
In The
INTERNATIONAL COURT OF JUSTICE

THE UNITED STATES OF AMERICA,

Applicant

v.

THE REPUBLIC OF FRANCE,

Respondent

MEMORIAL FOR THE GOVERNMENT OF

THE REPUBLIC OF FRANCE

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Agreement with Saudi Arabia on Diplomatic and Consular Representation, Juridical Protection, Commerce and Navigation, Nov. 7, 1933, 48 Stat. 1826 (1934), E.A.S. No. 53	7,8,11
Treaty between the Federal Republic of Germany and Pakistan on Promotion and Protection of Investments, Nov. 25, 1959, Bundesrat Doc. No. 11/61, 457 U.N.T.S. 23, 26	11
Treaty between Japan and Argentina on Friendship, Commerce and Navigation, Dec. 20, 1961, 613 U.N.T.S. 323	11
Treaty between the United Kingdom and Iran on Commerce, Establishment and Navigation, March 11, 1959, Iran No. 1 (1959), Cmd. 698.	11
Treaty with Denmark on Friendship, Commerce and Navigation, Oct. 1, 1951, 12 U.S.T. 908, T.I.A.S. No. 4797	7,10,11
Treaty with Poland on Settlement of Claims, July 16, 1960, 11 U.S.T. 1953, T.I.A.S. No. 4545	11
Treaty with Rumania on Settlement of Claims, March 30, 1960, 11 U.S.T. 317, T.I.A.S. No. 4451	11
<u>U. N. CHARTER</u>	4
Vienna Convention on the Law of Treaties, <u>open for signature</u> May 23, 1969, U. N. Doc. A/CONF. 39/27, May 23, 1969	8,9
I. C. J. AND P. C. I. J. CASES	
Advisory Opinion on Reparation for Injuries Suffered in the Service of the United Nations, [1949] I.C.J. 174	2
Case Concerning Barcelona Traction, Light and Power Company, Limited, [1970] I.C.J. 4	1,3
Case Concerning Certain German Interests in Polish Upper Silesia (Chorzow Factory Case), [1926] P.C.I.J., ser. A, Nos. 7 & 13	12,15,19

Case Concerning the Application of the Convention of 1902 Governing the Guardianship of Infants, [1958] I.C.J. 55	14
Interpretation of the 1919 Convention Concerning Employment of Women During the Night, [1932] P.C.I.J. ser. A/B, No. 50	8
The Oscar Chinn Case, [1934] P.C.I.J., ser. A/B, No. 63.	5

INTERNATIONAL ARBITRATIONS

Banque d'Orient v. Turkey, 7 Trib. Arb. Mixtes 967 (1927-1928)	2
The De Sabla Claim (United States v. Panama), 6 U.N.R.I.A.A. 358 (1933).	3
The Naulilaa Incident Arbitration (Portugal v. Germany), 2 U.N.R.I.A.A. 1011 (1949)	4
Neer Case (United States v. Mexico), United States and Mexican General Claims Arbitration 71, 4 U.N.R.I.A.A. 60 (1926)	6
Norwegian Shipowners' Claims (Norway v. United States), 1 U.N.R.I.A.A. 307 (Perm. Ct. Arb. 1922).	12

OTHER CASES

Anglo-Iranian Oil Co. v. Jaffrate (The Rose Mary), [1953] Ann. Dig. 316 (Sup. Ct., Aden 1953)	10,12,15
Anglo-Iranian Oil Co. v. Idemitsu Kosan Kubushiki Kaisha, [1953] Ann. Dig. 305 (High Ct. Tokyo, Japan 1953)	12,14,15
Anglo-Iranian Oil Company, v. S.U.P.O.R., [1955] Ann. Dig. 23 (Civ. Ct. Rome, Italy 1954)	12,14,15
Anglo-Iranian Oil Co. v. S.U.P.O.R. (The Miriella), [1955] Ann. Dig. 19 (Ct. Venice, Italy 1953)	14
Banco Nacional de Cuba v. Farr, Whitlock & Co., 243 F. Supp. 657 (S.D.N.Y. 1965)	18
Banco Nacional de Cuba v. Sabbatino, 307 F. 2d 845 (2d Cir. 1962), <u>rev'd on other grounds</u> , 376 U. S. 398 (1964)	4,12,18

Bank Indonesia v. Senembach Maatschappij Bank, 30 I.L.R. 28 (Ct. App., Netherlands 1959)	15,18
Bernstein v. Freres, [1947] Ann. Dig. 11 (No. 5) (Cir. Ct., United States 1947).	15
Bernstein v. N. V. Nederlandsche-Amerikaansche Stoomvaart-Maatschappij, 210 F. 2d 375 (2d Cir. 1954).	12
Bollack v. Societe General, 33 N.Y.S. 2d 986, 236 App. Div. 60 (1942)	16
Braden Copper Company v. Le Groupement d'Impartation des Metaux (Kennecott Copper Case), 12 I.L.M. 182 (Ct. Extended Jur. Paris, France 1972)	12,14,15
Effect of Nationalization of Foreign Company on Rights of Shareholders Case, 40 I.L.R. 16 (Sup. Ct. Austria 1961)	3,17
First National City Bank v. Banco Nacional de Cuba, 406 U. S. 759 (1927)	18
H. M. Alfonso Di Barbone v. Credito Italiano, [1935-1937] Ann. Dig. 198 (No. 72) (Ct. App. Rome, Italy 1934)	16
Koh-I-Noor Tuskarna L. & C. Hardtmuth National Enterprise v. Fabrique de Crayons Hardtmuth L. & C., 40 I.L.R. 17 (Ct. Cass., Italy 1960)	14
Lanne and Baltser v. Entoway State Cargo, [[1948] 22 D.L.R. 641 (Sup. Ct., Canada 1949).	17
Moscow Fire Ins. Co. v. Bank of N.Y., [1938- 1940] Ann. Dig. 141 (No. 53) (Ct. App. N.Y. 1939)	15
Moulin v. Volatron, [1938-1940] Ann. Dig. 24 (No. 10) (Ct. App. Aix, France 1939).	14
Nielson v. Johnson, 279 U.S. 47 (1929).	9
Plesch v. Bank Nationale de Haiti, [1948] Ann. Dig. 13 (No. 7) (App. Div. N.Y., United States 1948).	17

