In the
INTERNATIONAL COURT OF JUSTICE

THE UNITED STATES OF AMERICA,

Applicant

v.

THE REPUBLIC OF FRANCE,

Respondent

MEMORIAL FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

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"C" - Annex C;

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STATEMENT OF JURISDICTION

Pursuant to Article 40, Section 1 of the Statute of the International Court of Justice, the Government of the United States of America and the Government of the Republic of France have agreed to submit to the jurisdiction of the International Court of Justice for decision upon their differences as described in the compromis. The International Court of Justice shall decide the controversy in accordance with the applicable rules of law described in Article 38 of the Statute of the International Court of Justice.

STATEMENT OF FACTS

The parties have stipulated to the facts in this dispute. Applicant's memorial incorporates by reference those facts as stipulated in the Special Agreement.

QUESTIONS PRESENTED

I.

Whether the Foreign Investors Act is a valid prohibition against entry of aliens.

II.

Whether the Foreign Investors Act is a valid regulation of economic activity of aliens within the United States.

III.

Whether the forfeiture of stock illegally obtained by CANIND was necessary and appropriate to effectuate the purposes of the Act and was in compliance with international law.

IV.

Whether the Foreign Investors Act is an economic sanction applied to protect the domestic economy of the United States from foreign economic intervention and is valid under international law.

V.

Whether the payment by CNFP to CANIND instead of AMERIND is both an injury to AMERIND and a violation of the rights of the United States under international law.

SUMMARY OF ARGUMENT

The United States may bar aliens from entering and the Foreign Investors Act is intended to do so. CANIND was in violation of the Act.

The United States may bar aliens, after legal entry, from economic areas which it feels are vital to the United States economy and security.

The forfeiture of stock was a penalty which was necessary to the purpose of the Foreign Investors Act and was proper under international law.

The United States was justified in enacting the Foreign Investors Act as a means of economic self-protection and the Act meets the emerging standards governing economic self-protection.

The payment by CNFP to CANIND was an injury to the rights of AMERIND and the United States as trustee in ownership for AMERIND. France, by its actions has caused injury to both AMERIND and the United States.

International law requires that France, in an international forum, may not impose its ordre public to invalidate the actions of the United States, which are valid under international law.

ARGUMENT AND AUTHORITIES

I. THE FOREIGN INVESTORS ACT RESTRICTS THE ENTRY OF ALIENS INTO ECONOMIC ACTIVITIES IN THE UNITED STATES AND IS VALID UNDER INTERNATIONAL LAW.

A. Under International Law, States May Deny Entry to Alien Persons, Corporations and Investments.

In the absence of treaty, admission of aliens by a State is wholly within the discretion of the admitting State.[1] There are no minimum standards to which a State, under international law, must conform.[2] Based upon its territorial sovereignty, a State may exclude aliens from all or part of its territory. In practice, States rarely exercise this right to its fullest extent. However, the failure to do so does not detract from the legal validity of the right.[3] Furthermore, the right to exclude extends to alien corporations and alien investments.

As evidenced by international practice, States have traditionally denied investment by foreign nationals in certain areas of their economy. France and Canada, as well as the United States, have enacted legislation precluding or regulating such investment. France requires prior government approval for all direct investment by foreign investors. Notice of proposed acquisition must be given 60 days prior to acquisition and the Government of France may deny the application at its discretion.[4] Canada, in its Foreign Investment Review Act of 1973, provides for standards which may preclude investment in stock and bases the standards

upon a desire to protect the economy and control the use of Canada's natural resources.[5] This is similar to the standard provided by the Securities Exchange Act of 1934 as amended by the Foreign Investors Act of 1975 (hereinafter referred to as the Foreign Investors Act) enacted by the United States.

