

COMMISSION) 155 made which could warrant the Commission in reaching the conclusion that the reduction of the sentence resulted in a denial of justice as that term is understood in international law. I am not entirely clear with regard to the argument that was made that in a case of this kind law, justice, and equity "preclude" a claim from being set up. Under Article I of the Convention of September 8, 1923, the United States has the right to present this claim to the Commission. The United States invoked the rule of international law which requires a government to take proper measures to apprehend and punish nationals who have committed wrongs against aliens. The legal issue presented to the Commission is whether or not the obligations of that rule were properly discharged with respect to the apprehension and punishment of the person who killed Massey. Neither the character nor the conduct of Massey can affect the rights of the United States to invoke that rule nor can they have any bearing on the obligations of Mexico to meet the requirements of the rule or on the question whether proper steps were taken to that end. In other words, the character and conduct of Massey have no relevancy to the merits of the instant claim under international law. 4. In the Mexican brief the contention is advanced that a State is not responsible for a denial of justice, when a private individual who is under MEXICO/U.S.A. (GENERAL CLAIMS COMMISSION) 157 indictment or prosecution for the killing of an alien is allowed to escape by a minor municipal officer in violation of law and of his own duty; if the State immediately disapproves of the act by arresting and punishing the officer, and reasonable measures are taken for the apprehension of the fugitive. It is asserted that an assistant jail-keeper unlawfully permitted Saenz to walk out of jail; that this minor official was arrested and strong action was taken against him; and that therefore no responsibility attaches to the Mexican Government for his misconduct. 5. No such defense with regard to the non-responsibility for the acts of the jail-keeper, and no facts regarding his conduct or steps taken to punish him for his wrongdoing are stated in the Mexican Answer. It is therefore very questionable whether the defense could properly be advanced as it was in the Mexican brief and in oral argument in which contentions were forcefully pressed by counsel for Mexico with respect to the non-responsibility of Mexico for the acts of a minor official of this kind, and whether it is proper for the Commission to consider it. However that may be, I am of the opinion that the argument made with respect to this question of responsibility for the jail-keeper is not well taken. 6. An examination of the opinions of international tribunals dealing with the question of a nation's responsibility for minor officials reveals conflicting views and considerable uncertainty with regard to rules and principles to which application has been given in cases in which the question has arisen. To attempt by some broad classification to make a distinction between some "minor" or "petty" officials and other kinds of officials must obviously at times involve practical difficulties. As the Commission has heretofore pointed out, it appears to be a proper construction of provisions in Article I of the Convention of September 8, 1923, that uncertainty with respect to a point of responsibility was largely eliminated by the two Governments when they stipulated that the Commission should pass upon "all claims for losses or damages originating from acts of officials or others acting for either Government and resulting in injustice." 7. The question which has

been raised in the instant case, and not infrequently in cases coming before international tribunals, is not one that can be properly determined in the light of generalities such as are frequently found in the opinions of tribunals. That this is true may be shown by a brief reference to citations of cases appearing in the Mexican brief. 8. With respect to the broad statement in an opinion rendered by Attorney General Cushing to Secretary of State Marcy under date of May 27, 1855 (7 Ops. Atty. Gen'l 229), it is pertinent to note the precise character of the Peruvian Government's claim with respect to which Mr. Cushing advised Mr. Marcy. A Peruvian vessel was stranded as a result of the unskillfulness or carelessness of a pilot in the Bay of San Francisco. While this pilot was under a measure of supervision of state authorities and was licensed by them, he was employed by the master of the Peruvian vessel, who was at liberty to pilot his own vessel or to employ an unlicensed pilot. Mr. Cushing was of the opinion that neither the state of California nor the 158 MEXICO/U.S.A. (GENERAL CLAIMS COMMISSION) United States was the "guarantor, security, or assurer" of the professional acts of the pilot. Whether or not the keepers of jails may properly be designated as minor officials, they are assuredly entrusted with highly important duties. 2. 9. 11. 12. 13. 14. 16. 22. 25. 26. 27. 28.