

maintains that the success of the insurgent party and its assumption of the government, do not affect the responsibility of the State. Czechoslovakia states:

“The State is not responsible for damages caused by insurrection, however, if the claimant State and the State against which the claim is brought both recognize the insurgents as belligerents.

“The question whether a revolutionary Government is responsible for damage caused during a civil war to the person or property of foreigners where the insurgents gain power is not yet ripe for settlement, and it seems unlikely that any general formula found for it would secure unanimous acceptance. The reply to this question, above all, would depend on the circumstances of the case, more particularly on whether the acts which caused the damage could be attributed to the new Government or to its agents.”¹

These are neither isolated opinions nor do they lack proper grounds. The opinion based upon the success of the insurgents could be termed the *doctrine of success*. Victory, which has become a fact, would control the juridical relations. The fiction of the national will, which is presumed to lie with the successful side, may be used to explain the advantage of holding responsible the new revolutionary government that comes into power; but it does not attribute any juridical character to such advantage.² The acts involving responsibility and committed during the revolution are due to the fault of those who committed them. If fault exists, responsibility follows. It would not then seem correct to state that the Government is responsible for damage caused by the insurgents “if the insurrection is successful and the insurgent party has assumed power”. The formula of the Harvard Research Committee is preferable:

“In the event of a successful revolution, the state whose government is established thereby is responsible if an injury to an alien has resulted

¹ *Ibid.*

² Professor Podestá Costa, of the Argentine, maintains this view in his work entitled “*Ensayo sobre las Luchas Civiles y el Derecho Internacional*” (Essay on Civil Wars and International Law). The following is quoted therefrom: “As regards *specific injurious acts*, there is no foundation for the view that the accidental and extraneous fact of final victory of the insurgent party should alter the juridical question arising between the State and the injured alien on account of the commission of such acts by members of the insurgent party . . . if the hypothesis should be accepted *a posteriori* that the national will is with the successful party from the inception of the revolution, it should also be concluded that, at the beginning of every civil war, the responsibility of the State for injurious acts will be involved, either in connection with the acts attributable to the constituted Government, or in connection with those attributable to the insurgent party, depending upon which of the two should be finally victorious; and if this conclusion is established, when the insurgent party is finally successful, the State would have to be relieved from all responsibility for the acts attributable to the former constituted Government.”