IN THE INTERNATIONAL COURT OF JUSTICE

April 1976

Between:

THE UNITED STATES OF AMERICA

Applicant

and

FRANCE

Respondent

MEMORIAL FOR THE RESPONDENT

Team No.

Agents for France:

P. D. Jackson

R. van Banning

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TREATIES AND OTHER INTERNATIONAL AGREEMENTS

American Convention on Human Rights (signed Nov. 22, 1969), 9 Int'l. Leg. Materials 99 (1970). 10

Charter on the Economic Rights and Duties of States, G.A. Resolution 3281 (XXIX), December 1974. 9

Draft Declaration on Rights and Duties of States, Int'l. L. Comm'n Rep., 7 U.N. GAOR, Supp. 10, U.N. Doc. A/925 (1949). 1

O.E.C.D. Draft Convention on the Protection of Foreign Property, O.E.C.D. Publication No. 15, 637 (1962). 6, 10, 11

O.E.C.D. Resolution on the Draft Convention on the Protection of Foreign Property, 12 October 1967, 2 Int'l Lawyer 330 (1967). 7

Resolution on Permanent Sovereignty over Natural Resources, G.A. Resolution 3172(XXVIII), December 1973. 2, 9

U.N. Charter. 1, 2

Universal Declaration of Human Rights, G.A. Resolution 217A (III), December 1948. 5

CASES

Anglo-Iranian Oil Co. Ltd. v. Jaffrate (The Rose Mary), [1953] 1 W.L.R. 246 (Sup.Ct. of Aden). 13, 20, 21

Anglo-Iranian Oil Co. v. S.U.P.O.R., [1955] I.L.R. 23 (Civil Court of Rome, Italy, 1954). 8

Asylum Case (Colombia v. Peru), [1950] I.C.J. 266. 11

Banco de Vizcaya v. Don Alfonso, [1935] 1 K.B. 140. 20

Banco Nacional de Cuba v. Farr, 383 F. 2d. 166 (1967). 3

Banco Nacional de Cuba v. Sabbatino, 307 F. 2d. 845 (1962). 3, 8, 23

Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398 (1964). 18, 19, 20

Bauer Marchal et Cie v. Pioton and Others, [1955] I.L.R. 13 (Cass., France 1955). 21

Case concerning the Barcelona Traction Light and Power Co. Ltd., (Belgium v. Spain), Second Phase, [1970] I.C.J. 3. 12, 15, 22, 23

Case concerning Certain German Interests in Polish Upper Silesia (Merits), [1926] P.C.I.J. Ser. A, No. 7. 1

Case concerning Rights of Nationals of the United States of America in Morocco (France v. U.S.A.), [1952] I.C.J. 176. 1

Chorzow Factory Case (Merits), [1928] P.C.I.J., Ser. A., No. 17. 12

Confiscation of Assets of German-controlled Company in the Netherlands Case, 32 I.L.R. 12 (Fed. Sup.Ct., Fed. Rep. of Germany 1960). 18, 24

Confiscation of Shares of German-controlled Company in the Netherlands Case, 32 I.L.R. 26 (Fed. Sup.Ct., Fed. Rep. of Germany, 1960). 24

De Sabla Claim, [1933-34] Ann. Dig. 241 (No. 92) (United States-Panama Claims Commission, 1933) 12

Enterprise Nationale L et C Hardtmuth, Fabrique de Crayons Koh-I-Noor v. Fabrique de Crayons Koh-I-Noor, L et C Hardtmuth, 26 I.L.R. (Cour d'appel de Paris, France 1958). 21

Expropriation of Sudenten-German Co-operative Society Case, [1957] I.L.R. 36 (Fed.Sup.Ct., Fed. Rep. of Germany 1957). 18

Expropriation of Czechoslovak Co-operative Society (German) Case, 32 I.L.R. 19 (Fed.Sup.Ct., Fed. Rep. of Germany, 1960). 24

Frankfurter v. Exner, [1947] 1 Ch. 629. 8

Folliot v. Ogden, 3 Term. Rep. 726 (1789). 20

Huntington v. Attrill, 146 U.S. 657 (1892). 20

Huntington v. Attrill, [1892] A.C. 150. 20

Koh-I-Noor, L & C Hardtmuth v. Koh-I-Noor, Tuzkarna, L & C Hardtmuth, 26 I.L.R. 40 (Sup.Ct., Austria 1958). 8, 13, 21