Sociedad Minera El Tenienta S.A. v. Aktiengesellschaft Norddeutsche Affinerie (Kennecott Copper Case), 12 I.L.M. 251 (Super. Ct. Hamburg, Germany 1973)	12,14,15
Societe Potasas Ibericas v. Nathan Bloch, [1938-1940] Ann. Dig. 150 (No. 54) (Ct. Cass., France 1939)	13,18
Special Copper Tribunal Decision on the Question of Excess Profits, 11 I.L.M. 1013 (Copper Trib., Chile 1972)	12
Sudeten Germans Case, [1948] Ann. Dig. 24 (No. 12) (Amtsgericht of Dingolfing, Germany 1948)	15
The Antelope, 23 U.S. (10 Wheat.) 66 (1825)	17
Underhill v. Hernandez, 168 U. S. 250 (1897)	18
United States v. Bank Voor Handel, 9 I.L.M. 758 (Sup. Ct., Netherlands 1969)	15
U.R.S.S. v. Intendant General, [1927-1928] Ann. Dig. 67 (No. 43) (Ct. Cass., France 1928)	15
Vaghi v. Reichsbank, [1938-1940] Ann. Dig. 153 (No. 56) (Ct. Cass., Italy 1939)	15
Wilkening v. Belgian State, [1948] Ann. Dig. 236 (No. 66) (Ct. 1st Instance, Belgium 1948)	15
Zwack v. Kraus Bros & Co., 237 F. 2d 255 (2d Cir. 1956)	14,17

UNITED NATIONS RESOLUTIONS

Permanent Sovereignty over Natural Resources, G.A. Res. 1803, 17 U.N. GAOR 24, U.N. Doc. A/PV 1193 (1962)	12
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<u>U. S. CONST.</u>	12
<u>C. CIV. art. 545 (1st ed. Codes Annōtes du Dalloz 1905)</u>	13
Foreign Assistance Act of 1964, TITLE 22, UNITED STATES CODE, Section 2370 (1964)	18

TREATISES

<u>M. BELTRAMO, G. LONGO, J. MERRYMAN, THE ITALIAN CIVIL CODE 227</u> (1969)	12
1 <u>E. COHN, MANUAL OF GERMAN LAW 205</u> (2d ed. 1969)	12
<u>E. COLBERT, RETALIATION IN INTERNATIONAL LAW</u> (1948)	4
<u>R. FALK, LEGAL ORDER IN A VIOLENT WORLD</u> (1968)	4,5
3 <u>G. HACKWORTH, INTERNATIONAL LAW</u> (1942)	12
<u>M. KAPLAN & N. KATZENBACH, THE POLITICAL FOUNDATIONS OF INTERNATIONAL LAW</u> (1961)	16
2 <u>D. P. O'CONNELL, INTERNATIONAL LAW</u> (2d ed. 1970)	6
1 <u>L. OPPENHEIM, INTERNATIONAL LAW</u> (8th ed. Lauterpacht 1967)	16,17
1 <u>M. PLANIOL, TREATISE ON THE CIVIL LAW</u> (12th ed. Louisiana State Law Institute transl. 1939)	12
<u>A. VATTEL, THE LAW OF NATIONS</u> (ed. 1872)	5
<u>G. VON GLAHN, LAW AMONG NATIONS</u> (2d ed. 1970)	4
8 <u>M. WHITEMAN, DIGEST OF INTERNATIONAL LAW</u> (1967)	10,11

JOURNALS AND PERIODICALS

<u>Briggs, Codification Treaties and Provisions on Reciprocity, Non-Discrimination, or Re- taliatiōn, 56 AM.J.INT'L L. 475</u> (1962)	5
---	---

Domke, <u>Foreign Nationalizations</u> , 55 <u>INT'L L.</u> 585 (1961)	17
Drucker, <u>On Compensation Treaties Between Communist States</u> , 229 <u>LAW TIMES</u> 279, 293 (1960)	11
Kunz, <u>The Nature of Customary International Law</u> , 47 <u>AM. J. INT'L L.</u> 662 (1953)	14
17 <u>AM. J. INT'L L.</u> 362 (1923)	10
32 <u>AM. J. INT'L L.</u> 519 (1938)	10
51 <u>AM. J. INT'L L.</u> 672 (1957)	10
54 <u>AM. J. INT'L L.</u> 484 (1960)	10
55 <u>AM. J. INT'L L.</u> 822 (1961)	10
10 <u>I.L.M.</u> 1067 (1971)	10
29 <u>DEP'T STATE BULL.</u> 357 (1953)	10,12
69 <u>DEP'T STATE BULL.</u> 701 (1973)	4
72 <u>DEP'T STATE BULL.</u> 97, 237 (1975)	4
 OTHER SOURCES	
<u>RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW OF THE UNITED STATES</u> (1965)	4,5
T. Herzog, <u>Sources of Expropriations in the Americas</u> , July, 1972 (unpublished thesis in University of Miami Law School Library)	12

REFERENCES

The following symbols will be used throughout this
Memorial for Respondent:

"A" - Annex A;

"B" - Annex B;

"C" - Annex C.

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. Respondent's memorial incorporates by reference those facts as stipulated in the Special Agreement.

QUESTIONS PRESENTED

I.

Whether an injury occurred to the United States for which it may seek redress.

II.

Whether the 1975 Amendment to the Securities Exchange Act of 1934, as applied to the facts in this case, violates international law.

III.

Whether the International Court of Justice must validate the decisions of the national courts of Germany and France on the issues raised by this application.

SUMMARY OF ARGUMENT

I.

The United States has no right to direct changes in contracts negotiated by AMERIND, and thus no injury occurred to the United States for which it may seek redress.

II.

The seizure of stock acquired by CANIND constitutes a taking of property by the United States for which CANIND, SAUDINC, and the Saudi nationals have an independent right of action against the United States.

The taking by the United States of property owned by Canadian and Saudi nationals pursuant to the Foreign Investors Act is an act of retaliation against Saudi Arabia for its participation in the Arab Oil Embargo and consequently violates customary international law.

The Foreign Investors Act which imposes additional burdens upon Saudi and Canadian nationals discriminates against such nationals and thus violates international law.

The harsh and extreme penalty of confiscation for minor infractions of procedural regulations of the Foreign Investors Act is contrary to international standards of justice and violates international law.