The legislative acts of both France and Canada are prior prohibitions against entry of foreign investment. They set up barriers against alien investment deemed harmful to the State, and any attempted investment in contravention of the legislation is nugatory. Thus the Foreign Investors Act is similar in purpose and scope to the legislation of France and Canada. Furthermore, legislation of this nature is in accord with the common practice of other States, including inter alia, the United Kingdom and Japan.[6]

B. The Foreign Investors Act Properly Controls the Entry of Certain Alien Investments into the United States.

The Foreign Investors Act requires that all aliens whose governments have engaged in boycotts or discriminatory trade practices report to the Securities and Exchange Commission their intention to purchase 5% or more of securities in an American company. This report must be filed 30 days before the acquisition. [§13 (d)(1)(B)]. Thereafter the President, upon the recommendation of the Commission, may prohibit such acquisition if he finds that it would be harmful to the economy or national security of the

United States. [§13 (d)(1)(D)].

It is plain that the Foreign Investors Act is a non-discriminatory, non-retaliatory measure designed to control the entry of new foreign investments into the United States. It only requires reports prior to acquisition from foreign investors whose governments have engaged in certain practices. It then provides for a careful high level determination of whether any particular investment would be harmful to the vital interests of the United States. It is not an indiscriminate measure of retaliation against aliens by reason of their government's actions.

Any doubt as to the status of alien investors under the Act should be resolved prior to investment. Initially, the alien investor must determine whether his proposed acquisition is in a company within the category regulated by the Act. Second, he must determine if he is within the class of aliens prohibited from investing in such companies. The alien has a choice of either seeking an official determination of his status before any acquisition is made, or of accepting the consequences of his own evaluation.

C. CANIND Violated the Requirements of the Foreign Investors Act.

The Foreign Investors Act was enacted in January, 1975 [C-1] and thus became effective prior to CANIND'S acquisition of stock in AMERIND. [B-3]. CANIND failed to meet any of the filing requirements of the Act. [B-3]. CANIND, as a corporation controlled by

Saudi nationals, was on notice that it might fall within the class of persons required to make a report 30 days prior to their acquisition. [D-2] Particularly in light of similar legislation enacted by Canada, CANIND, as a Canadian corporation, either knew or should have known of the restrictions provided by the Foreign Investors Act. Moreover, if CANIND had filed the required notice prior to acquisition, or at least consulted on the matter, the United States would have been in a position to make its decision so as to avoid any injury to CANIND and avoid the necessity of vindicating its own law by the imposition of a penalty. CANIND cannot complain, when, in spite of adequate notice, it violated and possibly attempted to circumvent the laws of the United States.[7]

II. THE FOREIGN INVESTORS ACT REGULATES THE ECONOMIC ACTIVITY OF ALIENS IN THE UNITED STATES AND IS VALID UNDER INTERNATIONAL LAW.

According to customary international law, States may regulate the activities of aliens after entry. In this regard, "[i]nternal economic policies and aspects of foreign policy may result in restriction on the economic activities of aliens."[8] The United States has consistently classified areas forbidden to foreign investment through legislation such as the Federal Aviation Act (aircraft)[9] and the Communications Act (radio and television stations).[10] The Alien Restriction (Amendment) Act provides the same type of regulation in the United Kingdom.[11] France regulates the activities of aliens within the country and provides for fines

and penalties for their violation.[12]

However, the right to regulate is subject to the condition that the international minimum standard of treatment be met. The standard requires that the actions of the host State "...not amount to an outrage, to bad faith, to willful neglect of duty or to an insufficiency of governmental action...."[13]

Applicant submits that the treatment of CANIND pursuant to the Foreign Investors Act conforms completely to the international standard of justice. The Act, as applied to CANIND was neither arbitrary, outrageous nor in bad faith. AMERIND operates oil refineries producing gasoline and petrochemical products and is thus a user of certain of the United States most important natural resources. [B-2]. AMERIND is in a sector vital to both the continued well being of the United States economy and to its national defense. Clearly the regulation of AMERIND's ownership is consistent with international practice and constitutes a legitimate exercise of the police power of a State.

