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THE RESPONSIBILITY OF THE STATE FOR THE ACTS
AND OBLIGATIONS OF LOCAL DE FACTO
GOVERNMENTS AND REVOLUTIONISTS

By N. D. Houghton*

There are several reasons for considering the matter of the responsibility of the state for the acts of local de facto governments along with responsibility for the acts of revolutionists. In the first place, no clear distinction is made in popular usage between the terms “de facto government” and “revolutionists.” In the second place, most de facto governments originate in some sort of revolution. And finally, the responsibility of the state for the acts of local de facto governments and for the acts of revolutionists is, in general, dependent upon the same conditions, namely, the ultimate outcome of the movement.

A local de facto government, as distinguished from a general de facto government, is a government which is in actual control of affairs in a section or part of a state only. Such a government may be maintained by any of the following forces:

1. an enemy in military occupation of the region;
2. a revolutionary element attempting to secure independence and the establishment of a new state; or,
3. a revolutionary element contending against another faction for national control.

Until recently no attempt was made by adjudicating authorities to define just how great a portion of a state’s territory must be

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The term “revolutionists” is here used to include “rebels.”

A general de facto government is a government which is set up by a revolutionary element, displacing the regular government and constituting itself the central government of the state in control of political affairs throughout the state. See Borchard, Diplomatic Protection of Citizens Abroad, 206. See also Thorton v. Smith, (1869) 8 Wall. (U.S.) 1, 19 L. Ed. 361.

Borchard, Diplomatic Protection of Citizens Abroad 206, 207.

Another situation in which a local de facto government sometimes operates, in the absence of revolution in the ordinary sense of the term, is in the case of vigilance committees and emergency organizations which sometimes handle local affairs after great disasters, such as floods and storms, and in other emergencies.
controlled by a de facto government in order that it may be considered a general, as distinguished from a local, \(^6\) de facto government.\(^6\) In March, 1926, however, the Mexican-United States General Claims Commission indicated that after the Huerta government ceased to exercise “real control and paramountty . . . over a major portion and a majority of the people of Mexico,” it could properly be considered only a local de facto government.\(^7\)

**Responsibility for Acts of Local De Facto Governments Which Ultimately Become De Jure, and for Acts of Successful Revolutionists**

The question of the responsibility of a state for the acts and obligations of a local de facto government is somewhat more complicated than that of the responsibility of a state for acts of a general de facto government.\(^8\) But it is a generally accepted principle of international law that the acts of a de facto government of the former type which accomplishes a successful revolution and becomes ultimately the established de jure government of the state, are considered binding, from its inception, upon the state.\(^9\)

\(^5\)After having described a general de facto government, the Supreme Court of the United States, in the case of Thorington v. Smith, (1869) 8 Wall. (U.S.) 1, 19 L. Ed. 361, stated: “But there is another description of government, called also by publicists a government de facto, but which might, perhaps, be more aptly denominated a government of paramount force. Its distinguishing characteristics are, first, that its existence is maintained by active military power within the Territories, and against the rightful authority of an established and lawful government; and second, that while it exists, it must necessarily be obeyed in civil matters by private citizens who, by acts of obedience, rendered in submission to such force, do not become responsible as wrong-doers, for those acts though not warranted by the laws of the rightful government. Actual governments of this sort are established over districts differing greatly in extent and conditions. They are usually administered directly by military authority, but they may be administered also by civil authority, supported more or less directly by military force.”

\(^6\)Borchard, (1917) 26 Yale L. J. 340.

\(^7\)Though the Commission did not use the exact term, it did use the concept. See Geo. W. Hopkins v. The United Mexican States, (1926) Docket No. 39, General Claims Commission, United States and Mexico.

\(^8\)Generally speaking, the acts of a general de facto government are binding on the state. Borchard, Diplomatic Protection of Citizens Abroad 207.

\(^9\)Moore, Digest 991-994. See also a note written by Dr. Moore on June 21, 1913, as Counselor of the United States Department of State, concerning claims of American citizens for damages from the Madero revolt in Mexico. (1913) For. Rel. 949.
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In the case of *Dix v. Venezuela,* the Venezuelan-United States Claims Commission of 1903 held Venezuela liable for the payment of a claim by an American citizen for live stock which was confiscated by the military forces of General Castro during the revolution of 1899 in Venezuela. The Commission stated that:

"The Revolution of 1899, led by General Cipriano Castro, proved successful, and its acts, under a well-established rule of international law, are to be regarded as the acts of a de facto government. . . . The same liability attaches for encroachments upon the rights of neutrals in the case of a successful revolutionary government, as in the case of any other de facto government." General Castro's government ultimately became the recognized de jure government of Venezuela.

