



GENERAL CLAIMS US-MEXICO

NEER AND NEER (U.S.A.) V. UNITED MEXICAN STATES

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DECISION

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15 October 1926

*RIAA*

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# Decision

1. This claim is presented by the United States against the United Mexican States in behalf of L. Fay H. Neer, widow, and Pauline E. Neer, daughter, of Paul Neer, who, at the time of his death, was employed as superintendent of a mine in the vicinity of Guanacevi, State of Durango, Mexico. On November 16, 1924, about eight o'clock in the evening, when he and his wife were proceeding on horseback from the village of Guanacevi to their home in the neighborhood, they were stopped by a number of armed men who engaged Neer in a conversation, which Mrs. Neer did not understand, in the midst of which bullets seem to have been exchanged and Neer was killed. It is alleged that, on account of this killing, his wife and daughter, American citizens, sustained damages in the sum of \$100,000.00; that the Mexican authorities showed an unwarrantable lack of diligence or an unwarrantable lack of intelligent investigation in prosecuting the culprits; and that therefore the Mexican Government ought to pay to the claimants the said amount.
2. As to the nationality of the claim, which is challenged, the Commission refers to the principles expounded in paragraph 3 of its opinion and decision rendered in the case of William A. Parker on March 31, 1926. On the record as presented the Commission decides that the claimants were by birth, and have since remained, American nationals.
3. As to lack of diligence, or lack of intelligent investigation, on the part of the Mexican authorities, after the killing of Paul Neer had been brought to their notice, it would seem that in the early morning after the tragedy these authorities might have acted in a more vigorous and effective way than they did, and moreover, that both the special agent of the Attorney General of Durango (in his letter of November 24, 1924), and the Governor of that State, who proposed the removal of the Judge of Guanacevi, have shared this opinion. The Commission is mindful that the task of the local Mexican authorities was hampered by the fact that the only eyewitness of the murder was unable to furnish them any helpful information. There might have been reason for the higher authorities of the State to intervene in the matter, as they apparently did. But in the view of the Commission there is a long way between holding that a more active and more efficient course of procedure might have been pursued, on the one hand, and holding that this record presents such lack of diligence and of intelligent investigation as constitutes an international delinquency, on the other hand.
4. The Commission recognizes the difficulty of devising a general formula for determining the boundary between an international delinquency of this type and an unsatisfactory use of power included in national sovereignty. In 1910 John Bassett Moore observed that he did "not consider it to be practicable to lay down in advance precise and unyielding formulas by which the question of a denial of justice may in every instance be determined" (*American Journal of International Law*, 1910, p. 787), and in 1923 De Lapradelle and Politis stated that the evasive and complex character (le caractère fuyant et complexe) of a denial of justice seems to defy any definition (*Recueil des Arbitrages Internationaux*, II, 1923, p. 280). It is immaterial whether the expression "denial of justice" be taken in that broad sense in which it applies to acts of executive and legislative authorities as well as to acts of the courts, or whether it be used in a narrow sense which confines it

to acts of judicial authorities only; for in the latter case a reasoning, identical to that which—under the name of "denial of justice"—applies to acts of the judiciary, will apply—be it under a different name—to unwarranted acts of executive and legislative authorities. Without attempting to announce a precise formula, it is in the opinion of the Commission possible to go a little further than the authors quoted, and to hold (first) that the propriety of governmental acts should be put to the test of international standards, and (second) that the treatment of an alien, in order to constitute an international delinquency, should amount to an outrage, to bad faith, to wilful neglect of duty, or to an insufficiency of governmental action so far short of international standards that every reasonable and impartial man would readily recognize its insufficiency. Whether the insufficiency proceeds from deficient execution of an intelligent law or from the fact that the laws of the country do not empower the authorities to measure up to international standards is immaterial.

5. It is not for an international tribunal such as this Commission to decide, whether another course of procedure taken by the local authorities at Guanacevi might have been more effective. On the contrary, the grounds of liability limit its inquiry to whether there is convincing evidence either (1) that the authorities administering the Mexican law acted in an outrageous way, in bad faith, in wilful neglect of their duties, or in a pronounced degree of improper action, or (2) that Mexican law rendered it impossible for them properly to fulfil their task. No attempt is made to establish the second point. The first point is negated by the full record of police and judicial authorities produced by the Mexican Agent, though the Commission feels bound to state once more that in its opinion better methods might have been used. From this record it appears that the local authorities, on the very night of the tragedy, November 16, went to the spot where the killing took place and examined the corpse; that on November 17 the Judge proceeded to the examination of some witnesses, among them Mrs. Neer; that investigations were continued for several days; that arrests were made of persons suspected; and that they were subsequently released for want of evidence. The American Agency in rebuttal offers nothing but affidavits stating individual impressions or suppositions. In the light of the entire record in this case the Commission is not prepared to hold that the Mexican authorities have shown such lack of diligence or such lack of intelligent investigation in apprehending and punishing the culprits as would render Mexico liable before this Commission.

## *Decision*

6. The Commission accordingly decides that the claim of the United States is disallowed.