Moreover, the Act was applied in a procedurally fair and impartial manner. CANIND was on notice as to the provisions of the Act prior to its acquisition. [D-2]. The Act entitled CANIND to a hearing before the Commission. [§13(d)(1)(D)]. CANIND had full and fair access to the courts of the United States, including a right to request review by the Supreme Court,[14] and CANIND took full advantage of that right. [B-4]. Thus any consequence arising from

the action of CANIND is due solely to CANIND's failure to obey the law.

III. THE FORFEITURE OF STOCK ILLEGALLY OBTAINED BY CANIND WAS NECESSARY AND APPROPRIATE TO EFFECTUATE THE PURPOSES OF THE FOREIGN INVESTORS ACT AND WAS IN COMPLIANCE WITH INTERNATIONAL LAW.

It is patent that the purpose of the Foreign Investors Act is to protect and control ownership in those companies vital to the economy and security of the United States. A further purpose is to insure that natural resources of the United States which are controlled by such companies be used solely for the benefit of the American people. No penalties would have been imposed on CANIND had it complied with the requirements of the Act. The forfeiture of the stock acquired by CANIND is necessary to prevent possible surreptitious acquisition of stock.

Applicant submits that the penalty is proportional to the offense in that deprivation of illegally obtained stock is the only deterrent sufficient to prevent future attempts at acquisition. A provision providing divestiture with compensation would not serve to discourage attempted violations of the Act. In fact, surreptitious acquisition might be encouraged if alien investors know that they will suffer no loss if caught. Because of the procedural safeguards accorded alien investors by the Unites States, any divestiture of improperly obtained ownership can and will take time. While in the instant case it took less than six months for the Commission to make its determination, for that determination to be

reviewed by the President, for the District and Appellate Courts to decide the matter and for the Supreme Court to deny certiorari, this is not likely to be the general pattern. More likely alien owners who surreptitiously purchase American companies will have ample time to reap substantial economic and political gains before action can be taken against them. Only if these possibilities are denied to them by complete forfeiture of their interest can the Act be effectively enforced.

Indeed, forfeiture has long been recognized as the appropriate remedy in international law where it represents the only efficacious means of securing the basic purposes of national regulation. Forfeiture under the Act is comparable in its necessity to the long established right of a State to confiscate the catch of fishermen illegally fishing within a restricted fishing zone delimited by the State.[15] Confiscation has also been applied as a proper penalty for violation of customs laws, and has been extended to the confiscation of an offending vessel engaged in a prohibited trade.[16]

It is axiomatic that a State may protect its citizens from traditional criminal acts perpetrated by aliens.[17] States also have, it is submitted, an even greater right to protect their citizens from acts of aliens which threaten to deprive their people of natural resources vital to their economic well being and defense. The natural resources of a State belong to all the citizens of that State and the government of the State as trustee. The State

may therefore determine how and by whom the natural resources of the State will be utilized, and may prohibit the use of such natural resources by aliens.[18] If an alien illegally obtains ownership of either the resource itself or the means of exploiting the resource then "confiscation may be a step towards restitution to the true owner. Restitution to the true owner unlawfully dispossed, is not, of course, confiscation since it reestablished a superior title and ends a defective one."[19]

In the case before this Court, CANIND illegally obtained control of a company which both controls and utilizes a critical natural resource vital to the economy and national security of the United States, [B-2]; a resource which the United States government is sworn to protect for the benefit of all American citizens. The forfeiture penalty operates to return control to the rightful owners of the natural resources of the State. Consequently, the penalty is proportional to the threat and is the minimum needed to achieve the purposes and objectives of the Foreign Investors Act valid under international law and practice.

IV. THE FOREIGN INVESTORS ACT IS AN ECONOMIC SANCTION APPLIED TO PROTECT THE DOMESTIC ECONOMY OF THE UNITED STATES FROM FOREIGN ECONOMIC INTERVENTION AND IS VALID UNDER INTERNATIONAL LAW.