Koh-I-Noor Tuzkarna L & C Hardtmuth Narodni Podnik v. Fabrique de Crayons Hardtmuth 26 I.L.R. 44 (Court of Appeal of Turin, Italy, 1958). 21

Laane & Balster v. Estonian State Steamship Line, [1949] S.C.R. 530. 19

Luther v. Sagor, [1921] K.B. 532. 18

Macaura v. Northern Insurance Co., [1925] A.C. 619. 15

Molnar v. Wilsons A/B, [1954] I.L.R. 30 (Sup.Ct. Sweden 1954). 18, 21

North Sea Continental Shelf Cases (Fed. Rep. of Germany v. Denmark, Fed. Rep. of Germany v. Netherlands), [1969] I.C.J. 64. 11

Norwegian Claims Case (Norway v. United States), Hague Court Reports (Scott) 39 (Perm. Ct. Arb. 1922). 8, 12

Printing & Numerical Registering Co. v. Sampson, (1875) L.R. 19 Eq. 462. 16

Plesch v. Banque Nationale de la Rep. d'Haiti, 77 N.Y.S. 2d 43, aff'd 298 N.Y. 573 (1948). 20

Pullman Car Co. v. Missouri Pacific Co., 115 U.S. 587 (1885) 15

Re Fried Krupp A/G, [1917] 2 Ch. 188. 8

Re George Newman & Co., [1895] 1 Ch. 674. 14

Re Helbert Wagg & Co., [1956] 1 All E.R. 129. 21

Rep. of Iraq v. First National City Bank, 241 F. Supp. 567, (1965). 20, 21

Re Schebsman, [1943] 2 All E.R. 768. 16

Salomon v. Salomon, [1897] A.C. 22. 15

S.A.R.L. "Koh-I-Noor L et C Hardtmuth" v. S.A. Agebel and Societe de Droit Tzecoslovaque Enterprise Nationale Koh-I-Noor, 47 I.L.R. 31 (Ct. of App. of Brussels, Belgium, 1959). 8, 13, 21

Senembah Maatschappij N.V. v. Republiek Indonesie Bank Indonesia and de Twentsche Bank N.V., Nederlandse Jurisprudentie No. 73 (1959), aff'd Nederlandse Jurisprudentie No. 350 (1959) (translated in Domke, "Indonesian Nationalization Measures before Foreign Courts", 54 A.J.I.L. 305 (1960). 8

Societe Potasas Ibericas v. Nathan Bloch, [1938-40] Ann.Dig. 150 [No. 54) (Cass. civ., France 1939). 13, 21

Standard Oil Tankers Case, 22 A.J.I.L. 404 (1928). 8

Tabacalera Severiano Jorge, S.A. v. Standard Cigar Co., 392 F. 2d 706. 18

The Jupiter (No. 3), [1927] P. 250. 19

Treatment of Polish Nationals in Danzig, [1932] P.C.I.J., Ser. A/B, No. 44. 7, 8

U.R.S.S. v. Intendent General Bourgeois es-qualite et Societe la Ropit, [1927-28] Ann.Dig. 67 (No. 42)(Ct. of Cass., France, 1928). 13, 21

Vladikavkazsky Ry. Co. v. New York Trust Co., 263 N.Y. 369 (1934). 20, 21

JOURNALS

American Branch of the International Law Association's Committee on Nationalization of Property; Am. Br. of the Int'l. L. Ass. Proceedings & Comm. Rep'ts. 68 (1957-8). 3

Anderson, "Municipal Laws on Confiscation", 21 A.J.I.L. 525 (1927). 11

Dawson and Watson, "Prompt, Adequate and Effective: A Universal Standard of Compensation?" 30 Fordham L. Rev. 727 (1962). 13

Fulton, "Mitigating the Rigors of the Act of State Doctrine", 20 Syracuse L.R. 705 (1968-69). 12

Haight, "OECD Resolution on the Protection of Foreign Property", 2 Int'l Lawyer 326 (1967). 7

Institut de Droit International, 44 Annuaire de l'Institut de Droit International II 283 (1952). 5