In the case of *Bolivar Railway v. Venezuela,* Mr. Plumely, umpire in the British-Venezuelan Claims Commission of 1903, holding Venezuela liable for a claim for compensation for services rendered by a British Corporation to the Castro government during its revolutionary struggle of 1899, stated that:

"The nation is responsible for the debts contracted by its titular government, and that responsibility continues through all changing forms of government until the obligation is discharged. The nation is responsible for the obligations of a successful revolution from its beginning, because, in theory, it represented ab initio a changing national will, crystallizing in the final successful revolt. . . . Success demonstrates that from the beginning it [the Castro revolution] was registering the national will."12

*Importance of Recognition.*—Moreover, it appears that it has not been deemed essential that such a de facto government shall have been recognized at the time of the acts in question by the government of the claimant, in order that the state be held responsible for such acts. In fact, it is perhaps unlikely that in most cases recognition will have been granted, for foreign states are not ordinarily hasty in recognizing de facto governments of this sort, due, in part at least, to the fact that premature recognition of such a government is likely to be considered an unfriendly act by the regular government of the state in which the revolt is taking place.

10(1903) Ralston, Ven. Arb. 7.
The United States, in 1886, held the Peruvian government, under the presidency of General Caceres, liable for payment for certain property which the forces of the Caceres government had seized from an American firm in 1884, during the period when the Caceres government was in revolution, which was ultimately successful, though at the time of the seizure the Caceres government was in control of only a portion of Peru, and had not been recognized by the United States. It was not intended, said the state department, to question the generally admitted principle that a state is not responsible for the acts of insurgents whom the government cannot control. But it was pointed out that,

"The guano which was seized was appropriated to sustain a cause which has become national by the voluntary action of the people of Peru, its chief representative being at the present time the duly elected and installed constitutional executive of the Republic."

Similarly, the United States, in 1898, held Peru responsible for mistreatment of an American citizen by a revolutionary force in 1894, which finally accomplished a successful revolution and was in power as the government of Peru in 1898, though the revolutionary government had not been recognized by the United States at the time of the acts in question.

Responsibility for Acts of Local De facto Governments Which Fall Without Becoming De jure, and for Acts of Unsuccessful Revolutionists

There is substantial agreement upon the general proposition that a state is not responsible for the acts or obligations of unsuccessful revolutionists whose activities have passed beyond the control of the de jure authorities. This principle has been

13For instances in which the United States has held Peru responsible for acts of successful revolutionists see (1901) For. Rel. 427-434. And for a similar instance with Honduras, see (1899) For. Rel. 352-354.

14Moore, Digest 992.

15(1901) For. Rel. 430.

recognized by various international commissions in adjudicating upon claims arising out of such situations.\textsuperscript{16} So, the capacity of a local de facto government to bind the state, and therefore, succeeding governments, depends largely upon its ultimate success. If it finally becomes the de jure government of the state, or if the region over which it exercises control becomes an independent state, then its acts, from its inception, are binding, upon the old state or the new state, as the case may be. But if it fails, the succeeding de jure government may refuse to consider many of its acts and obligations as binding upon the state.\textsuperscript{17}

In the case of \textit{Williams v. Bruffy},\textsuperscript{18} the Supreme Court of the United States stated that the validity of the acts of such a de facto government, “both as against the parent state and its citizens or subjects, depends entirely upon its ultimate success. If it fails to establish itself permanently all such Acts perish with it. If it succeed and become recognized, its Acts from the commencement of its existence are upheld as those of an independent nation.” Continuing, Mr. Justice Field instanced the case of the state governments upon their separation from the British Empire.

“Having made good their Declaration of Independence, everything they did from that date was as valid as if their independence had been at once acknowledged. . . But if they had failed in securing their independence, and the authority of the King had been re-established in this country, no one would contend that their acts against him or his loyal subjects, could have been upheld as resting upon any legal foundation.”

Denying that the acts of the Confederate Government were binding upon the country after its fall, the Supreme Court, in the case of \textit{Thorington v. Smith},\textsuperscript{19} stated that:


\textsuperscript{17}Borchard, Diplomatic Protection of Citizens Abroad 207.