The interdependence and interpenetration of national economies renders each State susceptible to foreign intervention and manipulation of its domestic economy.[20] The crucial significance to the general welfare of a State and its people of key industries and

resources tends to increase the sensitivity of a State to world economic conditions. For this reason, individual States have been prone to apply increasingly broad and rigid economic sanctions for the protection of their domestic economic interests.[21] This practice, which has existed in various forms for centuries, has reached a point of such uniformity as to warrant recognition under customary international law. Yet, because the practice can and has been abused there are emerging standards limiting the purposes for which and the methods by which States may engage in economic self-protection. It is imperative that this Court at once affirm both the right and the limits upon that right, in order that international law will continue to evolve as a force for the preservation of world order.

A. International Practice Establishes the Right of States to Use Economic Means of Self-Protection in Response to External Economic Threats.

The prerogative of all States to take action in defense of their essential sovereign rights is, as a general concept, universally recognized.[22] This right is usually considered a fundamental and intrinsic aspect of sovereignty. France, Canada and the United States, as well as virtually all other States, frequently exercise this right through the adoption of economic measures designed to counter external economic threats. Such devices as tariffs, import-export quotas, exchange controls, dumping duties and the like have been utilized for the protection of the domestic

economy.[23] There has been general acquiescence to and acknowledgment of the competence of sovereign States to unilaterally adopt such measures.[24] It is this practice that has given birth to some multilateral treaty regulation.[25] Such regulations also imply recognition of the existence of an underlying right of States to adopt such measures. But it also plain that the world lacks a comprehensive set of standards governing such conduct. Filling this hiatus is an important function of customary international law. Considering the potentially severe consequences of economic conflict,[26] and in view of the fact that economic coercion is now often used to advance political or ideological as well as purely economic ends,[27] it seems incumbent upon this Court to aid in the development of appropriate international standards.[28]

B. Emerging International Standards Must Govern the Exercise of Economic Sanctions by States.

The principle of non-intervention is firmly established in international law.[29] As a corollary, a State may take measures of self-protection in response to or in anticipation of any act, whether economic or otherwise, which would constitute an intervention prohibited by international law in the affairs of that State.[30] The threshold issue in each case must concern whether an act of such character or magnitude as to constitute an intervention has occurred. An essential characteristic of intervention is not only the means used in intervening, but the intent of the perpetrator.[31] Measures of economic self-protection must always be

proportional to the threat. Only necessary action should be taken,[32] and the consequences of these actions should be primarily territorial.[33]

1. The Foreign Investors Act Was Promulgated in Response to an Imminent Threat of Economic Intervention in Crucial Sectors of the Economy.

In the case of the Foreign Investors Act two conditions are set forth before any sanctions may be imposed. First, the government of the alien seeking to invest in an American company must have engaged in boycotts or other discriminatory trade practices which injure the United States or the world economy. [§13(d)(1)(B)(ii)]. Second, there must be a finding in the particular case that the acquisition of ownership would be harmful to the United States. [§13(d)(1)(D)]. It is apparent that if the nationals of any foreign country whose government engages in such discriminatory trade practices gain control of important American resources, that control may be the mechanism for an economic intervention in the United States of the most serious nature. If any form of economic intervention is prohibited under international law, such control would certainly be the first to qualify.

2. The Operation of the Act Conforms with International Standards Governing the Legitimacy of Particular Acts of Economic Self-Protection.

If, in any particular case, the acquisition of ownership actually poses no real threat of intervention in spite of the discriminatory practices of the alien purchaser's own goverment,

the Foreign Investors Act permits the acquisition. Not until the president has found an actual threat of harm does the Act resort to its sanctions. [§13(d)(1)(D)]. Moreover, forfeiture of any securities acquired in violation of the Act is a proportional and appropriate response when compared to the magnitude of the threat. The sanction is not retaliatory in that no penalty is exacted beyond the level necessary to remove the threat.

Transfer of ownership is the minimum level of deterrence capable of inducing a reduction of the threat. The United States, faced with an imminent danger of economic intervention was presented with three alternatives. It could do nothing,[34] retaliate,[35] or it could seek to forestall intervention before consummation. This latter is the method adopted by the Act, and is the method least likely to bring harm to foreign nationals. Necessary to the effectiveness of this alternative, however, is a non-trivial penalty. Were the United States to compensate alien investors for the forfeiture of securities wrongfully acquired under the Act, the effectiveness of the deterrent would be destroyed.