Jennings, "The Sabbatino Controversy", 20 Rec. of the Bar Ass. of the City of N.Y. 81, (1965). 20

Kline, "An Examination of the Competence of National Courts to Prescribe and Apply International Law", 1 U. San Franc. L.R. 40 (1966). 20

Landau, "Compensation upon the Taking of an Alien's Property", Amer. Bus. L.J. 31, (1974). 10, 11

McNair, "The Seizure of Property and Enterprises in Indonesia", 6 Netherlands Int'l. L. Rev. 218 (1959). 3, 8

O'Connel, 1 International Law, (1965). 12

Rolin, "Avis de Monsieur le Professeur H. Rolin" 6 Netherlands Int'l. L. Rev. 260 (1959). 8

Sohn, Proceedings and Committee Reports of the American Branch of the Int'l L. Ass. 31 (1959-60). 8

Verdross, "Die Nationalisierung Niederlandischer Unternehamungen in Indonesien im Lichte des Volkerrechts" (English summary), 6 Netherlands Int'l L. Rev. 278 (1959). 3, 8

TREATISES, DIGESTS, RESTATEMENTS & MISCELLANEOUS

J. Castel, International Law (1965). 11

B. Cheng, General Principles of Law as Applied by International Courts and Tribunals (1953) 13

Cheshire's Private International Law (9th ed., 1974, P. North ed.). 18, 20

Code Civil (74e ed; Petits Codes Dalloz 1974-75). 16, 17

17A Corpus Juris Secundum, Contracts. 17

W. Friedmann, O. Lissitzyn, and R. Pugh, International Law (1969). 1

8 Halsbury's Laws of England, Conflict of Laws (4th ed. 1974). 18

Letter from Acting Secretary of State Christian Herter to the Cuban Ministry of Foreign Relations, July 16, 1960, XLIII Bulletin (U.S. Dept. of State) No. 1101, 171 (1960). 5, 11

Letter from the Government of the Netherlands to the Government of Indonesia, December 18, 1959, 54 A.J.I.L. 484 (1960). 5

Memorandum from the Government of Guatemala to the Government of the United States, June 26, 1953. MS, U.S. Dept. of State, file 814-20/6-2653. 5

S. Mills, The Genoa Conference (1922). 10

Memorial of the United Kingdom, Anglo-Iranian Oil Co. Case (U.K. v. Iran), I.C.J. Pleadings (1952). 5

Restatement (second) of the Foreign Relations Law of the United States (1962) 9, 18

B. Wortley, Expropriation in International Law (1959). 13

JURISDICTION

The parties submit the present dispute by Special Agreement, in accordance with Article 38 of the Statute of the International Court of Justice, to a chamber of that court for decision.

STATEMENT OF FACTS

The parties have agreed to the Statement of Facts* which has been filed before the Court.

* As clarified in the letter from Katherine Hope Larson of December 18, 1975.

QUESTIONS PRESENTED

Is the Foreign Investors Act or the seizure thereunder, contrary to international law?

Even if the Act is not per se invalid, is the French Court required by international law to enforce it?

SUMMARY OF ARGUMENT

The Foreign Investors Act of 1975, whether viewed as legislation designed to regulate or to expropriate, is contrary to international law.

Even if (contrary to our submission) it is held that the Act and the forfeiture under it do not violate public international law, it does not follow that national courts are required to enforce this claim by the United States. The claim is contrary to basic principles of corporation and contract law. For this Court to recognize the claim of the United States is to permit the United States to implement its laws extra-territorially in derogation of French sovereignty.

ARGUMENT AND AUTHORITIES

1. THE FOREIGN INVESTORS ACT OF 1975 IS CONTRARY TO INTERNATIONAL LAW.

A. The United States cannot argue that its takeover of AMERIND was justified under a duly-passed domestic law unless that law conforms to international law.

A state cannot plead its own law as an excuse for non-compliance with international law.[1]

B. If the Foreign Investors Act of 1975 is viewed as regulatory in nature then it is contrary to international law.

1. It is a principle of international law that states should not engage in economic coercion.

It has long been recognized that the peace and harmony among nations which are the goal of international law are ill-served by acts of force by one state against another. This is true whether the force applied is armed or economic.

