

Report of the Mexican Senate Foreign Relations Committee

Background: *After the protocol was forwarded to the Mexican Senate the Senate Relations Committee met to prepare the opinion that would be presented to the plenary session of the Senate.*

In the session of the thirteenth of this month, this Commission was referred the note of the 11th of the same month by which the Ministry of Foreign Affairs forwarded, for constitutional purposes, the convention held with the Government of the Chinese Empire on December 16, 1911, to settle the damages suffered by its subjects during the 1910 revolution, including property damage and bodily injuries or loss of life.

The Ministry of Foreign Affairs states in that note that it is public knowledge that in Torreón, Coahuila, from May 13 to 15, 1911, very serious events occurred in which numerous Chinese lost their lives: three hundred according to the data presented by the Delegate of the Chinese Empire in Mexico, but only two hundred and twenty according to the investigation carried out by the Mexican Government, who were murdered under particularly cruel conditions.

According to the investigations carried out by both the federal justice system and special officials from the Ministry of Foreign Affairs, as mentioned in the Ministry's report, it seems clear that most of the two hundred and twenty Chinese were killed by the mob in Torreón and that probably seventy of them were killed on the orders of lower-ranking officers of the revolutionary forces that occupied the city. It also appears to be proven that the Chinese resisted at four locations, as stated by some witnesses and corroborated by the bullet impacts on the buildings opposite those occupied by the Chinese.

The aforementioned Secretariat also states that the executive branch decided, without recognizing, in substance, the right of the Chinese Empire to claim compensation for the deaths of its subjects and without establishing any precedent with the compensation, to conclude the convention submitted to the Senate for ratification, believing that it was thereby interpreting the national sentiment, deeply affected by the crimes of Torreón, and to satisfy that sentiment.

The preamble to the convention states that our Government upholds the principle that the Nation is not and cannot be responsible for acts of revolutionaries or rioting mobs, except in the exceptional cases established by International Law; that the Government of Mexico does not consider the damages suffered by Chinese subjects to be included in those cases, and that nevertheless, it is willing to compensate the affected Chinese subjects voluntarily and graciously, without this establishing a precedent. The convention stipulates, in summary, that the Mexican Government will deliver to the Chinese \$3,100,000, it being the will of both Governments that, as a consequence of this delivery, neither the Chinese Government nor

its subjects may make any claim against the Mexican Government or Mexican citizens, for damages to property, bodily injuries and loss of life suffered directly or indirectly by Chinese subjects in the Mexican Republic during the 1910 revolution, or on account of it, and within a period that will be counted from November 20, 1910 to the date of the convention, that is, December 16, 1911, any claim that may have already been formulated or presented by Chinese subjects, on account of the aforementioned revolution, being ipso jure terminated.

The Commission finds that between the considerations set forth by the Ministry of Foreign Affairs in its note to this Chamber and in the recitals of the convention, on the one hand, and what is stipulated in the convention itself, on the other hand, there is a serious inconsistency, if not a contradiction, since at the same time that it is expressly stated that Mexico does not recognize being obligated to pay any compensation, because the case is not covered by the doctrines of International Law on the responsibility of States for acts of their citizens or revolutionaries, it nevertheless grants compensation for a very large sum and even though it is given the character of being voluntary and gracious, no consideration is made to explain or substantiate the reason for the graciousness, as is customary in analogous international acts, to avoid that, as happens in the present case, the words used appear hollow of meaning and in opposition to the acts carried out, thus losing all their importance.

The assertion by the Ministry of Foreign Affairs that in the case of the Chinese who have been victims of acts by revolutionaries or rioting mobs, Mexico is not and cannot be held responsible under International Law, is quite easy to demonstrate. The point has already been studied by the Advisory Commission on Compensation, whose opinion recommended dismissing the claim of the Mexican Art & Curio Co. This opinion, approved by the Ministry of Finance and Public Credit (Official Gazette of February 2, 1912, page 395), extensively established the thesis that the responsibility of governments arises from illegal acts committed by their agents, or from the omission of said agents in the performance of their duties, citing, among other doctrines, the following:

Since the State delegates its authority to its officials, says A. Rougier (Civil Wars and the Law of Nations, paragraph 119 B), and demands passive obedience from individuals, its responsibility must be considered compromised if the authorities have not taken all precautions to ensure order; in a word, if there is negligence on the part of one of its officials, a lack of vigilance, or a violation of the law of nations.

The act of the subject cannot be the act of the sovereign; unless the subject has been commissioned by the sovereign to execute it.” (Federal Court of Appeals (178) 2 Dallas) cited by Moore. Digest of International Law VI, no. 1019).

