

following formula at its Lausanne session in 1927, covering responsibility by reason of a denial of justice or manifest injustice:

"First; when the courts necessary to assure protection to aliens do not exist, or are not functioning. Second; when, in the absence of reasons justified by the requirements of procedure, the courts are not equally accessible to foreigners and nationals alike. Third; when such courts manifestly fail to provide those guaranties indispensable to assure the proper administration of justice.

"The State is equally responsible if the proceedings or the decision constitute a manifest injustice, and especially, if they have been influenced by ill-will against all foreigners as such, or against the nationals of one State in particular."

The Research Committee of the Harvard Law School has adopted the following formula as a solution for this problem:

"A State is responsible if an injury to an alien results from a denial of justice. Denial of justice exists when there is a denial, unwarranted delay or obstruction of access to courts, gross deficiency in the administration of judicial or remedial process, failure to provide those guaranties which are generally considered indispensable to the proper administration of justice, or a manifestly unjust judgment. An error of a national court which does not produce a manifest injustice is not a denial of justice."

The Preparatory Committee of the Codification Conference propounded this question in Basis of Discussion No. 6, reading as follows:

"A State is responsible for damage suffered by a foreigner as the result of the courts following a procedure and rendering a judgment vitiated by faults so gross as to indicate that they did not offer the guarantees indispensable for the proper administration of justice."

The replies of the various governments are not uniform. The Government of Australia deems that a State may incur responsibility if the decision is either corrupt or so erroneous that it could not honestly have been given by a competent court, or is given under pressure from the executive organs of the government. The Government of Belgium recognizes responsibility if after the judge has been shown to be guilty of corruption, the laws of the country do not allow the decision to be reversed. Great Britain believes that there are four principal grounds for responsibility in the case of an erroneous decision; if it is

- "(a) So erroneous that no properly constituted court could honestly have arrived at such a decision;
 - "(b) Due to corruption;
 - "(c) Due to pressure from the executive organs of the Government;
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