This view is affirmed in the Charter of the United Nations, which calls on all Member States to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State",[2] and which provides that economic or armed force may only be used by the

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1.a) W. Friedmann, O. Lissitzyn, and R. Pugh, International Law 149 (1969);
b) Draft Declaration on Rights and Duties of States, article 13, Int'l L. Comm'n Report 7 U.N. GAOR, Supp. 10, U.N. Doc. A/925 p. 10 (1949);
c) Case Concerning Certain German Interests in Polish Upper Silesia (Merits), [1926] P.C.I.J., Ser. A, No. 7 at 19, 22 42;
d) Case Concerning Rights of Nationals of the United States of America in Morocco (France v. U.S.A.), [1952] I.C.J. 176.

2. U.N. Charter, article 2, paragraph 4.

United Nations when it is aimed at the maintenance or restoration of international peace and security, and when it has been authorized by the Security Council.[3] It is significant that only once in its thirty year history has the U.N. actually employed measures of economic coercion against a State.[4]

The stringent limitations which have been put on the exercise of economic force in the charter of the United Nations, and which have been reaffirmed by the subsequent history of the United Nations, are strong evidence of the attitude of member states towards economic coercion. They indicate that states would view a unilateral action of economic force as contrary to international law.

A more explicit denunciation of economic coercion has come from the United Nations in the General Assembly's most recent Resolution on Permanent Sovereignty over Natural Resources:

> The General Assembly. . .
> 5. Re-emphasizes that actions, measures or legislative regulations by States aimed at coercing, directly or indirectly, other States or peoples engaged in the reorganization of their internal structure or in the exercise of their sovereign rights over their natural resources, both on land and in their coastal waters, are in violation of the Charter of the United Nations, . . . and that to persist therein could constitute a threat to international peace and security.[5] (Emphasis added.)

A number of authorities have endorsed the view that the taking

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3. Id. articles 39, 41, and 42.
4. The 1968 trade sanctions against Rhodesia.
5. G.A. Resolution 3172 (XXVIII) December 1973, article 5.

of alien property for purposes of retaliation is contrary to international law.[6]

The United States Court of Appeals, in one of the few cases which has addressed the issue of the international legality of economic retaliation, noted that the seizure of alien property as an act of reprisal "does not have any significant support among disinterested international law commentators from any country"[7] and concluded that "peacetime seizure of the property of nationals of a particular country, as an act of reprisal against that country, appears to this court to be contrary to generally accepted principles of morality throughout the world."[8]

2. The Foreign Investors' Act of 1975, particularly as applied to the facts in this case, is a measure of economic coercion.

The protection of important areas of national commercial activity could more than adequately be achieved by appropriate regulatory measures. This legislation goes far beyond that,

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6. -The American Branch of the International Law Association's Committee on Nationalization of Property, Am. Br. of the Int'l L. Ass. Proceedings & Comm. Reports 68 (1957-8);
-McNair, "The Seizure of Property and Enterprises in Indonesia", 6 Netherlands Int'l L. Rev. 218, 243 (1959);
-Verdross, "Die Nationalisiering Niederlandischer Unternehamungen in Indonsien im Lichte des Volkerrechts" (English summary), 6 Netherlands Int'l L. Rev. 278, 288 (1959).

7. Banco Nacional de Cuba v. Sabbatino, 307 F. 2d 845, 866 (1962).

8. Id. (Although the case was reversed by the Supreme Court, the Court of Appeal noted, in the later case of Banco Nacional de Cuba v. Farr, 383 F. 2d 166, 183 (1967) that: "This holding of ours...was unaffected when the Supreme Court reversed the result we had reached. The Supreme Court based its resolution of the case upon an application of the act of state doctrine and, as appellant concedes, found it unnecessary to decide whether international law had been violated in this case.)

suggesting the true purpose of the United States in enacting it is something else.

The terms of the legislation indicate that the considerations underlying the regulation of non-nationals under Sec. 13(d)(1)(B) are fundamentally different from those which apply to people or corporations not within paragraph (B). The latter are exposed to seizure of their rights only if they fail to file information within ten days after their acquisition of securities; the former are required to file thirty days before any proposed acquisition. If both groups were being regulated for the same ends, such a distinction would not be necessary.