The taking by the United States pursuant to legislation which lacks provision for compensation at or prior to the time of taking violates United States treaty obligations and customary international law.

The taking by the United States, in which no compensation was in fact paid, violates United States treaty obligations and customary international law.

III.

Pursuant to customary rules of international law, France may deny recognition of foreign legislation which violates its ordre public.

Under customary rules of international law, France may deny recognition to foreign legislation which violates international law.

Under international practice, France may refuse to enforce foreign penal decrees or to give effect to the extraterritorial operation of foreign legislation.

The foreign "Act of State" Doctrine is not a rule of international law.

ARGUMENT AND AUTHORITIES

1. NO INJURY OCCURRED TO THE UNITED STATES FOR WHICH IT MAY SEEK REDRESS.

The French court properly denied payment to the United States as alleged shareholder of AMERIND. According to the record, CNFP was originally ordered to make payment to CANIND pursuant to the AMERIND-CNFP contract. [B-6] The contract was not modified by AMERIND. Rather, the change in location of payment was requested by the United States. [B-6]

Under international law, the modification of a corporate contract is solely within the province of the corporation and beyond the powers of a shareholder, even a sole shareholder. The International Court of Justice, in the Case Concerning Barcelona Traction, Light and Power Company Ltd., declared:

It is a basic characteristic of the corporate structure that the company alone, through its directors or management acting in its name, can take action in respect of matters that are of a corporate character. . . Ordinarily, no individual shareholder can take legal steps, either in the name of the company or in his own name. If the shareholders disagree with the decisions taken on behalf of the company, they may, in accordance with its articles or the relevant provisions of the law, change them or replace its officers, or take such action as provided by law.

Thus, even if the United States had acquired the rights of a shareholder of AMERIND, it had no legal right to direct a change in the terms of the contract.

Furthermore, international law mandates that absent an injury to its national, a State may not interpose a claim in that national's behalf.² As indicated previously, CNFP fulfilled the terms of the contract with AMERIND. Consequently, no injury occurred to AMERIND for which the United States may seek redress.

II. THE 1975 AMENDMENT TO THE SECURITIES EXCHANGE ACT OF 1934, AS APPLIED TO THE FACTS IN THIS CASE, VIOLATES INTERNATIONAL LAW.

A. The Action of the United States Constitutes a Taking of Property Acquired by CANIND.

Respondent submits the Securities Exchange Act of 1934 as amended by the Foreign Investors Act of 1975 (hereinafter referred to as the Foreign Investors Act) does not prohibit acquisition of stock in American corporations by foreign investors. Rather, by its language, it invites foreign investors to purchase American stock and recognizes title in the purchaser, notwithstanding alleged procedural infractions by the purchaser. The Act clearly indicates that the stock of a foreign purchaser who does not comply with the procedural requirements is subject to "forfeiture." § 13(d)(1)(D)(ii).

Consequently, CANIND, a Canadian corporation partially owned by Saudi nationals, acquired ownership of certain shares of stock in AMERIND, an American corporation, prior to the action of the United States. [B-3] Under international law, as evidenced by the Mixed Arbitral Tribunal's decision in Banque d' Orient v. Turkey,³ corporate stock and the rights incident thereto are property. As

such, the shares of stock acquired by CANIND constitute property.

After the acquisition of this property by CANIND, the United States seized such property for alleged infractions of the Foreign Investors Act. [B -3,4] This seizure of CANIND's property, absent compensation, constitutes a taking of property for which the United States has an international responsibility.⁴ The legal form in which the taking was fashioned by the United States is of no consequence when the underlying factor is a taking of acquired property without compensation.⁵

The taking by the United States is a direct injury to CANIND, as shareholder, and SAUDINC and Saudi nationals, as indirect shareholders. According to the International Court of Justice in Barcelona Traction, "Whenever one of [the shareholder's] direct rights is infringed, the shareholder has an independent right of action."⁶ Therefore, CANIND, SAUDINC, and the Saudi nationals have an independent right of action against the United States.

B. The Taking by the United States Is Retaliatory and Thus Violates International Law.

The Foreign Investors Act permits the President of the United States to confiscate American stock acquired by foreign nationals when such acquisition is perceived as a threat to the United States and the foreign nationals violate the procedural requirements of the legislation. [C-1,3] Pursuant to this legislation, the President determined CANIND's acquisition of AMERIND stock constituted a threat to the economy and national security

of the United States and confiscated such stock. [B-3]

It is a customary rule of law among States that retaliatory acts are contrary to international law.⁷ Despite alleged injuries to one State by another, the former may not justify a retaliatory response on the basis of international law. This principle of non-retaliation is exemplified in the Naulilaa Case,⁸ in which the German-Portuguese Arbitral Tribunal stated the rule that notwithstanding the precipitating unlawful act, a State may not seize the property of the initially delinquent State.

Traditionally, the retaliatory act has consisted of physical exertion of force,⁹ such as seizure of ships at sea, belligerent responses, and pacific blockades. Increasingly, however, penal and economic measures are used and considered as evidence of retaliation by the world community.¹⁰

Respondent submits the Foreign Investors Act was enacted with a view towards economic retaliation against the oil exporting countries, including Saudi Arabia, and its operation constitutes an economic retaliation against the same. Specifically, the actions of the United States achieve the intended effect of injuring Saudi nationals for the purportedly harmful actions of their government against the United States. The precipitating action of the Saudi government apparently consists of its participation in the Arab Oil Boycott and Embargo against the United States.¹¹ Consequently, the enactment and operation of the Foreign Investors Act constitute an

economic retaliation against Saudi Arabia which violates international law.¹²

The underlying rationale for the principle declaring retaliation contrary to international law is to prevent States from unilaterally acting in response to actions by other States determined to be injurious by the former. The doctrine serves to force disputing States to enter into negotiations at the outset, thus preventing the escalation of a minor incident into a major disruption. The action of the United States thus puts undue pressure upon Saudi Arabia to act in turn, thereby leading to a chain of events which could be disastrous to the world community.

C. The Taking by the United States Is Discriminatory and Thus Violates International Law.

The Foreign Investors Act clearly discriminates between classes of foreign nationals. It imposes additional procedural burdens upon those foreign nationals falling within the statutory classification.¹³

According to international law, when a State discriminates between groups of foreign nationals to the detriment of one group, that State violates international law.¹⁴ Respondent submits the discriminatory practices of the United States severely depart from the recognized international view of minimum standards of common treatment to all persons.¹⁵ The Foreign Investors Act operates to discriminate against the Saudi and Canadian nationals and thus violates international law.