\textsuperscript{18}(1878) 96 U. S. 176, 24 L. Ed. 716.
“No obligations of a national character were created by it, binding after its dissolution, on the states which it represented, or on the National Government. From a very early period of the Civil War to its close, it was regarded as simply the military representative of the insurrection against the authority of the United States.”

In this connection, the holding of the Mexican-United States General Claims Commission, in March 1926, in the case of Geo. W. Hopkins v. The United Mexican States, ought perhaps, to be recalled. The Commission accepted the general principle that the acts of a local de facto government “become binding on the nation as of the date territory comes under its domination and control conditioned upon its ultimate success.” But it maintained that what it termed the “unpersonal acts of the government itself as an abstract entity,” as distinguished from the “acts of the Huerta administration in its personal character,” were binding upon Mexico during the period after the Huerta government ceased to be the “real master of the nation” and controlled only a fragment of Mexican territory.

It appears to have been rather generally conceded by other powers that the United States was not responsible for the acts of the Confederate Government. In the case of Prats v. United States, the Mexican-United States Claims Commission of 1868 stated that:

“The non-responsibility of the United States for the acts of its late rebel enemies, while forcibly withdrawn from the jurisdiction of that government, must have been generally conceded by other nations; for, although many citizens of American and European states were resident in the hostile territory during the struggle, and suffered losses common to all inhabitants of the arena of war, no nation has made a demand upon the United States for indemnity (unless the present case forms the execution), while it is certain that that government would promptly repel all such demands.”

20(1869) 8 Wall. (U.S.) 1, 19 L. Ed. 361.
21Professor Borchard states that since the capacity of a local de facto government to bind the state internationally depends primarily upon its ultimate success, most of its international acts, such as treaties, are affected with a suspensive condition. If it is ultimately successful then the state, the old or the new, is bound by them. If it fails, then in general, its international acts do not bind the state.
22See footnote 7 and text.
23Those acts of the government which are essential to the ordinary life of the people, such as postal service, railway service, etc.
24Concurring in the opinion of the Commission as thus expressed by Mr. Wadsworth, Mr. Palacio, Mexican commissioner, stated that,
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Some claims were presented, however, especially by Great Britain to the British-American Claims Commission of 1871, involving the question of the responsibility of the United States for destruction of property of British subjects by the Confederate authorities, and for debts contracted with British subjects. In the case of Hanna v. United States, this Commission held the United States to be not responsible for certain cotton which had been destroyed by the Confederate authorities of the state of Louisiana. Mr. Frazier, American Commissioner, in his opinion stated that:

"the particular 'State of Louisiana' which concurred and participated in the destruction of the claimant's property, was a rebel organization, existing and acting as such in hostility to the Government of the United States as was the Confederate States, so called. It was in form and fact a creature unknown to the constitution of the United States, and acting in hostility to it. It was an instrumentality of the rebellion. . . . It is not the case of a government established de facto, displacing the government de jure. But it is the case merely of an unsuccessful effort in that direction, which, for the time being, interrupted the course of lawful government without the fault of the latter. Its acts were lawless and criminal, and could result in no liability on the part of the Government of the United States."

DEBTS CONTRACTED BY A LOCAL DE FACTO GOVERNMENT
WITH FOREIGN SUBJECTS

As a general rule, a succeeding de jure government is not liable for debts contracted by a displaced local de facto government, and persons who deal with such a government assume the risk of the enterprise. In 1858, one Joseph Cuculla, an American citizen, loaned some $40,000 to the Zuloaga government which was engaged in a revolutionary attempt to maintain a government of Mexico and was in control of the Capital of Mexico. The money

"It is in my opinion self-evident that in the present case there was not any aggressive and direct action on the part of the authorities of the United States; because the authors of the fact (Confederate naval force) which has given origin to this claim, are neither de facto nor de jure authorities of the United States, nor of any of the states of the Union."

Moore, Arbitrations 2886.

For a distinction between the validity of the acts of the individual insurrectionary state governments, and the acts of the confederate central government, by the United States Supreme Court, See Sprott v. United States, (1874) 20 Wall. (U.S.) 459, 22 L. Ed. 371.

For a similar holding by the British-Venezuelan Claims Commission of 1903, see the case of Puerto Cabello and Valencia Railway v. Venezuela, (1903) Ralston, Ven. Arb. 455.

