

WALTER A. NOYES (UNITED STATES) *v.* PANAMA

*(May 22, 1933, dissenting opinion of Panamanian Commissioner, undated.
Pages 190-194.)*

The Agents, by consent of the Commission, filed memoranda in lieu of oral arguments on the issues raised in the pleadings. Oral arguments were presented on March 23, 1933, on the question of jurisdiction.

In this case a claim is made against the Republic of Panama by the United States of America on behalf of Walter A. Noyes, who was born, and has ever remained, an American citizen. The sum of \$1,683 is claimed as an indemnity for the personal injuries and property losses sustained by Mr. Noyes through the attacks made upon him on June 19, 1927, in, and in the neighborhood of, the village of Juan Díaz, situated not far from Panama City. The claim is based upon an alleged failure to provide to the claimant adequate police protection, to exercise due diligence in the maintenance of order and to take adequate measures to apprehend and punish the aggressors.

The facts in this claim occurred after the signing of the convention to which this Commission owes its jurisdiction and the only article of the convention referring to such claims is art. VII, which says:

“The High Contracting Parties agree to consider the decision of the Commission as final and conclusive upon each claim decided, and to give full effect to such decisions. They further agree to consider the result of the proceedings of the Commission as a full, perfect and final settlement of every such claim upon either Government, for loss or damage sustained prior to the exchange of the ratifications of the present Convention. And they further agree that every such claim, whether or not filed and presented to the notice of, made, preferred or submitted to such Commission, shall from and after the conclusion of the proceedings of the Commission, be considered and treated as fully settled, barred, and thenceforth inadmissible, provided in the case of the claims filed with the Commission that such claims have been heard and decided.

“The provision shall not apply to the so-called Colón Fire Claims, which will be disposed of in the manner provided for in art. I of this Convention.”

Counsel for the United States has argued that the Commission has jurisdiction to decide this claim, because, whereas art. I of the convention fixes the date (November 3, 1903) since which claims must have arisen in order to be within the jurisdiction of the Commission, but is silent on the date before which such claims must have arisen, art. VII shows that claims arising before the exchange of ratifications are within the jurisdiction of the Commission.

The Agent for Panama, whilst recognizing that the Panamanian Govern-

ment has also filed claims arising after the signing of the convention, has contended that the Commission has no jurisdiction with regard to such claims. He referred to the claims convention between the United States and Mexico of September 8, 1923, the wording of which has to a certain extent been followed in the convention between Panama and the United States. Art. VII of the convention of September 8, 1923, contains an express provision giving the Commission constituted under that convention jurisdiction to decide claims arising after the signature of the convention. This provision was not inserted in the draft of the present convention and the Agent submitted that the reference to such claims which is found in art. VIII of the claims convention of September 8, 1923, was inadvertently copied in art. VII of that draft. He admitted however that the draft had been presented by the American Government and that, although, as the result of negotiations between the two Governments, the extent of the jurisdiction of the Commission as foreseen in the draft was modified, the question now under examination was not discussed in the course of these negotiations.

Art. VII of the convention between the United States and Mexico provides that claims for loss or damage accruing after the signing of the convention may be filed at any time during the period fixed in art. VI for the duration of the Commission and it also provides that, should at the end of that same period any such claim or claims not be decided as specified in art. VI, the Government will by agreement extend that period for such time as is necessary to hear, examine and decide such claim or claims. Whereas, therefore, that convention provides a complete machinery for the filing and deciding of claims arising after the signing of the convention, the convention between the United States and Panama contains no provisions on the subject. As, moreover, art. I of this convention confers upon the Commission jurisdiction over claims "filed by either Government within the time hereinafter specified" and as art. VI specifies a time with regard only to claims arising before the signing of the convention, the jurisdiction of the Commission over Mr. Noyes' claim would seem to be excluded by the convention but for the provision of art. VII, to which the Commission has to give effect according to its meaning. It may be conceded that, by reason of the absence of any reference in the preceding articles to claims arising between the signing of the convention and the exchange of the acts of ratification, the inclusion of such claims within the jurisdiction of the Commission is somewhat out of place in this article, but nevertheless the article clearly recognizes such jurisdiction and an interpretation to the contrary would be altogether inconsistent with its wording.

Accordingly the Commission decides that it has jurisdiction to entertain the claim.

