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**"Force majeure" and "Fortuitous event" as circumstances precluding wrongfulness: Survey
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INSURRECTION AT SFAX, TUNISIA (1881)

195. The residence of the Italian consular agent at Sfax, Tunisia, and those of other Italians, were occupied by French troops which had intervened to suppress a rebellion. The Italian Government protested to the Tunisian Government on the ground that the occupation violated the provisions of article 20 of the Treaty of Friendship and Trade of 8 September 1868 between Italy and Tunisia, according to which the immovable property of Italian citizens in Tunisia was inviolable.³⁵³

196. In a letter dated 10 August 1881 to the Acting Italian Consul-General at Tunis, Mr. Raybaudi, the Minister Resident of France at Tunis, Mr. Roustan, who was in charge of the Foreign Affairs of the Bey, wrote:

The Government of His Highness regrets the temporary infringement of the right of possession of the Italian property in question. However, it must point out that this infringement arose in a case of *force majeure* and was one of the acts necessitated by, and a consequence of, the military operation which restored the Bey's authority in the insurgent town.³⁵⁶

Referring to the above letter, the Italian Foreign Minister stated in a letter to Mr. Raybaudi, dated 17 August 1881, the following:

The representative implicitly admits, by the expressions of regret contained in his note, the irregularity of the occupation; however, he seeks to justify it by invoking the circumstance of *force majeure*. In this connexion, it would not be inappropriate to observe that, since the Italo-Tunisian treaty clearly stipulates the inviolability of Italian immovable property, it cannot be understood how justification can be sought by invoking a case which was certainly not one of *force majeure* for the French troops and officers, who had entered Sfax after a bombardment which had completely dislodged the enemy. In any event, even if the initial act of

³⁵³ *Ibid.*, p. 621.

³⁵⁴ *Ibid.*

³⁵⁵ Società italiana per l'organizzazione internazionale – Consiglio Nazionale delle Ricerche, *op. cit.*, pp. 872 and 874.

³⁵⁶ *Ibid.* p. 873.

occupation was recognized as a case of *force majeure*, that would not suffice to legitimate a long occupation.³⁵⁷

197. After the same insurrection the British agent and Consul-General at Tunis made a protest to the Bey on behalf of the British citizens who had suffered losses at Sfax, holding the French Government responsible for the losses on account of the insufficiency of the measures taken by the local authorities for the protection of persons and property. In a dispatch which the British Law Officers, Mr. James *et al.*, had commented upon in their opinion of 11 August 1881 as being right and proper, the British Secretary of State for Foreign Affairs stated the following to the Consul-General:

... Her Majesty's Government have always held the opinion that a foreign Power cannot, as a matter of international right, be made responsible generally for injuries inflicted on the persons or property of British subjects resident in the country by insurgents engaged in open and armed hostility to its Government, *which injuries the Government had not the power to prevent.** In such a case, foreigners cannot claim to be placed in a better situation than the natural-born subjects of the country. If a foreigner's property is injured by an invading army he has no title to compensation, and injury caused by insurgent rebels is subject to the same rule. If, indeed, the Government, having the power to do so, neglects or wilfully omits to restrain or put down the insurgents, it may be regarded as an accomplice in the act complained of, and there would be a right in the foreigner to demand compensation. It is possible that you may have reasonable ground for supposing that in the present instance the injuries complained of would not have occurred but for gross neglect on the part of the Bey's Government, although, so far as Her Majesty's Government are informed, this does not appear to have been the case. But, *under the circumstances,** it is desirable that protests of this nature should not be presented without previous communication with Her Majesty's Government, and I have accordingly to instruct you to refer home in the just instance if it should on any future occasion appear necessary to present a similar protest ...³⁵⁸