendered by the honorable umpire in the claim of Antoine Bonifacio, and in other cases where indemnity has been claimed for damages to property by revolutionary forces which have committed depredations in various towns of Venezuela, and principally in that of Carúpano, I consider it my duty to maintain the opinion heretofore expressed by me that claims based on negotiations, loans contracted between revolutionary chiefs and private individuals, as well as those for forced requisitions and damages sustained at the hands of revolutionary troops by neutrals, do not entail the liability of the Government of Venezuela.

In the decision given by Mr. Filtz in the claim of Bonifacio, the question principally considered was that of violence, and standing on the assumption

¹ This opinion was filed in the cases of José Acquatella for 4,488.29 bolívars, Jeronimo Bianchi for 4,800 bolívars, Francisco Casale for 156 bolívars, Ineco & Abreu for 1,118 bolívars, Jean Leonardi for 50 bolívars, Pietrantoni & Co. for 8,400 bolívars, Ange Poggi for 287 bolívars, Pietrantoni Frères for 18,504.60 bolívars, Pierre Segurani for 172 bolívars, and Jos. Bianchi for the value of 152 head of cattle and 4 horses.

² For a French translation see: Descamps-Renault, *Recueil international des traités du XX^e siècle*, 1903, p. 868.

that such existed in the case of loans, and that the papers in the case need not necessarily contain proof of such violence, the umpire accepted the claim and awarded the sum called for in the receipt signed by Gen. Nicolás Rolando as chief of a revolutionary force. In the same session the umpire also decided that the abuses and pillage committed by the revolutionary troops in the course of their seizure of a place should be considered as fixing liability, as in the cases of damages occasioned by said troops, after having taken possession of a district, and that therefore these abuses and unlawful seizures imply the necessity, on the part of the Commission, of awarding indemnity to the victims of these acts.

This decision was not based on any exposition of principles invalidating the rules established by international law and by precedent decisions of other arbitral tribunals, from which has been derived the fixed doctrine of international law that governments, like individuals, are liable only for the acts of their agents, or of those who have directly assumed responsibility. These principles and precedents establish that the existence of a state of revolutionary struggle presupposes that a certain portion of the members composing the nation has temporarily withdrawn from its obedience to constituted authority, and that only when it appears that the Government has failed to make prompt and efficient use of its authority to cause a return of said dissatisfied party to obedience, and to protect, within the measure of its ability, the property and persons threatened by the revolutionary disturbance, may it be considered as liable for the consequences of such abnormal condition. Many decisions of international tribunals might be cited in support of this rule,¹ but it will be sufficient to mention its adoption by the Mexican-American Commission of 1868, by the British-American Commission of 1871, with reference to the destruction of cotton plantations by Confederate troops during the war of the rebellion; by the Spanish-American Commission of 1871, and finally by the Commission instituted by the treaty of December 10, 1898, between Spain and the United States, to settle claims of individuals of both nations arising from the last Cuban insurrection. This Commission decided that—

Where an armed insurrection has gone beyond the control of the parent Government the general rule is that such Government is not responsible for damages caused to foreigners by the insurgents. (Spanish Treaty Claims Commission, Opinion No. 8.)

This view is sustained by an almost inexhaustible number of international law writers, among whom it suffices to mention such eminent names as those of Laurent, Pradier-Fodéré, and Despagnet, the last of whom, in his *Droit International Public* (p. 353), says:

Mais les étrangers peuvent souffrir un préjudice à la suite d'une guerre, d'une révolution ou d'une émeute éclatant dans les pays où ils se trouvent; il est universellement admis aujourd'hui que la protection diplomatique ou consulaire ne peut être invoquée en pareil cas, parcequ'il s'agit d'un accident de force majeure dont les étrangers courent le risque absolument comme les nationaux du pays.

Referring to loans negotiated by a revolutionary faction which has control of one section of the country, but is nevertheless a government of usurpation, not recognized by foreign powers, and whose acts the legitimate government has the right to, and should disavow and annul, it is opportune to quote the opinion of an eminent French jurist, obtained by the holders of bonds on a loan of such character:

If it be true [said Mr. Odillon Barrot] that it is, generally speaking, a wise and sound policy for a government to recognize the obligations contracted by the

¹ See *infra* Sambiaggio case, p. 666 (umpire's opinion).

government which preceded it, even while disputing its legitimacy, it would be nevertheless impossible to construe it as an absolute rule of international law. When, for example, as in the present instance, two governments are struggling for the mastery, and one of them contracts a loan with which to endeavor to insure its success, then to compel the other government on triumphing to pay the loan contracted by the other, in virtue of a strict and absolute right, would be to introduce in international law a principle sanctioned by no authority.