D. The Taking by the United States Is Contrary to International Standards of Justice and Thus Violates International Law.

Even assuming without conceding the taking is properly characterized as a penalty for the violation of an otherwise valid United States regulation, Respondent submits that the harsh and grossly extreme penalty of confiscation is contrary to international standards of justice. The United States Commissioner's concurring opinion in the often cited Neer Arbitration Case provides:

Although there is this clear recognition in international law of the scope of sovereign rights relating to matters that are subject of domestic regulation, it is also clear that the domestic law and the measure employed to execute it must conform to . . . international law, and that any failure to meet those requirements is a failure to perform a legal duty, and as such an international delinquency

. . . .

[T]he propriety of governmental acts should be determined according to international standards of civilization, even though standards differ considerably among members of the family of nations, equal under the law. . . .¹⁶

The Commission's Opinion further provides that a State's action will be deemed an international delinquency when, in view of international standards, the treatment of the foreign nationals constitutes an outrage.

Professor D. P. O'Connell, a noted international scholar, declared, "Obviously confiscation of all assets is a disproportionate punishment for breach of a traffic regulation, and there must clearly be some reasonable connection between the offense and the penalty."¹⁷

In light of this international standard, the confiscation of all of CANIND's property for a minor infraction of reporting regulations constitutes an outrage and thus violates international law.

E. The Taking by the United States Pursuant to Legislation Which Lacks Provision for Compensation at or Prior to the Time of Taking Violates International Law.

1. The United States Is in Violation of Its Treaty Obligations by Not Making Provision for Compensation in Its Legislation.

The taking by the United States pursuant to legislation which lacks provision for compensation at or prior to the time of taking violates the United States-Saudi Arabia Treaty of 1933.¹⁸

Article II of the Treaty provides:

Subjects of his Majesty the King of Saudi Arabia in the United States of America, its territories, and possessions, and nationals of the United States of America, its territories and possessions, in the Kingdom of Saudi Arabia shall be received and treated in accordance with the requirements and practices of generally recognized international law. In respect of their persons, possessions and rights, they shall enjoy the fullest protection of the laws and authorities of the country, and they shall not be treated in regard to their persons, property, rights and interests, in any manner less favorable than the nationals of any other foreign country.

In light of this most-favored-nation (hereinafter referred to as MFN) provision, Saudi Arabia can rightfully claim for its nationals the treatment afforded the nationals of Denmark under the United States-Denmark Treaty of 1951.¹⁹ Article VI, paragraph three of the treaty provides:

Property of nationals and companies of either Party shall not be taken within the territories of the other

Party except for public purposes nor shall it be taken without prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof.

This treaty provision is unconditional.

The United States-Saudi Arabia Treaty is not absolute, but contains several provisions wherein each State may terminate or suspend its obligations according to the terms of the treaty.²⁰

One provision, although not applicable, may need clarification.

Article V provides:

. . . 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.

The rules for interpretation of treaties have been codified in the final draft of the Vienna Convention on the Law of Treaties²¹ which embodies those international rules and principles of interpretation which were applied by the Permanent Court of International Justice.²² The relevant rule provides: "There shall be taken into account, together with the context; . . . (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation."²³

Respondent submits the practice of the parties requires Article V of the United States-Saudi Arabia Treaty to be strictly construed. Reasonable reliance on this MFN clause has been created by over forty-two years of non-interrupted use. The long-standing

use of the MFN provision, as a rule of law between the parties, should not be abrogated unless the legislation referred to in Article V specifically indicates that the MFN provision has been terminated.

The Vienna Convention permits the circumstances of a treaty's conclusion to be used as a means of supplementary interpretation.²⁴ Herein, several circumstances are relevant. The treaty was created as a time when the United States had firmly declared its present policy of using unconditional MFN clauses in economic relations. In 1929, the Supreme Court of the United States held: "When a treaty provision fairly admits of two constructions, one restricting, and the other enlarging rights which may be claimed under it, the more liberal interpretation is to be preferred. . . ." ²⁵

Respondent submits that the circumstances at the time of the treaty's formation confirm the interpretation based on the text of the Saudi Arabian Treaty and subsequent practice of the parties; that is, the MFN provision is still in force since the Foreign Investors Act did not specifically terminate it.

In sum, the United States failed to provide for compensation at or prior to the taking of property of the Saudi nationals. Consequently, the United States is in violation of its obligations under the United States-Saudi Arabia Treaty of 1933.

2. The United States Is in Violation of Customary International Law by Not Making Provision for Compensation in Its Legislation.

The failure to provide for compensation at or prior to the time of taking also violates customary rules of international law. The practice of non-communist expropriating States indicates recognition of a duty to provide for compensation in expropriating legislation.²⁶ This duty has been observed in expropriations by the United States, Mexico, Iran, Guatemala, Egypt, Indonesia, Cuba, and Chile.²⁷ The compensation provision in the expropriating legislation of each State contained a formula which measured the amount of compensation to be paid or referred the matter to an authority responsible for the determination thereof. Expropriating States thus acknowledge a duty to include provision for compensation at or prior to the time of taking.

The position of the United States with respect to providing for compensation at or prior to the time of a taking is quite clear. Since World War II, the United States has made no less than fourteen treaties containing provisions essentially identical with the Denmark provision noted in section II(E)(1).²⁸ These treaties have been entered into with a wide range of States, including Germany, France, Nicaragua and Iran.

Under these facts, the United States did not fulfill its duty under treaty obligations or customary international law to provide for compensation at or prior to the time of taking. By not providing for compensation in the confiscating legislation, the United States thereby fuels the fires of potential international conflict. In a world of increasing interdependence, this un-

ilateral action can only be characterized as foolhardy.

F. The Taking by the United States, in Which No Compensation Was in Fact Paid, Violates International Law.

1. The United States Is in Violation of Its Treaty Obligations by Not Compensating Saudi Nationals for a Taking of Their Property.

The United States-Saudi Arabia Treaty of 1933,²⁹ whose MFN provision attached to the United States-Denmark Treaty provision noted in section II(E) (1), indicates an unqualified duty on the part of the United States to compensate for any taking of property rights or interests owned by Saudi nationals in the United States. The United States did not meet its treaty obligations in the present circumstances and thus is in violation of international law.

