

nationals of one State in particular, it may be stated without hesitation that there is a denial of justice. These instances have been enumerated more or less in the foregoing order in the Bases of Discussion of the Preparatory Committee. They have been accepted by the States in general. The Government of Germany deems that the international responsibility incurred by the State owing to the decisions of its courts of justice must be restricted. It points out the common accord in regard to a denial of justice, but maintains that the opinions as to the exact nature of this phrase are quite varied. The term comprises the refusal of access to the courts as well as undue delay in the proceedings, and also any clear violation of the law to the detriment of foreigners as a whole or certain nationals in particular. The Government of Austria avers that responsibility arises when the judicial organization does not come up to the usual standard of that of a civilized State, or when aliens are denied access to the courts. Belgium accepts the typical cases before mentioned as a basis for the application of the doctrine of denial of justice. Chile confines a denial of justice to refusing aliens access to the courts. Great Britain affirms responsibility in cases of refusal of access to the courts, inconsistency of the decisions with international obligations, and delay in the proceedings. The Netherlands declares that, generally speaking, the intrinsic value of a judgment in civil or penal matters cannot form the subject of a claim, except in cases where some point of international law is involved or where there has been a flagrant infringement of the principles of law. Poland believes that the plan for the determination of what constitutes a denial of justice formulated in the draft of the American Institute of International Law is more complete than that framed by the Committee of Experts of the League of Nations.¹

Switzerland points out the advisability of drawing a distinction between judgments which imply a violation of international law and those which, though not amounting to a violation, manifestly ignore the elementary principles of justice.²

¹ Article 3. Every nation has the right to accord diplomatic protection to its nationals in an American Republic in cases in which they do not have legal recourse to the authorities of the country, or if it can be proved that there has been denial of justice by the said authorities, undue delay, or violation of the principles of international law.

Article 4. Denial of justice exists—(a) When the authorities of the country where the complaint is made interpose obstacles not authorized by law in the exercise by the foreigner of the rights which he claims; (b) When the authorities of the country to which the foreigner has had recourse have disregarded his rights without legal reason, or for reasons contrary to the principles of law; (c) When the fundamental rules of the procedure in force in the country have been violated and there is no further appeal possible. (Codification of American International Law—American Institute of International Law—Project No. 16—Diplomatic Protection.)

² "In the former case, the State is invariably responsible; it is not, however, necessarily so in the latter case. It is not responsible, as has been pointed out, for the intrinsic juridical merits of the judgment given. Every State is bound to afford full and absolute judicial protection to foreigners and this implies ready access to the courts.