## GEORGE W. HOPKINS (U.S.A.) *v.* UNITED MEXICAN STATES.

*(March 31, 1926. Pages 42-51.)*

This case is before this Commission on the Mexica Agent's motion to dismiss.

1. It is put forward by the United States of America on behalf of George W. Hopkins, who was born and has ever remained an American national. The claim is based on six postal money orders aggregating 1,013.40 pesos alleged to have been purchased by the claimant from the Mexican Government at its postoffices of Mazatlán, Sinaloa, and Guaymas, Sonora, between April 27, 1914, and June 8, 1914, inclusive. It is alleged that all of these money orders were in due time presented to the Mexican authorities and payment was refused by them. The ground of the motion to dismiss is that these money orders were issued by the Huerta administration, which was illegal, that the acts of such administration did not bind Mexico, and that therefore these orders can not be made the basis of a claim before this Commission against the United Mexican States.

*Status of Huerta administration*

2. In considering the character and the status of the Huerta régime this international tribunal will look to the substance rather than its form, a substance which is not difficult to discover notwithstanding the flimsy garb of constitutional power under which it undertook to masquerade. There is no room to doubt but that the assumption of power by Huerta was pure usurpation. From being the military commander of the capital, charged with the protection of the administration of President Madero against the revolutionary activities of Generals Reyes and Díaz to overthrow it, Huerta went over to Madero's enemies (February 18, 1913); he declared himself provisional president while Madero lawfully was in power (February 18, 1913, at 2 p. m. and 9 p. m.); he imprisoned both President Madero and Vice-President Pino Suárez and compelled them to tender their resignations (February 19, 1913, about 8 a. m.); he forced the provisional acting president, Lascurain, to appoint him, Huerta, the ranking minister in office (February 19, 1913, at 10 a. m.), and immediately thereafter forced him to resign (February 19, 1913, at 11 a. m.); he had his arbitrary acts confirmed by a congress from which his antagonists had fled and which could not muster a quorum (February 19, 1913, at 11.20 a. m.); and he contrived to procure recognition in some quarters as the constitutional provisional president through the suppression of press news so that the manner of his forcibly seizing the reins of government should not be known. The supreme court felicitated Huerta on his assuming office prior to the assassination of Madero and his associates and before the court could have known of the methods used to seize the office. The governors of the States which recognized Huerta were, most of them, either the partisans of Reyes and Díaz with whom Huerta conspired or had been placed in power by Huerta directly after the state stroke. It is not for an international tribunal to assume that events so abhorrent as these are only to be viewed from their "legal" aspect and that uncovering the real facts means an intrusion of "moral" or "sentimental" considerations on the sacred ground of law. Nor is there reason for alleging that in so judging the Commission infringes upon Mexico's sovereignty over

its domestic affairs, for the Mexican Government itself, through its Agency, invites the Commission to do so.

3. Before considering the question of the validity or nullity of acts done by or contracts entered into with a government administration of this character it is necessary to state at once the impossibility of treating alike all acts done by such an administration or all transactions entered into by an individual with it. There seems to be a tendency both in jurisprudence and in literature to do so, to declare that all acts of a given administration, the legality of which is doubtful, must have been either valid or void. Facts and practice, however, point in a different direction.

4. The greater part of governmental machinery in every modern country is not affected by changes in the higher administrative officers. The sale of postage stamps, the registration of letters, the acceptance of money orders and telegrams (where post and telegraph are government services), the sale of railroad tickets (where railroads are operated by the Government), the registration of births, deaths, and marriages, even many rulings by the police and the collection of several types of taxes, go on, and must go on, without being affected by new elections, government crises, dissolutions of parliament and even state strokes. A resident in Mexico who cleans the government bureaus or pays his school fee to the administration does not and can not take into consideration the regularity or even legality of the present administration and the present congress; his business is not one with personal rulers, not one with a specific administration, but one with the Government itself in its unpersonal aspect.

