

THE STATUS OF MR. BAKHMETEFF, THE RUSSIAN AMBASSADOR AT WASHINGTON¹

We have searched the records in vain for a historical parallel to the strange case of Mr. Bakhmeteff, the Russian Ambassador at Washington still representing a government (the Kerensky régime) which has been defunct for nearly five years, and which enjoyed a short-lived existence of but a few months in 1917.

Most of the cases cited by the authorities bearing on the termination of diplomatic missions deal with the recall or dismissal of ministers and lack applicability to this case. Among the eleven different causes resulting in the termination of a diplomatic mission, Oppenheim (Vol. I, 3rd ed., pp. 581 ff.) includes "revolutionary change of government in the sending or receiving state."

This Anglo-German authority, who among all the publicists consulted, treats this particular topic most carefully, distinguishes between the "termination" and mere "suspension" of diplomatic missions. He says that "the termination of diplomatic missions must not be confounded with their suspension. Whereas from the foregoing eleven causes a mission comes actually to an end, and new letters of credence are necessary, a suspension does not put an end to the mission, but creates an interval during which the envoy, although he remains in office, cannot exercise his office."

He adds: "Suspension may be the result of various causes, as for instance, a revolution within the sending or receiving state. Whatever the cause may be, an envoy enjoys all his privileges during the duration of the suspension."

From which it appears that in Oppenheim's view a revolutionary change may result either in the termination or mere suspension of the diplomatic mission. But he does not clearly indicate the differing circumstances causing these different results, though he is clear on the point (p. 585) that "a revolutionary movement in the sending or receiving state which creates a new government, changing for example, a republic into a monarchy or a monarchy into a republic, or deposing a sovereign and enthroning another, terminates the missions. . . . It happens that in cases of revolutionary changes of government, foreign states, for some time, neither send new letters of credence to their envoys nor recall them, watching the course of events in the meantime, and waiting for more proof of a real settlement. In such cases the envoys are, according to an international usage, granted all privileges of diplomatic envoys, although in strict law they have ceased to be such."

There seems to be a difference of opinion among the authorities as to whether a revolutionary change in the form of government results in the termination or mere suspension of a diplomatic mission.

¹ Written before the publication of the letter of Mr. Bakhmeteff to Secretary of State Hughes dated April 28, 1922, and the Secretary's reply of April 29th. (For the letters referred to, see *The Washington Post*, June 5, 1922).—ED.

Thus Hall (5th ed., p. 304) notes that "there is some difference of opinion as to whether the death of a sovereign to whom an ambassador or minister is accredited in strictness necessitates a fresh letter of credence, but it is, at least, the common habit to furnish him with a new one; though the practice is otherwise when the form of government is republican."

He adds: "A like difference of opinion exists as to the consequences of change of government through revolution, it being laid down on one hand that the relations between the state represented by a minister or other diplomat and the new government may be regarded as informal or official at the choice of the parties, and on the other that a new letter of credence is not only necessary, but that the necessity is one of the distinctive marks separating the position of a diplomatist from that of a consul. Practice appears to be in favor of the latter view."

In his *Digest of International Law*, Moore (IV, p. 472) thus summarizes the American viewpoint: "A change in the government of the country to which a minister is sent, although it involves furnishing him with new credentials to the ruling authorities, does not terminate the mission."

And in his recent treatise on *International Law as Interpreted and Applied by the United States* (I, p. 730), Hyde observes: "The change of a head of a state, or the change of its government, is not believed to terminate a foreign mission. The utmost consequence of either event is the suspension of the functions of the minister until the presentation of new letters of credence."

On the main question as to whether a revolutionary movement in the sending or receiving state has the effect of terminating or merely suspending diplomatic missions, it would seem that this should be made to depend upon the success or failure of the movement. If the revolution succeeds and the former government is definitely overthrown, diplomatic missions, whether sent by or accredited to it, should be regarded as having terminated once and for all. So long as a state of uncertainty prevails as to the issue of the revolutionary movement, the missions may be looked upon as suspended during the interval. If the movement definitely fails, their former status may be said to revive.²

Applying these principles to the strange case of Mr. Bakhmeteff, does it not seem reasonably clear that his mission should have been regarded as at an end as soon as it was reasonably clear that the Kerensky régime which he represented was definitely overthrown, and that there was little or no prospect of its revival? In any case, official intercourse with him and his aids should have been suspended during the longer or shorter period of uncertainty which appears to have existed in the official mind at Washington after the establishment of the Russian Soviet Republic in November, 1917. If this had been done, much subsequent embarrassment might have been avoided, and our Government would not find itself in its present awkward position.

² See Pradier-Fodéré, *Traité*, III, p. 462, on this point.

Of course our Government is probably as much within its rights in continuing to recognize an ambassador from a government which has long ceased to exist as it would be in recognizing one purporting to come from the planet Jupiter or some island in the Pacific Ocean which had been destroyed by a volcano or an earthquake. And as long as we continue to recognize him, he is entitled, by custom and courtesy at least, to diplomatic privileges and immunities.

As Satow (*Diplomatic Practice*, I, p. 368) observes: "Whatever may be the causes that lead to the termination of a mission, the minister remains in possession of the immunities and privileges attached to his public character until he leaves the country to which he has been accredited."³

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THE SWISS DECISION IN THE BOUNDARY DISPUTE
BETWEEN COLOMBIA AND VENEZUELA

On March 24, 1922, the Federal Council of Switzerland rendered its award upon certain boundary disputes pending between Colombia and Venezuela.

The dispute, as is so often the case between nations, has a long history. It was due, in first instance, to the uncertain boundaries of the Spanish possessions in America, and the desire of the Republics succeeding to the Spanish dominions in America to render definite what had been indefinite with due regard to their respective interests. There is one passage from the award which should be quoted by way of introduction, as it lays down a principle common to the Spanish-American Republics, and suggests a connection with a famous doctrine of North-American origin, which did not escape the keen eye and trained intelligence of the arbitrator. In English, of course the text is in French, this part of the award is as follows:

When the Spanish colonies of Central and South America proclaimed their independence in the second decade of the nineteenth century, they adopted a principle of constitutional and international law to which they gave the name of *uti possidetis juris* of 1810. The principle laid down the rule that the boundaries of the newly established republics would be the frontiers of the Spanish provinces which they were succeeding. This general principle offered the advantage of establishing the absolute rule that in law no territory of old Spanish America was without an owner. To be sure there were many regions that had not been occupied by the Spanish and many regions that were unexplored or inhabited by uncivilized natives, but these sections were regarded as belonging in

³ As if in some doubt as to whether this statement is not too absolute, Satow adds: "In any case, his person continues to be inviolable." Vattel (IV, chap. 9, p. 125) indicated as the reason for the retention by an ambassador of his diplomatic rights and privileges after the termination of his mission that he must "return to his principal, to whom he is to make a report of his embassy." This reason can hardly be said to be operative in the case of Mr. Bakhmeteff.