Borchard, Diplomatic Protection of Citizens Abroad 209.
loaned was to be used "in the service of the nation." The Zuloaga government, which the United States had refused to recognize, was finally ousted by the Jaurez faction, which established a government under the constitution of 1857. The Jaurez government refused to pay the Cuculla loan. Part of it was paid by the Maximilian regime, and a claim for the balance, with interest, was presented by the United States to the Mexican-United States Claims Commission of 1868. The Commission unanimously rejected the claim on the grounds, first, that the loan was an unneutral act; and, second, that the Zuloaga government was not an "authority" of the Mexican state, but an unsuccessful insurrectionary movement.  

A similar position was taken by the umpire in the Venezuelan-Netherlands Claims Commission of 1903, holding Venezuela to be not liable for a loan made by a Dutch subject to a de facto government in the state of Falcon in 1902. The opinion said:

"A de facto government which would give this claim a position before this Commission must be one recognized as such for the Republic of Venezuela, and not one temporarily in authority in a state or district under revolution and against the will and purpose of the de jure . . . government of the nation."

And further,

"While the government of General Rivera might have been a de facto government for certain municipal purposes within the State or District, when, for the time his was the supreme force he had power to compel respect and obedience, it lacked all of the characteristics of a de facto national government that could speak and act in the name of Venezuela."

The policy of the United States, as declared by the fourteenth amendment to the constitution, that "neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, . . . but all such debts, [and] obligations . . . shall be held illegal and void," was in effect sustained by the British-American Claims Commission of 1871. The Commission unanimously dismissed all claims of British subjects for debts contracted by the Confederate authorities, holding that, "the United States is not liable for the payment of debts contracted by the rebel authorities."

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29Cuculla v. Mexico, (1871) 3 Moore, Arbitrations 2873.
30Mr. Frank Plumley.
32Declared a part of the Constitution by the Secretary of State, July 20, 1868.
It appears to be conceded that a local de facto government may not legally alienate or dispose of any part of the public domain of the state, which may be temporarily within its jurisdiction. During the period of the Civil War the United States prosecuted a claim against Peru, arising out of such an action by a de facto government in Peru in 1858, but the claim was finally abandoned.

Under authority of the Vivanco insurrectionary government, which was in control of the city of Iquique in 1858, two American owned ships were given permission to load and carry guano from that vicinity. The two vessels were seized by a war ship of the Peruvian government on the grounds that such carrying trade could be legally engaged in only by express permission of the Peruvian government. Peruvian law made such unauthorized taking of guano a criminal act and subjected vessels so taken to confiscation. The United States protested the seizures and demanded payment for the vessels, contending that:

"The Georgiana and the Lizzie Thompson having obeyed the laws of the place then established, and having acted in pursuance of licenses given by the officers in authority, were guilty of nothing for which the other party to the civil war could punish or molest them afterward,"

and that,

"The laws and jurisdiction of the Peruvian Government were superseded at Iquique during the time that place was in possession of its domestic enemy, and its resumption of possession—supposing possession to have been resumed—gave it no power to punish American citizens for a supposed violation of its laws while they were suspended, nor to make any law which would have a retroactive effect."

The Peruvian government rejected the demands, setting forth that, "the vessels at the time of the seizure were engaged in loading guano from deposits which notoriously belonged to the Government of Peru, and had for years constituted the principal source of its revenue," and that:

32Barrett v. United States, (1871) 3 Moore, Arbitrations 2900; see also 1 Moore, Arbitrations, 695.
34Borchard, Diplomatic Protection of Citizens Abroad 209. Professor Borchard states that the fruits of public lands may be sold, but only those parts accruing during the period of occupancy. See also Mumford v. Wardwell, (1867) 6 Wall. (U.S.) 423, 18 L. Ed. 756 and Coffee v. Groover, (1887) 123 U. S. 1, 8 Sup. Ct. 1, 31 L. Ed. 51.
352 Moore, Arbitrations 1593 ff.
"The authority to load was not obtained from the Government of Peru, but from a usurping body of her subjects, committing, by their very acts, treason against her and to whom no belligerent recognition had been given by the United States, which had lately negotiated a treaty with the government at Lima."

A convention was finally adopted providing for submitting the matter to arbitration, the King of Belgium being selected as sole arbitrator. But he declined to act, giving as one of his reasons that he did not desire to make a decision unfavorable to the United States, as he felt he would have to do, if he should act as arbitrator. Thereupon, the United States formally notified the Government of Peru of its intention to pursue the matter no further.

