Tinoco Concessions Arbitration
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A. Factual Background

1 The arbitral ruling of 18 October 1924 deals with the validity of contracts entered into by a → de facto regime of Costa Rica between 1917 and 1919 (Arbitration).

2 In 1917 the Costa Rican government was overthrown by Frederico Tinoco, the Secretary of War in that government. Tinoco assumed undisputed power, called an election, and established a new constitution. His government fell in September 1919, without having been recognized by some nations, including Great Britain (‘GB’) (Governments; Non-Recognition; Recognition). When Tinoco retired and left the country, the old constitution was restored. In 1922, the restored government passed a law known as the Law of Nullities No 41, which invalidated all contracts entered into by the Tinoco government. Among these were two contracts with British companies. One of them dealt with oil concessions granting the right to explore and exploit oil reserves within Costa Rica to a British-owned petroleum company (Oil Concession Disputes, Arbitration on). The second one concerned a funded debt with the Royal Bank of Canada. The British government contested the validity of the Law of Nullities with regard to the rights and property of the British companies that were concerned by the law (Property, Right to, International Protection).

B. Findings and Reasoning of Arbitrator

3 The jurisdiction of the sole arbitrator William R Taft, Chief Justice of the Supreme Court and former President of the United States of America (‘US’), derived from a treaty of arbitration between Costa Rica and the UK, dated 12 January 1922, in which the settlement of the conflict through arbitration had been stipulated (Arbitration and Conciliation Treaties).

4 The arbitrator ultimately decided in favour of Costa Rica. Nonetheless, his decision listed three arguments in favour of the UK before the claim was rejected on other grounds.

5 First, the arbitrator held that in conformity with ‘well settled international law’ (Arbitration between Great Britain and Costa Rica [1924] 18 AJIL 147, 150), namely the principle of continuity of States, de facto regimes are able to bind the subsequent governments irrespective of the way they gained power (see also Armed Conflict, International). The arbitrator stated that the Tinoco regime was such a de facto government, as it was in ‘actual and peaceable administration without resistance or conflict’ (ibid 152) until a few months before it ended. The argument of Costa Rica that the Tinoco regime had not been established according to the old constitution could not change its de facto character: ‘To speak of a revolution creating a de facto government, which conforms to the limitations of the old constitution, is to use a contradiction in terms’ (ibid 154).

6 Conceding that the recognition of a government by other nations is usually strong evidence of its existence, the arbitrator argued that the non-recognition of the Tinoco regime by some nations, including the US and the UK, could not outweigh the evidence presented as to the de facto character of Tinoco’s government when recognition vel non of a government is, by such nations, determined by inquiry, not into its de facto sovereignty and complete governmental control, but into its illegitimacy or irregularity of origin, their non-recognition loses something of evidential weight on the issue with which those applying the rules of international law are alone concerned (ibid 154).
Secondly, the decision stated that GB was not estopped from urging claims of her subjects dependent on acts of the Tinoco regime (→ Estoppel). Although GB did not recognize the Tinoco government, it was nevertheless a de facto government that could create rights in British subjects which the British government now wanted to protect. The principle of estoppel did not apply to this case, as ‘the failure to recognize the de facto government did not lead the succeeding government to change its position in any way upon the faith of it’ (ibid 156).

Thirdly, the arbitrator held that the British government was not precluded from giving → diplomatic protection to the companies as they were not obliged contractually to exhaust local remedies (→ Local Remedies, Exhaustion of). The duty of the courts of the restored government to administer the law of the restored constitution ‘may prevent the courts from giving full effect to international law that may be at variance with the municipal law’ (ibid 159; → International Law and Domestic [Municipal] Law). On the whole, the situation had changed so gravely since the conclusion of the contracts, that the restored government ‘must be held to have waived the enforcement of any limitation upon the right of the bank to invoke the protection of its home government’ (ibid 160; see also → Treaties, Fundamental Change of Circumstances).

The reasons why the claims of the British government were finally defeated lie within the peculiarities of the cases: as for the fund claimed by the Royal Bank of Canada, the bank knew that the money was not paid to the Tinoco government, but to the private person Tinoco and his brother for financing their refuge in foreign countries. The restored government could not be obliged to repay the private expenses of a former president.

As for the concessions claim, the arbitrator held that the contract had not been legally binding from the time of its conclusion as it could have been defeated for lack of power in the concluding body under the laws of the Tinoco regime. Accordingly, the restored government was not bound by the concession either.

C. Assessment and Relevance

In current literature the arbitral ruling is usually cited as a reference for the limited relevance of the recognition of States by foreign nations. It showed that recognition alone is not constitutive for the establishment of power but has declaratory effect only. Instead, the doctrine of effective control set forth in the case is largely used for the assessment of governmental → sovereignty (→ Effectiveness). Recent critics, though, see this doctrine as antagonistic and contradictory to the new constitutive, human rights-based conception of popular sovereignty (Reisman 241; → Human Rights).

In addition, the ruling is still relevant for questions regarding the responsibility of States for acts of insurgent governments (→ Insurgency; → State Responsibility). In this context, the case has recently been discussed in relation to the odious debt doctrine. Supporters of this doctrine refer to the case as a presumed precedent for their argument, as it states that a government is not responsible for repaying funds raised by insurgent leaders for their personal purposes.

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