M. Rolin-Jaequemyns, in a bibliographic article referring to a publication on this subject by M. Becker, in the "Revue de Droit International," is still more precise:

Le pays était donc dès lors en état de guerre civile, et, cela étant, la question n'est plus de savoir si un gouvernement reprend de droit les engagements de son précédent, mais si le parti qui l'emporte, dans une guerre civile, succède aux dettes que le parti vaincu a contractées pour trouver les moyens de le combattre. Il est à noter en effet que l'emprunt de Don Miguel a été contracté précisément pour combattre le parti constitutionnel. Or, à la question ainsi posée, la réponse ne nous paraît pas devoir être affirmative. Dans la guerre civile américaine les deux parties étaient belligérantes et reconnues telles; les États du Sud comme ceux du Nord ont contracté des emprunts; mais on n'a pas en général trouvé mauvais que les États du Nord répudiasent les emprunts du Sud. Ici la bonne foi publique n'est pas trompée. Car nul ne peut s'attendre à ce que le vainqueur consente à payer les frais de la guerre que lui a faite le vaincu. (Revue de Droit International, 1875, vol. 7, p. 714.)

The decisions just rendered in this capital by the umpires of the Italian-Venezuelan¹ and German-Venezuelan² Commissions declare with entire justice and in accordance with the principles of international law, the nonliability of the Government for injuries of persons or property of foreigners by revolutionary troops, and even the difference maintained by the latter umpire derived from his interpretation of the Washington protocol of February 13, 1903, according to which he holds that Venezuela expressly admitted, in said protocol, liability for damages arising from the civil war in progress at the time the protocol was signed, safeguards the principle which maintains that such liability is not applicable to damages caused by unsuccessful revolutionists at any other time or under any other conditions. The declaration of the Hon. Mr. Duffield is conclusive:

The Government of Venezuela is liable under her admissions in the protocol for all claims for injuries to or wrongful seizures of property by revolutionists resulting from the recent civil war.

Such admission does not extend to injuries to or wrongful seizures of property at any other times or under any other conditions.³

The umpire of the Italian-Venezuelan Mixed Commission maintains the nonliability under such circumstances absolutely, denying the application thereto of the clause of the Italian and Venezuelan protocols as an extension which would result in placing Venezuela in a position entirely exceptional and contrary to international law and the principles of justice on the bases of perfect equality to which she has a right by reason of her treaties with the other nations.

It is indisputable that the French-Venezuelan protocol signed at Washington, no more than those of the other pacific powers, imposes responsibilities not fixed by international law. On the contrary, a spirit of equity inspired the provisions of the said protocol, leaving to the commissioners the duty of examining and deciding all claims on a basis of absolute equity, which means that

¹ *Infra*, p. 512.

² *Infra*, p. 370.

³ *Infra*, p. 369.

the Government of Venezuela can not be held liable according to international law, and previous decisions of arbitral tribunals, with respect to damages occasioned by rebels to the property of neutrals and affecting their interests.

In the claims under discussion there is to be considered, moreover, that they are in no relation to the acts of a military leader who had withdrawn from obedience and military discipline by an act of disloyalty while in temporary command in the State of Bolívar, out of the Federal union, it having become necessary, in order to put an end to this state of things, to engage in a contest which cost the lives of many Venezuelan citizens and might have totally destroyed all neutral property in Ciudad Bolívar and caused grave injuries to the persons of neutrals. Now, if for such destruction and injuries, international law affords no redress, it would be absurd to assume that the Government of Venezuela is compelled to reimburse the money and supplies used by the revolutionary leaders to prolong the struggle, thus contributing to the resistance which cost the Republic 1,500 of her sons.

From the foregoing reasons, and considering that it is within the power of the honorable umpire, in the event that the honorable Commissioner for France does not agree with my views, to give his definite opinion with a more careful and deliberate study of the subject-matter, I conclude by rejecting damages based on receipts signed by revolutionary leaders in Ciudad Bolívar, and accepting only those based on receipts signed by the governor of Yuruary in favor of Piedrantoní Brothers for the sum of 15,904 bolívars, with interest at 3 per cent from August 15, 1902, to August 31, 1903, making 496.32 bolívars, or in all 16,300.92 bolívars.