**QUESTION OF CONSTITUTIONALITY**

A distinction must be made between the effect of the unconstitutionality of a general de facto government and the unconstitutionality of a local de facto government in a consideration of the matter of the responsibility of the state for their acts and obligations. Whereas the question of the legitimacy, or the constitutionality, of a general de facto government is not material in the matter of the responsibility of succeeding governments, internationally, for its acts; the matter of the unconstitutionality of a local de facto government may be of great importance. For, in case of an unsuccessful attempt at revolution or rebellion, the acts of the revolutionists do not bind the state. A local de facto government set up and maintained in opposition to the de jure government by unconstitutional and illegal means, falls, if the movement ultimately fails, into the class of unsuccessful revolution. It was upon this ground that the acts of the Confederate Government were held to be not binding upon the United States by the Supreme Court.

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2 Moore, Arbitrations 1593 ff.
For the effect of recognition of belligerency upon the responsibility of the state for acts of insurrectionary local de facto governments, see infra.

72 Moore, Arbitrations 1593 ff.
88 Moore, Arbitrations, 1593 ff.

See Borchard, Diplomatic Protection of Citizens Abroad 207; 1 Moore, Digest, 249; and the decision of Hon. W. H. Taft in the British-Costa Rican Arbitration of 1923.

EFFECT OF RECOGNITION OF BELLIGERENCY

Recognition of belligerency by the de jure government, or by foreign states, appears to have little, if any, real effect upon the responsibility of the state for the acts of unsuccessful insurrectionary governments. Recognition of belligerency does not constitute political recognition of such a government in any degree. And, in so far as it has any legal effect at all, aside from its direct effect upon the conduct of the warfare between the revolutionists and the de jure government, it seems to operate to release the latter from all responsibility for the acts of the former.

About the only possible effect in this connection would seem to be the fixing of a date from which non-responsibility exists, for actual existence of a state of war in such a case is sufficient to establish nonresponsibility of the state for acts of the belligerent de facto organization, in case it ultimately fails, irrespective of whether the belligerency has been recognized by other states or not.

Discussing the legal significance of the recognition of belligerency in connection with the Confederate Government, the Supreme Court of the United States, in the case of Williams v. Bruffy, pointed out that, "The concession of belligerent rights to the rebellious organization yielded nothing to its pretensions of legality," explaining that:

"When a rebellion becomes organized and attains such proportions as to be able to put a formidable military force in the field, it is usual for the established government to concede to it some belligerent rights. This concession is made in the interests of humanity, to prevent the cruelties which would inevitably follow mutual reprisals and retaliations."

Similarly, in the case of Hickman v. Jones, the Supreme Court stated that:

"The recognition [of belligerency] did not extend to the pretended Government of the Confederacy. The intercourse was confined to its military authorities. In no case was there intercourse otherwise than of this character. The rebellion was simply an armed resistance to the rightful authority of the sovereign. Such was its character in its rise, progress, and downfall."

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42 See Borchard, Diplomatic Protection of Citizens Abroad 235, 236.
43 Borchard, Diplomatic Protection of Citizens Abroad 235, 236.
44 (1878) 96 U. S. 176, 24 L. Ed. 716.
45 (1870) 9 Wall. (U.S.) 197, 19 L. Ed. 551.
And, in the case of Prats v. United States, the Mexican-United States Claims Commission of 1868 held that the matter of recognition or non-recognition of the belligerency of the Confederate Government by Mexico in no way affected the question of the responsibility of the United States for its acts. Mr. Wadsworth, speaking for the Commission, stated that:

"So far, therefore, as the responsibility of the United States to Mexico in this case is concerned, it is in nowise increased or diminished by the failure of the latter to accord belligerent rights to the Confederates." 

**Effect of Amnesty**

The question of the effect upon the responsibility of the state for the acts of a revolutionary government, of the granting of amnesty by the established government to the leaders in the revolutionary movement has been before international commissions on several occasions. But, in some instances, the question has been complicated by other factors, such as specific treaty acceptance of responsibility; the opinions of the commissions are not in agreement upon the question of the principle; and, the exact status of international law upon the subject appears to be somewhat uncertain.