The village of Juan Díaz has only a small population, but on June 19, 1927, several hundreds of adherents of the party then in control of the Government had gathered there for a meeting. The police on the spot had not been increased for the occasion; it consisted of the usual three policemen stationed there. In the course of the day the authorities in Panama City learned that the crowd in Juan Díaz had become unruly under the influence of liquor. The chief of the police, General Pretelt, thereupon drove thither with reinforcements.

After a careful examination of the evidence produced by both Agencies the Commission feels no doubt as to the facts concerning the incidents in which Mr. Noyes became involved on that day. These facts can be concisely stated as follows:

At about 3:00 p.m. the claimant passed through the village in his automobile, on his return to Panama City from a trip to the Tapia River bridge. In the

center of the village a crowd blocked the road and Mr. Noyes stopped and sounded his horn, whereupon the crowd slowly opened. Whilst he was progressing very slowly through it, he had to stop again, because somebody lurched against the car and fell upon the running-board. Thereupon members of the crowd smashed the windows of the car and attacked Mr. Noyes, who was stabbed in the wrist and hurt by fragments of glass. A police officer who had been giving orders that gangway should be made for the automobile, but who had not before been able to reach the car, then sprang upon the running-board and remained there, protecting the claimant and urging him to get away as quickly as possible. He remained with Mr. Noyes, until the latter had got clear of the crowd. At some distance from Juan Díaz the claimant was further attacked by members of the same crowd, who pursued him in a bus and who forced him to drive his car off the road and into a ditch. He was then rescued by General Pretelt who, having come from the opposite direction, had, after reaching the plaza of the village, returned upon his way in order to protect Mr. Noyes against his pursuers.

The facts related above show that in both instances the police most actively protected the claimant against his assailants and that in the second instance the protection was due to the fact, that the authorities sent reinforcements from Panama City upon learning that the conditions in Juan Díaz rendered assistance necessary. The contention of the American Agent however is, that the Panamanian Government incurred a liability under international law, because its officials had not taken the precaution of increasing for that day the police force at Juan Díaz, although they knew some time in advance that the meeting would assemble there.

The mere fact that an alien has suffered at the hands of private persons an aggression, which could have been averted by the presence of a sufficient police force on the spot, does not make a government liable for damages under international law. There must be shown special circumstances from which the responsibility of the authorities arises: either their behavior in connection with the particular occurrence, or a general failure to comply with their duty to maintain order, to prevent crimes or to prosecute and punish criminals.

There were no such circumstances in the present case. Accordingly a lack of protection has not been established.

The claim is also based upon the failure of the Panamanian authorities to prosecute the perpetrators of the aggressions upon the claimant. It is a fact that no prosecutions were instituted. Taking into account however the conditions under which the events had taken place, the Commission cannot conclude to a liability of the Panamanian Government in this respect.

The claim is disallowed.

Dissenting opinion of Panamanian Commissioner

The undersigned in concurring in the above decision considers it pertinent to state that he is not able to agree on the question of jurisdiction for the following reasons.

It is unquestionable that the convention of July 28, 1926, contains two provisions which have a contradictory text. According to article VI, damages on which claims are based must have accrued prior to the signing of the convention. Article VII refers to claims for loss or damage sustained prior to the exchange of ratifications of the convention. How this contradiction occurs can only be explained by the fact that the Panama-United States General Claims Convention of 1926 was substantially copied from the Mexico-United States General Claims Convention of September 8, 1923; that the latter compact had an

article, the seventh, which permitted the presentation of claims arising out of damages sustained after the signing of the convention; that such article seventh of the Mexican-American Convention was suppressed in the Panama-United States Convention and that article VIII of the convention between Mexico and the United States, was left in the convention with Panama as article VII, without advertency of the fact that it contained a phrase which was incompatible with the suppression agreed upon.

It would seem, therefore, that if in negotiating the Panama convention, the clause was suppressed which allowed claims for loss or damage accruing after the signing of the compact, the intention of the High Contracting Parties was that claims should be restricted to those in which the loss or damage accrued before such signing and not afterwards.

Moreover, the undersigned Commissioner entertains the opinion that apart from the intention of the parties, as gathered from the antecedents of the convention, the nature of the two conflicting texts would also indicate that article VI should prevail over article VII, because the latter deals with the effect of the proceedings and decisions of the Commission while the former deals with the question of terms. Therefore, in determining the term within which a certain claim must have arisen in order to be admissible, it would appear to be more natural to follow the provision dealing with the general subject of terms than following another provision dealing with some other subject. In support of this reasoning, it may be noted that article VII of the Panama convention would have been more in harmony with the other provisions therein if the phrase above referred to had been omitted.