5. The difficulty of distinguishing between the Government itself and the administration of that Government arises at the point where the voluntary dealings and relations between the individual and the government agencies assume a personal character in support of the particular agencies administering the government for the time being. To this class belong voluntary undertakings to provide a revolutionary administration with money or arms or munitions and the like. But the ordinary agencies, departments, and bureaus of the Government must continue to function notwithstanding its principal administrative offices may be in the hands of usurpers, and in such a case the sale and delivery to these necessary and legitimate agencies of supplies, merchandise, and the like, to enable the Government itself in its unpersonal aspect to function is a very different transaction from one having for its object the support of an individual or group of individuals seeking to maintain themselves in office. The character of each transaction must be judged and determined by the facts of the particular case.

6. A similar distinction arises in the field of international law. There are, on one side, agreements and understandings between one nation and another changing or even subverting its rulers, which are clothed with the character of a free choice, a preference, an approval, and which obviously undertake to bear the risks of such a choice. There are, on the other hand, many transactions to which this character is alien. Embassies, legations, and consulates of a nation in unrest will practically continue their work in behalf of the men who are in control of the capital, the treasury, and the foreign office—whatsoever the relation of these men to the country at large may be. Embassies, legations, and consulates of foreign nations in such capital will practically discharge their routine duties as theretofore, without implying thereby a preference in favor of any of the contesting groups or parties. International payments (for a postal union, etc.) will be received from such Government; delegates to an international conference will often be accepted

from such Government. Between the two extremes here also there is a large doubtful zone, in which each case must be judged on its merits.

7. Facts and practice, as related to the Huerta administration in Mexico, illustrate the necessity of a cleavage in determining the validity or nullity of its acts.

8. In the field of international relations the distinction is apparent. Where pre-existing relations with government agencies continued under such circumstances as not to imply either approval or disapproval of the new administration or recognition of its authority these transactions must be treated as government transactions and binding on it as such rather than transactions had with a particular administration. The routine diplomatic and consular business of the nation continued to be transacted with the agencies assuming to act for the Government and which were in control of the foreign office, the treasury, and the embassies, legations, and consulates abroad. Even the United States, though placing its stamp of disapproval in the most unmistakable manner on the act of Huerta in usurping authority, kept its embassy in Mexico City open for the transaction of routine business, entrusting it to a chargé d'affaires, and maintained its consulates throughout Mexico. Such relations, so maintained, were entirely unpersonal; they constituted relations with the United Mexican States, with its Government as such, without respect to the status of the individual assuming to act for the Government.

9. This distinction was recognized in the decisions made by the Carranza administration as to the legality of the acts of the Huerta administration. Such acts as the registration of births, deaths, and marriages were practically undisturbed, because they were performed in the orderly functioning of the Government quite independent of the recognition or nonrecognition of the individuals exercising authority. These were unpersonal acts of the Government itself as an abstract entity. It does not matter for the present argument, and it is not for the Commission to decide, whether the terms of the Carranza decree of July 11, 1916, are or not in all things to be commended; it is noticed here only to point out that it recognized the distinction between transactions with and by the Government itself and transactions with and by the Huerta administration.

10. The same cleavage was recognized in connection with the financial transactions of the Huerta administration by later administrations of the Government of Mexico. The series of Mexican bonds issued during the Huerta régime, the proceeds of which were applied to the payment of the interest on the pre-existing debt of Mexico, have been uniformly recognized as valid, while other series of the same issue, the proceeds of which are claimed to have been applied to the maintenance in power of the Huerta administration or to the purchase of arms, munitions, and the like, have been repudiated. The Commission here expresses no opinion with respect to the application made by Mexico of the principle invoked in recognizing as valid one series of bonds and repudiating another series of the same issue. The latter is referred to here only to point out that the principle which the Commission applies in this case has been recognized and invoked by the Government of Mexico under administrations of unquestioned regularity and validity.