Finally, the facts of the instant case show that a significant nexus of factors exists relating the act of economic self-protection to the territory of the United States. The securities, issued by an American corporation, were acquired in the United States under regulations established by the United States government. [B-1,3]. The United States government was owner of record

at the time the shipment of plastics was dispatched from the United States to France. [B-4,6]. Most importantly, it was the domestic economy and the national security of the United States which were threatened.

C. The United States Is Not a Party to Any Treaty Which Limits or Prohibits the Measures Provided for in the Foreign Investors Act.

Applicant submits that, upon a review of the multilateral treaties in force to which the United States is a party, there are no provisions limiting or forbidding the operation of the Foreign Investors Act. The only applicable bilateral treaties are the 1933 Agreement between the United States and Saudi Arabia, which provides for most favored nation status,[36] and a 1951 Treaty between the United States and Denmark which provides for compensation for property taken for a legitimate public purpose.[37]

By their own terms the treatries are inapposite. Article V of the Agreement with Saudi Arabia declares that "... should the Government of the United States of America be prevented by future action of its legislature from carrying out the terms of these stipulations, the obligations thereof shall thereupon lapse."[38] Treaties are to be interpreted according to their plain meaning, and subsidiary means of interpretation are to applied only where ambiguity is found.[39] In the instant case, there is no ambiguity. The Foreign Investors Act, insofar as it contradicts any MFN privileges in the Agreement with Saudi Arabia, has effected a

corresponding lapse of obligations.

V. THE PAYMENT BY CNFP TO CANIND INSTEAD OF AMERIND IS BOTH AN INJURY TO AMERIND AND A VIOLATION OF THE RIGHTS OF THE UNITED STATES UNDER INTERNATIONAL LAW.

A. Payment by CNFP to CANIND Is an Injury to AMERIND.

CANIND acquired 100% of the stock in AMERIND by February 14, 1975 in violation of the Foreign Investors Act. [B-3]. AMERIND, on February 27, entered into contracts with ANP and CNFP providing for payment to CANIND. [D-1]. On June 4, 1975, AMERIND shipped goods to CNFP. [B-6]. Shortly before, on May 29, CANIND, by reason of the action of the United States, ceased to have any ownership rights in AMERIND whatsoever. [B-4]. Since the right of AMERIND to the proceeds of the contract is absolute, any payment to CANIND from this point on was an injury to AMERIND and a deprivation of its property in the contract. Moreover, CNFP was notified of the termination of CANIND's interest by the United States and was requested to make payment to AMERIND. [B-6]. Although the United States, and not the management of AMERIND, instituted the notice and request, the mere fact that CNFP's payment was technically in accord with the contract should not be allowed to obscure the basic fact that CNFP knew that payment to CANIND would cause injury to AMERIND.

B. A State Has the Right of Diplomatic Protection of Its Nationals.

A State may extend diplomatic protection to its nationals if

the national has suffered an injury and has a genuine link with the State.[40] Any injury to a national may be considered an injury to the State. The right to intervene is not dependant upon a request by the national for such intervention.

C. The United States May Extend Diplomatic Protection for an Injury to AMERIND even Without a Request by AMERIND.

AMERIND is incorporated in the United States [B-1] and all of its shares are owned by the Secretary of the Treasury as trustee. [B-4]. There is thus a genuine link between AMERIND and the United States and, therefore, the United States may extend diplomatic protection to the rights of AMERIND. The injury to AMERIND is an injury to the United States. For these reasons, the refusal of France to accede to the request of the United States is a delict. As such, France is in violation of international law and is liable for the actions of its courts which cause injury to the United States.[41]

VI. INTERNATIONAL LAW REQUIRES THAT FRANCE RECOGNIZE THE ACTIONS OF THE UNITED STATES.

A. The Customary Practice of States Establishes that Domestic "Ordre Public" Is Controlling Only When the Act of the Foreign State also Violates International Law.