2. The United States Is in Violation of Customary International Law by Not Compensating Saudi and Canadian Nationals for a Taking of Their Property.

The principle that compensation must be paid to foreign nationals whose property has been taken is a customary rule of international law. As indicated, the practice of non-communist expropriating States evidences their recognition of the duty to compensate.³⁰ The United States, in particular, has no less than fourteen post World War II treaties recognizing the duty to pay compensation.³¹ Similar treaties include those of Argentina-Japan,³² United Kingdom-Iran,³³ and the Federal Republic of Germany-Pakistan.³⁴ Even in communist states, the obligation to pay compensation has been recognized in practice through agreements with other communist States³⁵ and in arrangements with Western States.³⁶

International tribunals, such as the Permanent Court of
International Justice,³⁷ and the Permanent Court of Arbitration at
the Hague,³⁸ have upheld the duty to compensate for the taking of
property of foreign nationals. This duty to compensate has also
been recognized in the national courts of the United States, France,
Germany, the United Kingdom, Italy, Japan, and Chile.³⁹ It has
achieved the level of a constitutional or statutory requirement among
both developed and developing States, including, inter alia, the
United States, France, Italy, Germany, the Sudan, Guinea, and the
overwhelming majority of Latin American States.⁴⁰ The United Nations
Resolution on the "Permanent Sovereignty Over Natural Resources"
further recognizes the duty to pay compensation for the taking of
property of aliens.⁴¹

The official position of the United States has been con-
sistent: international law places a duty on all States to pay comp-
ensation for any takings.⁴² Thus, "The taking of property without
compensation is not expropriation. It is confiscation."⁴³

The 1953 United States Department of State aide-memoire
to Guatemala cites the Permanent Court of Arbitration decision in
1917 in support of the United States position.⁴⁴ The decision, con-
cerning the United States taking of certain Norwegian interests
within the United States, held: "Whether the action of the United
States was lawful or not, just compensation is due to the claimants
. . .under international law, based upon respect for private prop-
erty."⁴⁵

Respondent therefore submits caselaw, practice, and legislation of the international community overwhelmingly establish the customary rule of international law requiring compensation for takings of property. Consequently, the United States violated customary international law by not compensating the Saudi and Canadian nationals. 4

Respondent further submits the rule of international law requiring compensation for all takings is based upon a fundamental principle of respect for private property. The violation of this rule disrupts international capital flow which is essential for political and economic stability in the world community. This disruption may cause grave results in the world economy as well as international relations.

III. THE INTERNATIONAL COURT OF JUSTICE MUST VALIDATE THE DECISIONS OF THE NATIONAL COURTS OF GERMANY AND FRANCE ON THE ISSUES RAISED BY THIS APPLICATION.

A. France May Deny Recognition to Foreign Legislation Which Violates Its Ordre Public.

In the action by the United States against ANP and CANIND, the German court held the United States seizure would not be recognized on the grounds it violated German public policy and international law. [B-5] Subsequently, the French court, in the United States action against CNFP, noted the German decision and directed that payment be made to CANIND in Canada. [B-6] This result is due not solely to the German decision, but to the fact that the United States action violates the ordre public of France as established by French statute and caselaw. 47

Under a well established general principle of international law, a State may refuse to recognize an act of a foreign State repugnant to its ordre public: that is, those fundamental principles upon which the society is based.⁴⁸ This principle has been followed repeatedly by States, as evidenced by international practice, and has evolved into a customary rule of international law.⁴⁹

A prominent example of this principle is the Kennecott Copper Cases⁵⁰ in which the courts of Germany and France refused to recognize the Chilean expropriation of the Kennecott Copper Company on the ground such act violated the ordre public of Germany and France. A similar example is the Anglo-Iranian Oil Company Cases,⁵¹ in which Iran nationalized the property of the Anglo-Iranian Oil Company and subsequently sold oil from the property to various purchasers. In the Oil Company's suits against the purchasers, the courts of Italy and Japan declared they could refuse to recognize the nationalization decrees if against their own ordre public.

In view of the above, Respondent submits the French court's denial of recognition of the action of the United States on the ground it violates France's ordre public complies with general principles and customary rules of international law. This principle permitting national courts to ignore foreign laws violative of their ordre public is rooted in sound reason. It is unrealistic to ask domestic courts to validate foreign laws repugnant to the fundamental principles of their own society.

Although violations of the forum's ordre public also constitute violations of international law, this may not always be the

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case. In the present circumstances, the action of the United States is repugnant to both as established previously. However, even if that action were valid under international law, France could deny recognition on the sole ground of violation of France's ordre public.⁵³ Thus, France's denial of recognition is proper and should be validated by the International Court of Justice.

B. France May Deny Recognition to Foreign Legislation Which Violates International Law.

Under customary international law, a State may refuse to⁵⁴ recognize foreign legislation which violates international law.

A noteworthy example of this rule is the Indonesian Nationalization Case,⁵⁵ wherein the Netherlands Supreme Court held the confiscation of a Dutch corporation without compensation violated international law and would not be recognized by the Netherlands courts. Similarly, in the Anglo-Iranian Oil Company Case (The Rose Mary),⁵⁶ the Supreme Court of Aden held the Iranian nationalization law violated international law and would not be recognized. These are but a few of the cases evidencing this principle.

Herein, the action of the United States violates international law as established in section II. The United States has not provided restitution or indemnity to the injured parties as required by the Chorzow Factory Case,⁵⁷ decided by the Permanent Court of International Justice. Therefore, France may refuse to recognize the legislation and action pursuant thereto by the United States.

In addition, the courts of Germany and France may properly treat such legislation as a nullity and as incapable of transferring title to the confiscating sovereign. Judge Lauterpacht, an eminent publicist, accurately stated this general principle when he declared:

[F]oreign legislation, whatever the place of its purported effect, which is itself contrary to international law. . . may properly be treated as a nullity and, with regard to the rights of property, as incapable of transferring title to the State concerned, either within its territory or outside it.⁵⁸

Judge Lauterpacht's declaration reflects a customary rule of international law as well.⁵⁹

Respondent submits the international rules allowing States to deny recognition as well as validity to foreign legislation contrary to international law is based upon a sound premise. A State violating international law may not be responsive to mere protests through diplomatic channels. National courts may provide the only means for securing respect for international law as well as securing redress for its violation. Consequently, the courts of each State must be allowed to continue to assess whether foreign legislation violates international law. Indeed, it would be anomalous for international law to require a State to respect a violation of international law.⁶⁰

C. France May Refuse to Enforce Foreign Penal Decrees Or to Give Effect to Extraterritorial Operation of Foreign Legislation.