11. It is clear that the sale by the Mexican Government to and the purchase by the claimant Hopkins of postal money orders falls within the category of purely government routine having no connection with or relation to the individuals administering the Government for the time being. The facts as developed in the Memorial and the briefs, which are not contested by the Mexican Agent, aptly illustrate the necessity of the distinction here

made between acts of the Huerta administration in its personal character and acts of the Government itself in its unpersonal character. From the facts so developed it appears that at the very time these postal money orders were issued the greater part of the States of Sonora and Sinaloa, from which they issued, was dominated by Carranza as First Chief of the Constitutional Army, while the City of Mexico, on which the orders were drawn, was dominated by Huerta. Yet the post offices in these two States under the domination of Carranza continued to issue money orders of the United Mexican States upon the postmaster in the Federal District of Mexico. In other cases that have been submitted to this Commission it is apparent that the government agencies functioning under the Huerta administration continued to carry out obligations under pre-existing contracts and otherwise functioned without reference to the change in the administration. It also appears that when Huerta seized the reins of government which in his capacity as provisional president he undertook to administer he did not change the government machinery as it had been set up under President Madero, which continued to operate in all its parts in the service of the people, and the great majority of the personnel of all of the bureaus and agencies of the Government remained unchanged and continued to discharge their duties to and in the name of Mexico. At no time did the government machinery cease to function, notwithstanding the change in the personnel of some members of its executive branch. To the extent that this machinery acted in the discharge of its usual and ordinary functions or to the extent that it received benefits from transactions of an unusual nature, Mexico is bound.

12. But it by no means follows that if the contracts of the claimant Hopkins, evidenced by postal money orders, should be treated as contracts with the Huerta administration in its personal aspects Mexico is not bound by such contracts. The question then arises. How far can an administration which seizes the reins of government by force and is illegal in its inception bind the nation? It will be borne in mind that an administration of illegal origin either operates directly on the central authority by seizing, as Huerta did, the reins of the Government, displacing the regularly constituted authorities from their seats of power, forcibly occupying such seats, and extending its influence from the center throughout the nation; or it comes into being through attacking the existing order from without and step by step working toward the center. The acts of an organization of the latter type become binding on the nation as of the date territory comes under its domination and control *conditioned* upon is ultimate success. The binding force of such acts of the Huerta administration as partook of the personal character as contradistinguished from the Government itself will depend upon its real control and paramountcy at the time of the act over a major portion of the territory and a majority of the people of Mexico. As long as the Huerta régime was in fact the master in the administration of the affairs of the Government of Mexico its illegal origin did not defeat the binding force of its executive acts (award of 1901 in the Dreyfus case between France and Chile, Deschamps et Renault, Recueil international des traités du XX$^{e}$ siècle, an 1901, 394). Once it had lost this control, even though it had not been actually overthrown, it would not be more than one among two or more factions wrestling for power as between themselves. Even while still in possession of the capital and therefore dominating the foreign office, the treasury, and Mexico's representatives abroad, its acts of a personal nature could not ordinarily bind the nation from the moment it apparently was no longer the

real master of the nation. It is unnecessary in this case for the Commission to determine the exact time between February, 1913, and July, 1914, the turning point was reached in the ebbing power of Huerta. During the months of February (last half), March, and April, 1913, Huerta's power was paramount in the north, the center, and the south of Mexico notwithstanding uprisings in several States. The Huerta administration was not accorded recognition by any foreign Government after June 1, 1913. During the period from January to July, 1914, inclusive, Huerta's power rapidly diminished, and it is not improbable that the alleged insult offered the American Flag in March, 1914, resulting in America's military occupation of Veracruz was an unsuccessful endeavor on his part to turn the tide in his favor by appealing to the Mexican people to rally to his support against a foreign "enemy" (?) It therefore follows that in every case submitted to this Commission in which acts of the Huerta administration in its personal aspect are involved the Commission must consider the particular facts in that case and decide upon the actual binding force upon the Mexican Nation of such acts.