In the case of Baldwin v. Mexico, the umpire in the Mexican-United States Claims Commission of 1839 held Mexico responsible for confiscation of goods and false imprisonment of an American citizen residing in Mexico, which wrongs were committed by a revolutionary "junta" in Tehauntepec, which operated as a local government for some six months in the year 1833. There was evidence showing that no effort was made by the Mexican government to put down the junta; it was finally displaced by granting amnesty to the persons who composed it, and they were continued in office. The judicial proceedings to which Mr. Baldwin objected were started under the junta regime, but were continued under the succeeding government, which failed

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463 Moore, Arbitrations 2886.

to give satisfactory relief. It was held by the umpire that the circumstances warranted the holding of Mexico responsible for damages, since the junta authorities had never been treated by the Mexican government as rebels, but rather were "clothed with official honors" and permitted to continue "exercising high functions."

This case was complicated, however, by the fact that a treaty concluded in 1831 between the United States and Mexico guaranteed "special protection" to Americans in Mexico and to Mexicans in the United States. There was ample proof of a lack of due diligence in the use of proper means by the Mexican government to protect Mr. Baldwin and his property. And, so this was additional ground cited by the umpire for the decision of the case.49

In the case of *The Montigo*,50 a claim was submitted by the United States to arbitration under an agreement with Colombia of August 17, 1874, for compensation for a ship which had been seized from American owners by revolutionists in Panama in 1871, who did not succeed in establishing their control there. But the leaders were granted amnesty by the Colombian government. It happened that in the treaty of peace with the revolutionists, which granted them amnesty, the Colombian government also agreed to pay for *The Montigo*. But, speaking of the effect of amnesty, the umpire stated that:

"even in the absence of any express stipulation to that effect, the grantor of an amnesty assumes as his own the liabilities previously incurred by the subjects of his pardon toward persons or things over which the grantor has no control."

And, the Swedish and Norwegian-Venezuelan Claims Commission of 1903 held Venezuela liable for compensation for injuries to Swedish and Norwegian subjects by revolutionists maintaining a de facto government in a section of Venezuela, on the ground that, "at the time when the acts complained of were committed, and since then, the delinquents have not been chastised or prosecuted, but, on the contrary, their principal leaders have occupied for some time official positions, having been appointed by the present Government of Venezuela, and that they are cloaked with authority in the very region where the events took place," and that by so doing, the Government of Venezuela

49 See Lapradelle and Politis, Recueil des arbitrages 466, 467.
502 Moore, Arbitrations 1421, 1438.
"tacitly approves their conduct, and according to the principles recognized by public law makes itself responsible for all the acts done by them.""\footnote{Bo Bavlins and Hedlund v. Venezuela, (1903) Ralston, Ven. Arb. 952.}

But, in the case of *Divine v. Mexico*,\footnote{52 Moore, Arbitrations 2980.} Sir Edward Thornton, umpire in the Mexican-United States Claims Commission of 1868, held that the granting of an amnesty to revolutionists did not render the state liable for their acts. The case involved a claim presented by the United States for compensation for property of American citizens seized by unsuccessful revolutionists in Mexico in 1851. The umpire said:

"It is urged that the Mexican government granted an amnesty to Carbajal and, therefore, made itself responsible for his acts. Other governments, including that of the United States, have pardoned rebels, but they have not on this account engaged to reimburse to private individuals the losses caused by those rebels."

Thus, as indicated above, the opinions of international adjudicating authorities have not been in entire accord upon the matter of the effect of the granting of amnesty upon the international responsibility of the state for the acts of unsuccessful revolutionists. But it would seem to be of some significance that, as a matter of fact, no case appears ever to have been presented to any of the various commissions which sat to determine the liability of the United States for acts growing out of the Civil War, in which the assumption or the claim was made that the United States had assumed responsibility for acts of the Confederate Government because of having pardoned its leaders.\footnote{Ralston, International Arbitral Law and Procedure 244. See also Ralston, Law and Procedure of International Tribunals 356.}

**Valid Acts of Local De facto Governments Maintained by Unsuccessful Revolutionists**

Under pressure, a government has been known to admit liability for acts of unsuccessful revolutionists. In 1861, Great Britain made its recognition of the Jaurez government in Mexico conditional upon its admission of responsibility "for the wrongs and crimes of [the] Zuloaga and Miramon [governments]."\footnote{54 See 3 Moore, Arbitrations, 2906. See also 52 State Papers, 237.} And, in 1923, one of the elements, at least, which led to the recognition of the Obregon government in Mexico by the United
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States was an admission of responsibility, in principle, for the acts of revolutionists in Mexico from 1910 to 1920.55

