



International Law

Assignment for Chapter 4

Ole J. Forsberg, Ph.D.

University of Tennessee

Mexico charged Harry Roberts, a US citizen resident of Chihuahua in Mexico, with “assaulting a house.” When Roberts and several armed American companions gathered outside a house in Chihuahua, the owner summoned the Mexican *Federales*. After an exchange of small-weapons fire, the police arrested Roberts. The Mexican *Constitución* provided that prisoners had to be brought to trial within twelve months of their arrest. Roberts was in the Mexican jail in Ciudad Juárez for nineteen months without any hearing.

The arbitration report further notes that “[w]ith respect to this point of unreasonably long detention without trial, the Mexican Agency contended that Roberts was undoubtedly guilty of the crime for which he was arrested; that therefore, had he been tried, he would have been sentenced to serve a term of imprisonment of more than nineteen months; and that, since, under Mexican law, the period of nineteen months would have been taken into account in fixing his sentence of imprisonment, it cannot properly be considered that he was illegally detained for an unreasonable period of time.”

His conditions of incarceration were typical for Mexican prisons of that era, but less tolerable than prison conditions in other countries in the early 1920s. The international arbitration report reveals that he was kept in a “room thirty-five feet long and twenty feet wide with stone walls, earthen floor, straw roof, a single window, a single door and no sanitary accommodations, all the prisoners depositing their excrement in a barrel kept in a corner of the room; that thirty or forty men were at times thrown together in this single room; that the prisoners were given no facilities to clean themselves; that the room contained no furniture, ... and that the food given them was scarce, unclean and of the coarsest kind.”

After his release, Roberts obtained US assistance for presenting this case against Mexico. The US representative claimed that Mexico was responsible for a denial of justice to a US citizen. It had violated the IMS applicable to all prisoners. Mexico’s representative countered that Roberts was treated the same as all prisoners, including Mexican prisoners.

As an aside, realize that jail conditions can be terrible, even in a comparatively strong economy like that of the United States. Its courts have occasionally enunciated a minimum constitutional standard for the treatment of prisoners (similar to the IMS on the domestic level). The following 1976 case from Alabama (fifty years *after* the Roberts international arbitration) is a classic example:

There can be no question that the present conditions of confinement in the Alabama penal system violate any current judicial definition of cruel and unusual punishment, a situation evidenced by the defendants’ [State of Alabama and its Board of Corrections] admission that states that serious Eighth Amendment cruel and unusual punishment violations exist...

Confinement itself within A given institution may amount to a cruel and unusual punishment prohibited by the [federal] Constitution where the confinement is characterized by conditions, and practices, so bad a, to be shocking to the conscience of, reasonably civilized people even though a particular inmate may never personally be subject to any disciplinary action.

The conditions in which Alabama prisoners must live, as established by the evidence in these cases, bear no reasonable relationship to legitimate institutional goals. As a whole they create an atmosphere in which inmates are compelled to live in constant fear of violence, in immanent danger to their Physical well-being, and without opportunity to seek a more promising future.

- *Pugh v. Locke*, 460 F.Supp. 318, 329 (Dist. Ct. Ala, 1976), cert. granted in part, judgment reversed in part on other grounds, *Alabama v. Pugh*, 438 U.S. 781 (US. Ala. 1978).

Ready? Let us move you back in time to the mid-1920s. Let us also have the United States (and Mexico) bring this case to the International Court of Justice in The Hague, Netherlands (even though it did not exist at that time, but let us pretend). As luck would have it, you are a judge on the ICJ. Just for the fun of it, let us have your home State be Czechoslovak Republic (if it matters at all).

Assume that Mexico did not treat Roberts any differently than other prisoners. Address the following questions associated with the US claim that Mexico breached the IMS of treatment for aliens. Write it up as though it were a genuine contentious case decision by the ICJ, and you were writing the opinion for a unanimous court.

1. Should Roberts' guilt or innocence be considered?
2. In the absence of any relevant treaty in the 1920s, is there an applicable IMS?
3. Should your international tribunal announce an IMS? If so, what would it be?
4. Did Mexico's violation of its constitutionally required twelve-month period, from arrest to trial, automatically constitute a breach of the IMS?
5. Did the earlier-quoted prison conditions constitute a breach of the IMS?