1. The Legislation of the United States Requires Enforcement to Be Effective.

The confiscatory legislation of the United States is neither

self-executing nor a fait accompli and requires enforcement to be effective. Based upon a State's right to its territorial sovereignty, France may validly refuse to enforce legislation of the United States.⁶¹

2. France May Refuse to Enforce Foreign Penal Decrees.

Respondent submits the action of the United States may be characterized as a penal measure. Under international law, States can and do refuse to enforce the penal laws of others.⁶² As a chief justice of the highest court of the United States declared: "The courts of no country execute the penal laws of others."⁶³

3. France May Deny Extraterritorial Effect to Foreign Legislation

The action of the United States was not an act solely affecting its own nationals [B-3,4] nor concerned with property exclusively within its jurisdiction. [B-3,5] Where intangible rights are located with a natural or juridical person outside the territory of a confiscating State, any disposition, regardless of label, which attempts to deprive the foreign owner of his rights, has no effect extraterritorially.⁶⁴

The confiscatory decree of the United States constitutes an attempted extraterritorial operation of United States legislation. Under customary principles of international law, even a proper taking of property by a State is limited by the State's territorial boundaries.⁶⁵ Respondent therefore submits the vested property rights of CANIND acquired in AMERIND stock cannot be confiscated when the

situs of those rights was without the territorial boundaries of the United States.

D. The Act of State Doctrine Is Not a Rule of International Law.

The "Act of State" Doctrine allegedly mandates that "The Courts of one country will not sit in judgment of the acts of the government of another done within its own territory."⁶⁶ Even assuming the acts in question were completely within the United States, such a practice is not recognized by international law. Indeed, the highest court of the United States declared, ". . . that international law does not require the application of the doctrine is evidenced by the practice of nations."⁶⁷

National courts have repeatedly determined they are not bound to apply such a doctrine.⁶⁸ Rather than being a rule of international law, the alleged "Act of State" Doctrine is a "discretionary rule of judicial abnegation in the United States."⁶⁹ Furthermore, the courts of the United States, wherein the doctrine has found its most vigorous expression and use, have limited its applicability.⁷⁰

V. CONCLUSION

The action of the United States constitutes a taking of property acquired by foreign nationals. The taking is retaliatory, discriminatory, and violates international standards of justice. The taking is without compensation and is pursuant to legislation which makes no provision for compensation. According to the Perm-

anent Court of International Justice, in the Chorzow Factory Case, takings of property violate international law when they are contrary to a State's treaty obligations or other rules of international law. For these reasons, the United States is in gross violation of international law.

Respondent submits the actions of the United States violate not only those fundamental principles of international law which States have traditionally adhered to, but also the spirit of international. In an interdependent world beset by problems which require for their solution mutual cooperation, unilateral actions, such as those of the United States, are devastating. The global problems will not be resolved by such unilateral actions which impair that degree of cooperation needed for their resolution.

For the foregoing reasons, Respondent respectfully requests the judgment of the International Court of Justice, on the issues raised, in favor of the Republic of France.

Respectfully submitted,

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FOOTNOTES

1. Case Concerning Barcelona Traction, Light and Power Company, Limited, [1970] I.C.J. 4, 34-35.
2. Advisory Opinion on Reparation for Injuries Suffered in the Service of the United Nations, [1949] I.C.J. 174, 181-182.
3. Banque d'Orient v. Turkey, 7 Trib. Arb. Mixtes 967, 969 (1927-1928).
4. E.g., The De Sabla Claim (United States v. Panama), 6 U.N.R.I.A.A. 358, 366 (1933).
5. Effect of Nationalization of Foreign Company on Rights of Shareholders Case, 40 I.L.R. 16 (Sup. Ct., Austria 1961).
6. Case Concerning Barcelona Traction, Light and Power Company, Limited, [1970] I.C.J. 4, 34-35.
7. See, e.g., U. N. CHARTER art. 6; Naulilaa Incident Arbitration (Portugal v. Germany), 2 U.N.R.I.A.A. 1011 (1949); RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 200 (1965).
8. The Naulilaa Incident Arbitration (Portugal v. Germany), 2 U.N.R.I.A.A. 1011 (1949).
9. E. COLBERT, RETALIATION IN INTERNATIONAL LAW 103 (1948). For a discussion in the context of self-defense, see R. FALK, LEGAL ORDER IN A VIOLENT WORLD 179 (1968).
10. Banco Nacional de Cuba v. Sabbatino, 307 F. 2d 845, 864-868 (2d Cir. 1962), rev'd on other grounds, 376 U. S. 398 (1964); G. VON GLAHN, LAW AMONG NATIONS 504 (2d ed. 1970)
11. Respondent submits that this court take judicial notice of the well-known and publicized facts surrounding the Arab Oil Embargo. As support for the textual proposition, Respondent notes the content of Secretary of State Kissinger's news conference of November 21, 1973, reported in 69 DEP'T STATE BULL. 701-703 (1973). See also 72 DEP'T STATE BULL. 97-101, 237-239 (1975).
12. Respondent stresses that there can be no justification for the unilateral retaliatory taking of the United States. Additionally, the factors validating the use of reprisal, including proportionality, are absent here. FALK, supra note 9 at 430.
13. See Foreign Investors Act §§ 13(d) (1) (A), (B) and (D).