The United States Government, said Secretary of State Forsyth (Sep. 1839), is not responsible for the misconduct of its private citizens, because they are not its representatives. M.S. Notes to Spain, Volume VI, No. 39.

It is impossible, says Benfils, *Derecho In*, Pub., no. 331, even for the best-organized government, to keep its subjects in accordance with the law and equity on every occasion.

It would be unjust, he adds, to impute to the State the harmful acts of its citizens. In principle, the private acts of nationals do not compromise the responsibility of the State.

The formula that seems to summarize the principles applicable to the question is this: The State, in principle, is not responsible for damages caused to foreigners by civil war: a case of force majeure. This irresponsibility ceases when the injury suffered by the foreigner results from the free will of the State, its negligence, or its imprudence. (A. Rougier, cited above).

The brilliant work of the Compensation Advisory Commission, to which we have just referred, can provide further arguments to support this thesis; however, to avoid making this opinion too long, we omit them, limiting ourselves to stating them so that those who wish to may refer to them.

Consequently, as the Executive acknowledges, the compensation to the Chinese Government could have no other character than that of a gracious act, but International Law acts of this nature are only carried out in exceptional circumstances and for very compelling reasons, whether in gratitude for a benefit received or in reciprocity for some other generous act. In the present case, none of these reasons exist, or at least the Foreign Relations Committee is unaware of them, and in the current circumstances, one cannot help but consider the granting of compensation to which Mexico is not obligated as dangerous, because even if it is said that this does not constitute a precedent, in fact it establishes one, and the representatives of other nations whose subjects have already suffered or may suffer in the future damages to their person or property, would not fail to cite the precedent of the Chinese compensation if it were to be granted. The state of unrest in which various regions of the country find themselves gives this possibility the character of a serious and imminent danger, not merely a remote risk, as would be the case if the country were in a state of peace and tranquility.

Furthermore, the amount of the compensation (\$3,100,000) considerably increases the seriousness of the case. The state of the Treasury cannot be described as healthy, since, as is natural, the revolt necessarily leads to increased public spending and decreases tax revenue. Therefore, the Executive, supported by the Chambers, has deemed it necessary to create new taxes to avert the terrible threat of returning to the lamentable era of deficits in the annual budgets.

The Foreign Ministry's assertion that national sentiment was deeply affected by the crimes perpetrated against Chinese subjects in Torreón is accurate; however, the assessment that this sentiment can be satisfied by the payment of compensation does not seem equally true. National sentiment would be calmed by acts of justice, and the punishment of some of the perpetrators of the massacres and attacks would have been more effective in dispelling the natural alarm and satisfying national sentiment. The note does not state that the Foreign

Ministry, nor has this Commission been able to verify through any other means, that any of the inhabitants of Torreón, or any of the revolutionary leaders believed to have ordered the murder of some Chinese, have been prosecuted. It is not even known whether these leaders were removed from their posts or were not admitted to government service when some of the revolutionary forces were elevated to auxiliary status. The negative impression created by the impunity of the criminals has been very clearly and forcefully demonstrated in the various episodes relating to those responsible for the attacks committed at the Covadonga Factory, Puebla.

For all the reasons stated above, the Commission considers it inappropriate to ratify the convention agreed upon with the Government of the Chinese Empire. By denying its vote, the Senate will perform its constitutional functions in due form, without this implying even the slightest censure of the Executive, which may have acted with the desire, perhaps exaggerated, but not reprehensible, to foster good relations with a friendly nation and avoid any cause of cooling or displeasure, a cause that in this case cannot fundamentally exist even if compensation is denied. To conclude a diplomatic convention, the Constitution requires the concurrence of the wills of the Executive and this Chamber; it integrates its contingent into one or the other, since it is the exercise of a right and sometimes also the fulfillment of a duty. What matters is the normal functioning of the system that the Constitution has established to decide matters concerning the international relations of the Mexican Federation.

Before concluding, the Commission deems it appropriate to expressly state, to prevent any misinterpretation of its stance, that it deeply regrets the events in Torreón and strongly condemns them, both for their nature and because the victims were subjects of a friendly nation, for which Mexico can harbor only feelings of sympathy and goodwill. The Commission is certain that the Senate shares these same ideas and sentiments, and, in light of the considerations set forth, the Commission finds itself obliged to submit the following to the approval of this Honorable Chamber:

AGREEMENT

The convention agreed upon by the Secretariat of Relations with the Government of the Chinese Empire on December 16, 1911, regarding compensation for damages and losses caused to nationals of that country during the revolution of 1910, is not to be ratified.

Senate Committee Room.
Mexico, May 25, 1912.