An analysis of international practice shows that in an overwhelming number of cases, domestic courts have refused to recognize foreign laws contrary to their "ordre public" only when those laws were also violative of international law.[42] Furthermore, a number

of national decisions have indicated that, unless violative of international law, foreign legislation will not be deemed offensive to the domestic "ordre public."[43] To not give effect to that proposition in the present case would be to contribute to an erosion of the legitimacy of the international law and of its ability to preserve international peace and order.

B. International Law Cannot Permit a State to Assert Its Domestic "Ordre Public" in Such a Way as to Defeat Actions by Another State Which Are Valid Under International Law.

The guiding and essential function of international law is the preservation of peace and the maintenance of order and continuity in the relations between States. "The rules of law binding upon states...[were]...established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims."[44] If, in a case with transnational elements, a domestic court were to refuse recognition to a foreign law simply because that law violated the forum's own notions of "ordre public", the refusal of recognition would be tantamount to giving extraterritorial effect to the forum's own law. The problem is reciprocal. The only means of resolving this impasse is to insure that international law is the touchstone of national action. If the foreign State's actions conform to international law they should be recognized. If they do not, the forum State may disregard them. To permit unilateral State action, through an extraterritorial extension of domestic "ordre public" to frustrate

actions of other States which are in conformity with international law endangers the effectiveness of those standards. To allow a State to contradict international law merely by a citation of its parochial, perhaps arbitrary, sense of "ordre public" diminishes any normative powers currently possessed by the regime of international law. In order for international law to retain validity and remain a viable force for the preservation of peace and world order, this Court must refuse to sanction the discretionary alternation of international standards by a State. There can be no rule of law where the application of the law is optional.

The present case provides a good example of the effects of a contrary position. It would mean that a State, such as the United States, although acting in full compliance with international law, might find its rights curtailed by the extension of another State's "ordre public." It would put U.S. corporations engaging in transnational business in a position where their international contract rights would be subject to discretionary nullification. Such corporations would effectively be barred from international business, and rights of the United States under international law would be severely impaired.

C. The United States Is Entitled, Under International Law, to a Judgment Declaring that Payment for the Plastics Delivered to CNFP Should Have Been Made to AMERIND.

It may be true that this Court is not competent to instruct the courts of France to disregard their domestic "ordre public."

Yet the Court can, and should, impose liability upon France for violating its international legal obligations. International law does not sanction an extension of French "ordre public" beyond French borders when such extension invalidates actions of the United States which are proper under international law.

A distinguished member of this Court, G. G. Fitzmaurice, has declared:

> It is generally admitted, and there is ample authority for the view, that the judgements of municipal courts applying international law will, if they misapply international law, ipso facto involve the responsibility of the state ... even though rendered in perfect good faith by an honest and competent court. The judgment of a municipal court misapplying international law is either per se a direct breach of international law ... or it will lead to such a breach if duly acted upon by the State. In either case, the state is internationally responsible for the breach if it occurs.[45]

Consequently, even if France acted in conformity to its domestic law in tendering payment to CANIND, it nevertheless remains liable to the United States, under international law[46] for injury so caused.

CONCLUSION

On the basis of the authorities and reasoning presented, Applicant respectfully requests that this Court direct France to pay the United States, as trustee for AMERIND, the value of the plastics delivered to CNFP.

Respectfully submitted,

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FOOTNOTES

1. See, e.g., 1 L. OPPENHEIM, INTERNATIONAL LAW § 314 (8th ed. H. Lauterpacht 1955).

2. Note, An Evaluation of the Need for Further Statutory Controls on Foreign Direct Investment in the United States, 8 VAND. J. TRANSNAT'L L. 147, 162 (1974).