But, even in the absence of admission or acceptance by a succeeding de jure government of responsibility for the acts of a defunct local de facto government, usually there will have been certain definite, executed acts on the part of the de facto authorities, the effect of which must necessarily arise, and the binding force of which upon the state must be determined. Foreigners who live within the area controlled by a de facto government must submit to its jurisdiction. Thus, not only domestic legal questions arise, but international questions also, in case the de jure government sees fit to disregard the acts of the de facto regime.56

The laws enacted by a local de facto government of ordinary domestic concern will usually be upheld by a subsequent de jure government, provided they are not hostile to the subsequent government, and provided further that such enactments, in case the de facto government is a foreign military occupant, are proper for a military occupant to enforce. And foreign persons residing in the area controlled by the de facto government may not be subjected by a subsequent government to penalties for acts which were enforced by the de facto government.57

While denying that the Confederate Government was a de facto government whose acts and obligations could constitute international obligations, binding upon the United States or any state, the Supreme Court of the United States admitted that it was a de facto government whose "actual supremacy, however unlawfully gained," within the area of its jurisdiction, "made obedience to its authority, in civil and local matters, not only a necessity but a duty. Without such obedience civil order was impossible."58

Responsibility of Mexico for the Acts of Revolutionists, 1910-1920

The question of the responsibility of Mexico for the acts of the various revolutionary forces which operated there, beginning

55Discussed infra. See also (1924) 18 Am. J. Int. L. 143, and 43 Stat. at L. Part II, 1722.
56See Borchard, Diplomatic Protection of Citizens Abroad 207.
57Borchard, Diplomatic Protection of Citizens Abroad 208. See also note above, 5, referring to Thorington v. Smith, (1869) 8 Wall. (U.S.) 1, 19 L. Ed. 361. See also I Wharton, Digest 29.
58Thorington v. Smith (1869) 8 Wall. (U.S.) 1, 19 L. Ed. 361, cited in the preceding note.
in 1910, was the subject of diplomatic discussion between Mexico and foreign governments from an early period of those disturbances. The Mexican authorities did not deny responsibility for losses incurred by foreigners at the hands of revolutionists. In fact, responsibility, in a general way, was freely admitted. But a definite settlement of claims was difficult to get. And finally, on September 22, 1915, the Carranza government proposed to the United States that the matter be indefinitely postponed, pending the establishment of order in Mexico.

The Special Claims Convention, arranged by the Mexican-United States Commission, which convened in 1923 to bring about an agreement upon the basis of which the United States would recognize the Obregon government, provided for a Special Claims Commission to settle claims of the United States against Mexico "arising from losses or damages suffered by American citizens through revolutionary acts within the period from November 20, 1910, to May 31, 1920, inclusive." The Convention provided that all claims should be examined and decided according to the "principles of justice and equity," it being set forth that, "The Mexican Government desires that the claims shall be so decided because Mexico wishes that her responsibility shall not be fixed according to the generally accepted rules and principles of international law, but ex gratia feels morally bound to make full indemnification and agrees, therefore, that it will be sufficient that it be established that the alleged loss or damage in any case was sustained," and that it "was due to any act by the following forces:

1. "By forces of a government de jure or de facto.
2. "By revolutionary forces as a result of the triumph of whose cause governments de facto or de jure have been established or by revolutionary forces opposed to them.
3. "By forces arising from the disjunction of the forces mentioned in the next preceding paragraph up to the time when the government de jure established itself as a result of a particular revolution.

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(1915) For. Rel. 836.

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Signed September 19, 1923, ratifications exchanged February 19, 1924. For the text of the convention, see (1924) 18 Am. J. Int. L. 143. See also 43 Stat. at L., Part II, 1722.

Similar conventions have been signed with other nations. See 23 Cur. Hist. 568; 24 Cur. Hist. 950; N. Y. Times, Mar. 31, 1927; (1926) 20 Am. J. Int. L. 163, 362.
4. "By federal forces that were disbanded.
5. "By mutinies or mobs, or insurrectionary forces other than those referred to under subdivisions 2 and 3 above, or by bandits, provided in any case it be established that the appropriate authorities omitted to take reasonable measures to suppress insurrectionists, mobs, or bandits, or treated them with lenity, or were in fault in other particulars."

It was further agreed by the Mexican government that the Commission "shall not disallow or reject any claim by the application of the general principal of international law that the legal remedies must be exhausted as a condition precedent to the validity or allowance of any claim." And the parties to the convention agreed to consider the decisions of the Commission "as final and conclusive upon each claim decided, and to give full effect to such decisions."