14. A. VATTEL, THE LAW OF NATIONS 165 (ed. 1872); RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW OF THE UNITED STATES §§ 166, 201 (1965).
15. Briggs, Codification Treaties and Provisions on Reciprocity, Non-Discrimination, or Retaliation, 56 AM. J. INT'L L. 475 (1962); The Oscar Chinn Case, [1934] P.C.I.J., ser. A/B, No. 63.
16. Neer Case (United States v. Mexico), United States and Mexican General Claims Arbitration 71, 4 U.N.R.I.A.A. 60, 64-5 (1926).
17. 1 D. P. O'CONNELL, INTERNATIONAL LAW 776 (2d ed. 1970).
18. 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 [hereinafter cited as 1933 Saudi Arabia Agreement].
19. 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 [hereinafter cited as 1951 Denmark Treaty].
20. 1933 Saudi Arabia Agreement, supra note 18, arts. IV & V.
21. 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) [hereinafter cited as Vienna Convention].
22. Interpretation of the 1919 Convention Concerning Employment of Women During the Night, [1932] P.C.I.J. ser. A/B, No. 50.
23. Vienna Convention, supra note 21, art. 31.
24. Id. art. 32.
25. Nielsen v. Johnson, 279 U. S. 47 (1929).
26. The limitation to the non-communist community is justified as the parties involved in the present case do not have the ideological characteristics which would preclude their observance of an established customary rule among the non-communist community.
27. 17 AM. J. INT'L L. 362, 370 (1923); 32 AM. J. INT'L L. 519, 520 (1938); Anglo-Iranian Oil Co. v. Jaffrate (The Rose Mary), [1953] Ann. Dig. 316, 321 (Sup. Ct. Aden 1953); 29 DEP'T. STATE BULL. 357 (1953); 51 AM. J. INT'L L. 672, 675 (1957); 54 AM. J. INT'L L. 484, 485 (1960); 55 AM. J. INT'L L. 822, 823 (1961); 10 I.L.M. 1067 (1971).
28. 8 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW § 30, at 1087-9 (1967).

29. 1933 Saudi Arabia Agreement, supra note 18.
30. Legislation of Expropriating States cited note 27 supra.
31. Treaties cited note 28 supra.
32. Treaty between Japan and Argentina on Friendship, Commerce and Navigation, Dec. 20, 1961, art. VI, para. 4, 613 U.N.T.S. 323, 359.
33. Treaty between the United Kingdom and Iran on Commerce, Establishment and Navigation, March 11, 1959, art. 15, Iran No. 1 (1959), Cmd. 698.
34. Treaty between the Federal Republic of Germany and Pakistan on Promotion and Protection of Investments, Nov. 25, 1959, art. III, para. 2, Bundesrat Doc. No. 11/61, 457 U.N.T.S. 23, 26.
35. Drucker, On Compensation Treaties Between Communist States, 229 LAW TIMES 279, 293 (1960).
36. Treaty with Rumania on Settlement of Claims, March 30, 1960, 11 U.S.T. 317, T.I.A.S. No. 4451; Treaty with Poland on Settlement of Claims, July 16, 1960, 11 U.S.T. 1953, T.I.A.S. No. 4545.
37. Case Concerning Certain German Interests in Polish Upper Silesia (Chorzow Factory Case), [1926] P.C.I.J., ser. A, Nos. 7 & 13.
38. Norwegian Shipowners' Claims (Norway v. United States), 1 U.N.R.I.A.A. 307 (Perm. Ct. Arb. 1922).
39. Bernstein v. N. V. Nederlandsche - Amerikaansche Stoomvaart-Maatschappij, 210 F. 2d 375 (2d Cir. 1954); Banco Nacional de Cuba v. Sabbatino, 307 F. 2d 845 (2d Cir. 1962), rev'd on other grounds, 377 U. S. 308 (1964); Braden Copper Company v. Le Groupement d'Impartation des Metaux (Kennecott Copper Case), 12 I.L.M. 182 (Ct. of Extended Jur. Paris, France 1972); Sociedad Minera El Teniente S. A. v. Aktiengesellschaft Norddeutsche Affinerie (Kennecott Copper Case), 12 I.L.M. 251 (Super. Ct. Hamburg, Germany 1973); Anglo-Iranian Oil Co. v. Jaffrate (The Rose Mary), [1953] Ann. Dig. 316 (Sup. Ct., Aden 1953); Anglo-Iranian Oil Co. v. S.U.P.O.R. Co., [1955] Ann. Dig. 23 (Civ. Ct. Rome, Italy 1954); Anglo-Iranian Oil Co. v. Idemitsu Kosan Kubushiki Kaisha, [1953] Ann. Dig. 305 (High Ct. Tokyo, Japan 1953); Special Copper Tribunal Decision on the Question of Excess Profits, 11 I.L.M. 1013 (Copper Trib., Chile 1972).
40. U. S. CONST. amend. V.; 1 M. PLANIOL, TREATISE ON THE CIVIL LAW § 2438 (12th ed. Louisiana State Law Institute transl. 1939); M. BELTRAMO, G. LONGO, J. MARRYMANN, THE ITALIAN CIVIL CODE 227 (1969); 1 E. COHN, MANUAL OF GERMAN LAW 205 (2d ed. 1969); 5 AM. J. INT'L L. 593 (1961); T. Herzog, Sources of Expropriations in

Americas 75-101, July, 1972 (unpublished thesis in University of Miami Law School Library).

G. A. Res. 1803, 17 U.N. GAOR 24, U.N. Doc. A/PV 1193, (1962). Although there are some statements by developing countries to the effect that compensation need not be paid for takings which are for a public purpose, these statements are not applicable to a State such as the United States which has adequate resources to pay for its takings. The concern of the developing countries is their right to control their natural resources notwithstanding their inability to pay.

3 G. HACKWORTH, INTERNATIONAL LAW § 277, at 658-9 (1942).

Id. at 656.

29 DEP'T STATE BULL. 357, 359 (1953).

Norwegian Shipowners' Claims (Norway v. United States), I.R.I.A.A. 307, 334 (Perm. Ct. Arb. 1922).

The United States has violated general principles of international law as evidenced by the national legislation cited in note 27 supra and national courts cited in note 39 supra.

C. CIV. art. 545 (1st ed. Codes Annotes du Dalloz 1905); Case Potasas Ibericas v. Nathan Bloch, [1938-1940] Ann. 150 (No.54) (Ct. Cass., France 1939).