3. I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 508 (2nd ed. 1973).

4. Law Concerning Financial Relations with Foreign Countries of Dec. 28, 1966, [1966] J.O. 11621, [1967] D.S.L. 30; implemented by Decree No. 67-78 of Jan. 27, 1967, [1967] J.O. 1073, [1967] D.S.L. 81 and Arrete of Jan. 27, 1967, [1967] D.S.L. 82. For a general discussion see Torem and Craig, Control of Foreign Investment in France, 66 MICH. L. REV. 669, 676-696 (1968).

5. Canadian Foreign Investment Review Act of 1973, CAN. REV. STAT. c. 46 (1973).

6. Note, An Evaluation of the Need for Further Statutory Controls on Foreign Direct Investment in the United States, supra note 2, at 162-173.

7. Radich v. Hutchins, 95 U.S. 210 (1877); accord, In re Szwergold, 26 I.L.R. 169 (Court of Cassation, Belgium 1968); The People of the Philippines v. Galavgac and Soriano, 26 I.L.R. 160 (Court of Appeal, Philippines 1957).

8. I. BROWNLIE, supra note 3, at 505.

9. Federal Aviation Act, 49 U.S.C. §§ 1301-1542 (1958).

10. Communications Act, 47 U.S.C. §§ 303(3), 310 (1958).

11. Alien Restriction (Amendment) Act, 9&10 GEO. 5 c. 92 §§ 4, 6 (1919).

12. In re Aschbacher and Lertola, 44 I.L.R. 145 (Court of Cassation, Criminal, France 1963).

13. Neer Case (United States v. Mexico), United States

and Mexican General Claims Arbitration 71, 4 U.N.R.I.A.A. 60, 61-62 (1926).

14. 2 D. O'CONNELL, INTERNATIONAL LAW 698 (2nd ed. 1970).

15. B. WORTLEY, EXPROPRIATION IN PUBLIC INTERNATIONAL LAW 45 (1959).

16. Id.; see also S. FRIEDMAN, EXPROPRIATIONS IN INTERNATIONAL LAW 1 (1953).

17. B. WORTLEY, supra note 15, at 40.

18. U.N. Resolution on the Permanent Sovereignty over Natural Resources, G.A. Res. 1803, 17 U.N. GAOR 24, U.N. Doc. A/PV 1193, 1194 (1962).

19. B. WORTLEY, supra note 15, at 40.

20. See, e.g., R. COOPER, THE ECONOMICS OF INTERDEPENDENCE: ECONOMIC POLICY IN THE ATLANTIC COMMUNITY (1968).

21. See, e.g., H. MALMGREN, INTERNATIONAL ECONOMIC PEACEKEEPING IN PHASE II 10 (1972).

22. See, e.g., Japan v. Shigaru Sakata and Others, 32 I.L.R. 43 (Supreme Court, Japan 1959).

23. See, e.g.; R. COOPER, supra note 20 at 13; cf. Saudi Arabia v. Arabian American Oil Co. (ARAMCO), 27 I.L.R. 117, 211 (Arbitration Tribunal 1958).

24. See, e.g., In re Claim by Helbert Wagg & Co., Ltd., 22 I.L.R. 480 (High Court of Justice (Chancery Division), England 1953).

25. See, e.g. General Agreement on Tariffs and Trade, concluded Oct. 30, 1947, 61 Stat. (5), (6), T.I.A.S. 1700, 55-61 U.N.T.S.

26. Consider, for example, the consequences of the Arab oil embargo. See, e.g., Paust and Blaustein, The Arab Oil Weapon - A Threat to International Peace, 68 AM. J. INT'L L. 410 (1974).

27. Again, the example of the Arab Oil embargo is instructive. Id. at 428. Also note that the charter of the United Nations has incorporated a provision permitting the use of economic sanctions for enforcement of Security Council decisions, U.N. CHARTER, art. 41. Such sanctions have been exercised against Rhodesia for non-economic reasons. See Galtung, On the Effects of International Sanctions with Examples from the Case of Rhodesia, 19 WORLD POLITICS 378 (1967).

28. Dawson and Weston, Banco Nacional de Cuba v. Sabbatino: New Wine in Old Bottles, 31 U. CHI. L. REV. 63, 102 (1963-64).