A large number of claims was presented to the Special Claims Commission, but it has made little progress in disposing of them. The decision in the *Santa Ysabel Cases*, given by a majority of the Commission on April 26, 1926, was drastically criticised, as being contrary to the terms of the Convention. And, the resulting situation was not conducive to harmonious operation of the commission.

The claimants in the Santa Ysabel Cases were American citizens who sought damages for the massacre of sixteen Americans, relatives of the claimants, in Mexico in January, 1916, by a group of armed men under the leadership of one Pablo Lopez, but the responsibility for which was traced to General Villa, who had been engaged in revolutionary effort against the Carranza government, and who, at the time of the massacre, was engaged in banditry in the region of Santa Ysabel. The majority opinion rejected the claims on the ground that, at the time of the murders, Villa and his followers, including the Lopez group, did not have the status of revolutionists, or of any of the forces for which Mexico had agreed to be held responsible. It held that the murderers were

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64See (1925) 19 Am. J. Int. L. 365. For detailed accounts of the incidents for which claims were presented, see Sen. Documents, Vols. IX, X, XIV, No. 165 and No. 285, 66th Cong., 2d sess.
65Docket No. 449, Special Claims Commission, United States and Mexico (1926).
66See the dissenting opinion of Judge Ernest B. Perry, American Commissioner; and N. Y. Times, April 27, 1926.
67Dr. Rodrigo Octavio, original Chairman of the Commission who joined with Senor F. Gonzalez Roa, Mexican Commissioner, in the opinion in the Santa Ysabel Cases, resigned in July, 1926, giving reasons of poor health.
simply bandits, and cited evidence to show that neither the Mexican government, nor the government of the United States, at that time considered them to be anything other than bandits. As bandits, Mexico had accepted responsibility for their acts, only in case it should appear that the Mexican government:

1. had not exercised proper diligence in guarding against their operations; or
2. had shown leniency in dealing with them after their depredations had been committed.

The opinion held that neither of these conditions was present in the case, pointing out that the entire band of murderers was executed, and so dismissed the claims.

The American Commissioner dissented, contending that the murderers were not only bandits, but also revolutionists, for whose acts the Mexican government had agreed to be responsible by the terms of the Special Claims Convention.

As stated at the beginning, the extent of the legal responsibility of the state for the acts of local de facto governments is perhaps somewhat less certain than in the case of de facto governments which control for a time the whole area of the state. The responsibility of the state for the acts of revolutionists maintaining control over only a portion of the state's territory depends largely upon the ultimate outcome of the revolution. If it succeeds and the organization becomes the de jure government, then its acts, from its beginning, are held to be binding upon the state. But if it fails, the state may disregard many of its acts. However, as has been pointed out, the state has been held to be liable in some instances for certain of the acts of governments of this sort.

Among the suggested projects for codification of international law, submitted in 1925 by the American Institute of International Law for the consideration of the International Commission of Jurists at its meeting in Rio de Janeiro, in 1927, was one designed to facilitate the determination of "the responsibility of the Ameri-

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Footnote: A general amnesty had been extended to General Villa's men by the Mexican government after his decisive defeat in September, 1915. About eight hundred of his followers accepted the amnesty. And the diplomatic correspondence of the United States Department of State at the time, and the language of the United States Congress in a resolution relative to the sending of armed forces across the Mexican border in pursuit of Villa and his followers in 1916 were cited to show that those men were considered no more than a "lawless band of armed men," or a "fugitive band of outlaws." See (1916) For. Rel. 489, 491, 582. See also a statement by President Wilson (1916) 10 Am. J. Int. L. Supp. 191.
can Republics with regard to foreigners for damages which they may suffer on the territory of those republics, from revolutionary disturbances. The suggestion is indicative of the unsatisfactory status of international law on the subject.

60 The original proposal was that a convention should be concluded by the American republics to the effect that:

"Article I. The Government of each American Republic is obliged to maintain on its own territory the internal order and governmental stability indispensable to the fulfillment of international duties.

"Article II. As a consequence of the rule formulated in the preceding Article, the governments of the American Republics are not responsible for damages suffered by foreigners, in their persons or in their property for any reason whatsoever, except when the said governments have not maintained order in the interior, having been negligent in the suppression of acts disturbing this order, or, finally, have not taken precautions so far as they were able to prevent the occurrence of such damages or injuries."