Case Concerning the Application of the Convention of 1902 Concerning the Guardianship of Infants, [1958] I.C.J. 55, 90, 92,

See e.g., United States: Zwack v. Kraus Bros. & Co., 237 F.2d 255 (2d Cir. 1956); France: Moulin v. Volatron, [1938-1940] Ann. Dig. 24 (No. 10) (Ct. App. Aix, France 1939); Braden Copper & Groupement d'Importation des Metaux (The Kennecott Copper Case), 12 I.L.M. 186 (Ct. Extended Jur. Paris, France 1972); Germany: Sociedad Minera El Teniente v. Aktiengesellschaft Deutsche Affinerie (Kennecott Copper Case), 12 I.L.M. 251 (Ct. Hamburg, Germany 1973); Japan: Anglo-Iranian Oil Co. v. Mitsui Bussan Kaisha, Ltd., [1953] Ann. Dig. 305 (High Ct. of Tokyo, Japan 1953); Italy: Koh-I-Noor Tuskarna L. & Co. v. Hardtmuth v. Fabrique de Crayons Hardtmuth, 40 I.L.R. 17 (Ct. of Cass., Italy 1960). Publicists generally agree a practice may become a norm of general customary international law through the acquiescence of States coupled with the conviction that the practice is binding. Practice must be applied by the majority of States which are in position to apply it. Accord, e.g., Kunz, Customary International Law, 47 AM. J. INT'L L. 662.

Sociedad Minera El Teniente S. A. v. Aktiengesellschaft

Norddeutsche Affinerie (Kennecott Copper Case), 12 I.L.M. 251 Super. Ct. Hamburg, Germany 1973; Braden Copper Company v. Le Groupement d'Importation (Kennecott Copper Case), 12 I.L.M. 182 (Ct. Extended Jur. Paris, France 1972).

51. Anglo-Iranian Oil Co. v. S.U.P.O.R., [1955] Ann. Dig. 23 (Civ. Ct. Rome, Italy 1955); Anglo-Iranian Oil v. S.U.P.O.R. (The Miriella), [1955] Ann. Dig. 19 (Ct. Venice, Italy 1953); Anglo-Iranian Oil Co. v. Idemitsu Kosan Kabushiki Kaisha, [1953] Ann. Dig. 305 (High Ct. Tokyo, Japan 1953).

52. Cf. Anglo-Iranian Oil Co. v. S.U.P.O.R., [1955] Ann. Dig. 23 (Civ. Ct. Rome, Italy 1954); Anglo-Iranian Oil Co. v. Idemitsu Kosan Kabushiki Kaisha, [1953] Ann. Dig. 305 (High Ct. Tokyo, Japan 1953); Bernstein v. Freres, [1947] Ann. Dig. 11 (No. 5) (Cir. Ct. United States 1947); Kennecott Copper Case, 12 I.L.M. 251 (Super. Ct. Hamburg, Germany 1973).

53. E.g., France: U.R.S.S. v. Intendant General, [1927-1928] Ann. Dig. 67 (No. 43) (Ct. Cass., France 1928); Italy: Vaghi v. Reichsbank, [1938-1940] Ann. Dig. 153 (No. 56) (Ct. Cass, Italy 1939); Belgium: Wilkening v. Belgian State, [1948] Ann. Dig. 236 (No. 66) (Ct. 1st Instance, Belgium 1948).

54. See, e.g., Austria: Effect of Nationalization of Foreign Co. Case, 40 I.L.R. 16 (Sup. Ct. Austria 1961); Germany: Sudeten Germans Case, [1948] Ann. Dig. 24 (No. 12) (Amtsgericht of Dingolfing, Germ. 1948); United States: Moscow Fire Ins. Co. v. Bank of N. Y. [1938-1940] Ann. Dig. 141 (No. 53) (Ct. App., N.Y. 1939):

55. Bank Indonesia v. Senembach Maatschappij Bank, 30 I.L.R. 28 (Ct. App., Neth. 1959). United States v. Bank Voor Handel, 9 I.L.M. 758 (Sup. Ct., Neth. 1969) held that Netherlands courts can determine the validity of a seizure of assets under international law, even when the seizure is within the territory of the seizing state.

56. [1953] Ann. Dig. 316 (Sup. Ct., Aden 1953).

57. Case Concerning German Interests in Silesia, [1926] P.C.I.J., ser. A, Nos. 7 & 13.

58. 1 L. OPPENHEIM, INTERNATIONAL LAW § 1150 b, at 268 (8th ed. Lauterpacht 1967).

59. E.g., United States: Bollack v. Society Generale, 33 N.Y.S. 2d 986, 236 App. Div. 60 (1942); Italy: H.M. Alfonso Di Barbone v. Credito Italiano, [1935-1937] Ann. Dig. 198 (No. 72) (Ct. App. Rome, Italy 1934).

60. Many publicists regard international law as a standard for good faith negotiation of settlements and controlling behavior. If a State realizes foreign courts will not automatically

validate its legislation when contrary to international law, that will serve as an even greater impetus for negotiation. M. KAPLAN & N. KATZENBACH, THE POLITICAL FOUNDATIONS OF INTERNATIONAL LAW 3-29 (1961).

61. 1 L. OPPENHEIM, INTERNATIONAL LAW § 144a (8th ed. Lauterpacht 1967).

62. See, e.g., United States: Plesch v. Bank Nationale de Haiti, [1948] Ann. Dig. 13 (No. 7) (App. Div. N.Y., United States 1948); Canada: Lanne and Baltser v. Entoway State Cargo, [1948] 22 D.L.R. 641 (Sup. Ct., Canada 1949).

63. The Antelope, 23 U.S. (10 Wheat.) 66 (1825).

64. Effect of Nationalization of Foreign Shareholders Case, 40 I.L.R. 16 (Sup. Ct., Austria 1961); Zwack v. Kraus Bros., 237 F. 2d 255 (2d Cir. 1956).

65. Domke, Foreign Nationalizations, 55 AM. J. INT'L L. 585, 598 (1961).

66. Underhill v. Hernandez, 168 U. S. 250, 253 (1897).

67. Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 421 (1964).

68. E.g., France: Societe Potasas Ibericas v. Bloch, [1938-1940] Ann. Dig. 150 (No. 54) (Ct. Cass., France 1939); Netherlands: Bank Indonesia v. Senembah Maatschappij, 30 I.L.R. 28 (Ct. App. Netherlands 1959).

69. Banco Nacional de Cuba v. Farr, Whitlock, & Co., 243 F. Supp. 957, 975 (S.D.N.Y. 1965).

70. Accord, Foreign Assistance Act of 1961, § 620(e)(2), as amended by Foreign Assistance Act of 1964, § 301(d)(4), TITLE 22, UNITED STATES CODE, Section 2370(e)(2) (1964); see First National City Bank v. Banco Nacional de Cuba, 406 U.S. 759 (1972).

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