29. Declaration of the Inadmissability of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, G.A. Res. 2131, 20 U.N. GAOR Supp. 14, at 11, U.N. Doc. A/6220 (1965). Adopted without opposition, the Declaration at 11, purports to reaffirm "...the principle of non-intervention proclaimed in the charters of the Organization of American States and. . .the League of Arab States. . . ."

30. M. WHITEMAN, DIGEST OF INTERNATIONAL LAW § 2 (1971).

31. Bowett, Economic Coercion and Reprisals by States, 13 VA. J. INT'L L. 1,5 (1972).

32. With respect to economic self-protection, see Bowett supra note 31, at 7. Note that these criteria correspond to well established standards delimiting the analogous right of forceable self-defense. For a discussion of the latter standards, see D. O'CONNELL, supra note 14, at 315-320 and authorities cited.

33. Territoriality cannot have the same meaning in the economic sphere as in other aspects of international affairs. Because of the complexity and interdependence of the world economy the question of the territoriality of any particular economic act must be decided on the basis of whether or not a significant nexus of factors ties the act to a specific geographical region. See Bowett, supra note 31, at 7.

34. See Japan v. Shigeru Sakata and Others, 32 I.L.R. 43, 54-55 (Supreme Court, Japan 1959).

35. Retaliation is not invalid in international law with respect to economic conflict, see Bowett, supra note 31. However, acts which tend to threaten the maintenance of world peace are discouraged, U.N. CHARTER, art. 2, para. 3.

36. Agreement with Saudi Arabia on Diplomatic and Consular Representation, Juridical Protection, Commerce and Navigation, Nov. 7, 1933, art. II, 48 Stat. 1826 (1934), E.A.S. No. 53.

37. Treaty with Denmark on Friendship, Commerce and Navigation, Oct. 1, 1951, art. VI, para. 3. 12 U.S.T. 908, T.I.A.S. No. 4797.

38. Agreement with Saudi Arabia on Diplomatic and Consular Representation, Juridical Protection, Commerce and Navigation, Nov. 7, 1933, art. V, 48 Stat. 1826 (1934), E.A.S. No. 53.

39. Vienna Convention on the Law of Treaties, open for signature May 23, 1969, U.N. Doc. A/CONF. 39/27, May 23, 1969 (pending ratification); Interpretation of the Convention of 1919 Concerning Employment of Women During the Night, [1932] P.C.I.J., ser. A/B, No. 50.

40. Nottebohm Case (Liechtenstein v. Guatemala), [1955] I.C.J. 4.

41. Case Concerning Certain German Interests in Polish Upper Silesia (Chorzow Factory Case), [1926] P.C.I.J. ser. A, Nos. 7 & 13.

42. See, e.g., Anglo-Iranian Oil Co. v. S.U.P.O.R., [1955] Ann. Dig. 23 (Civil Court Rome, Italy 1954); Anglo-Iranian Oil Co. v. Idemitsu Kasan, [1953] Ann. Dig. 305 (High Court Tokyo, Japan 1953); Braden Copper Co. v. Le Groupement d' Importation des Metaux (Kennecott Copper Case), 12 I.L.M. 182 (Ct. Extended Jur. Paris, France 1972); Sociedad Minera El Teniente S.A. v. Aktiengesellschaft Nordeutsche Affinerie (Kennecott Copper Case), 12 I.L.M. 251 (Superior Court of Hamburg, Germany, 1973).

43. See, e.g., Anglo-Iranian Oil Co. v. S.U.P.O.R. (The ,. [1955] Ann. Dig. 19 (Court of Venice, Italy 1953).

44. Case of the S.S. "Lotus," [1927] P.C.I.J. ser. A,

45. Fitzmaurice, The Meaning of the Term "Denial of " 13 BRIT. Y. B. INT'L L. 93, 110 (1932).

46. Case Concerning Certain German Interests in Polish lesia (Chorzow Factory Case), [1926] P.C.I.J. ser. A, 3.