*The Carranza decrees of nullity*

13. As the Commission holds that the contracts between the Government of Mexico and Hopkins, evidenced by the postal money orders which it issued to him, are unaffected by the character of the Huerta administration and are binding upon the United Mexican States as such, the question presents itself whether this binding force has from an international viewpoint been subsequently destroyed by the decrees issued by Carranza on February 19, 1913, and July 11, 1916. The Commission has no hesitancy in answering both questions in the negative. The first decree, being that of one State of the Union, Coahuila, could have no possible effect on or modify either the rights or duties of the Union itself. The second decree, even when considered as subsequently invested with the character of a law by the Mexican Congress, could not possibly operate unilaterally to destroy an existing right vested in a foreign citizen or foreign State or a pre-existing duty owing by Mexico to a foreign citizen or foreign State. The fact that it follows that foreign citizens may enjoy both rights and remedies against Mexico which its municipal laws withhold from its own citizens is immaterial as will be hereinafter pointed out in paragraph 16.

14. From the foregoing the Commission concludes that Hopkins' contracts are unaffected by the legality or illegality of the Huerta administration as such, that they bind the Government of Mexico, that they have not been nullified by any decree issued by Carranza, and that they have not been and can not be nullified by any unilateral act of the Government of Mexico.

*Nonrecognition as an estoppel*

15. Has the American Government forfeited its right to espouse Hopkins' claim because in 1913 it warned its citizens against the "usurper" Huerta and never recognized his administration? The Commission holds that such warnings and such failure to recognize the Huerta administration cannot affect the vested rights of an American citizen or act as an estoppel of the right of the American Government to espouse the claim of such citizen before this Commission (see the award of Honorable William H. Taft, Sole Arbitrator between Great Britain and Costa Rica, October 18, 1923, reported in 18 (1924) American Journal of International Law, at pages 155-157).

The position assumed by the American Government under the administration of President Wilson was purely political and was binding, even on that administration, only so long as it was not modified. It was an executive policy, which, so long as it remained unmodified and unrevoked, would close to the American Government the avenue of diplomatic interposition and intervention with the Huerta administration. It temporarily, therefore, rendered this remedy—diplomatic interposition or intervention—unavailable to an American citizen but it did not affect a vested *right* of such citizen. But nonrecognition of the Huerta administration by the American Government under the Wilson administration was not dependent upon Huerta's paramountcy in Mexico. It meant that, even if it were paramount, it came into power through force by methods abhorrent to the standards of modern civilization, that it was not "elected by legal and constitutional means", and hence, while the *Government* of Mexico continued to exist and to function, its *administration* was not entitled to recognition.

*Privileged status of foreigners*

16. If it be urged that under the provisions of the Treaty of 1923 as construed by this Commission the claimant Hopkins enjoys both rights and remedies against Mexico which it withholds from its own citizens under its municipal laws, the answer is that it not infrequently happens that under the rules of international law applied to controversies of an international aspect a nation is required to accord to aliens broader and more liberal treatment than it accords to its own citizens under its municipal laws. The reports of decisions made by arbitral tribunals long prior to the Treaty of 1923 contain many such instances. There is no ground to object that this amounts to a discrimination by a nation against its own citizens in favor of aliens. It is not a question of discrimination, but a question of difference in their respective rights and remedies. The citizens of a nation may enjoy many rights which are withheld from aliens, and, conversely, under international law aliens may enjoy rights and remedies which the nation does not accord to its own citizens.

*Decision*

17. From the foregoing opinion it follows, and the Commission decides, that the allegations contained in the memorial filed herein bring this claim within the jurisdiction of this Commission. Assuming that such allegations are true, the Government of Mexico is bound to pay the claimant the postal money orders declared upon. The motion of the Mexican Agent to dismiss is therefore overruled. The running of time for filing the Answer has been suspended from December 16, 1925, to March 31, 1926.