The true purpose of the distinction is suggested in part (ii) of paragraph (B). Those to be distinguished are nationals of a country whose activities are inconveniencing the American economy. Furthermore, the exact identity of this group is left to the President to designate on an ad hoc basis, suggesting very strongly that this measure is intended to be a weapon in the economic arsenal, available to be used when necessary.

C. If the Foreign Investors Act of 1975 is viewed as an expropriation, then it is contrary to international law.

1. If the Act is not an internationally valid regulatory measure, then it is an expropriation/nationalization measure.

The Institut de Droit International has adopted the following definition:

> La nationalization est le transfer a l'Etat par mesure legislative et dans un interet public, de biens ou droit prives d'une certaine

> categorie, en vue de leur exploitation ou controle par l'Etat, ou d'une nouvelle destination qui leur serait donnee par celui-ci.[9]

The present legislation, insofar as it provides for seizures falls clearly within this definition.

2. It is a principle of international law that an expropriating State may not discriminate against aliens.

(a) Customary international law prohibits discrimination.

One of the earliest resolutions adopted by the General Assembly confirmed the well-established principle of law that no State may pass laws which discriminate on the basis of nationality.[10]

Over the years, various States have specifically proclaimed their view of the illegality of such discrimination as it applies to the treatment of alien property.[11]

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9. 44 Annuaire de l'Institut de Droit International II 283 (1952).

10. G.A. Resolution 217 A (III) December 1948 (Universal Declaration of Human Rights, articles 2, 7).

11. -Memorandum from the Government of Guatemala to the Government of the United States, June 26, 1953 (concerning a general expropriation of farmland in Guatemala); MS, U.S. Dept. of State, file 814-20/6-2653;
-Letter from the Acting Secretary of State Christian Herter to the Cuban Ministry of Foreign Relations, July 16, 1960 (concerning Cuban expropriation of American owned property), XLIII Bulletin (U.S. Dept. of State) No. 1101, 171 (1960);
-Letter from the Government of the Netherlands to the Government of Indonesia, December 18, 1959 (concerning Indonesian expropriation of Dutch property), 54 A.J.I.L. 484, 485-6 (1960);
-Memorial of the United Kingdom, Anglo-Iranian Oil Co. Case (U.K. v. Iran) I.C.J. Pleadings 98-99 (1952).

More recently a specific and detailed statement of the law has been made in the O.E.C.D. Resolution and Draft Convention on the Protection of Foreign Property. Article one provides in part that: "Each party shall at all times ensure fair and equitable treatment to the property of all nationals of the other Parties."[12] Article three specifies that: "No party shall take any measures depriving, directly or indirectly, of his property a national of another Party unless the following conditions are complied with: ...(ii) The measures are not discriminatory."[13]

A note which constitutes part of the Convention explains that the prohibition against discrimination is a well-established rule of law; that illegal discrimination includes discrimination between nationals and aliens, between one alien nationality and another, and between aliens of the same nationality; and, finally, that it is "immaterial whether the measure complained of is expressly or exclusively directed against the property of the national for whom redress is sought or is couched in general terms which bring such property within its scope... de facto discrimination is unlawful."[14]

The Convention has not been ratified, but on 12 October 1967 the O.E.C.D. Council passed a resolution reaffirming the adherence

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12. O.E.C.D. Draft Convention on the Protection of Foreign Property, article 1, O.E.C.D. Publication No. 15, 637 (1962).
13. Id, article 3.
14. Id, Note 8.

of members to the principles of international law embodied in the Draft Convention.[15] At least one authority has noted that "the principles embodied in the Draft Convention, being principles of customary international law widely recognized, continue to be effective."[16]

(b) Judicial decisions prohibit discrimination.

Neither the International Court of Justice, nor the Permanent Court of International Justice has specifically addressed the question of discrimination in the taking of alien property. However, the P.C.I.J. has set down criteria for determining when discrimination against aliens is present. It has ruled that discrimination against a group of aliens does not cease to be discrimination simply because it applies to all aliens,[17] and that where discrimination is prohibited it must be absent in fact as well as in law. In other words, a legislative measure which is couched in general terms but which is in fact directed towards certain nationals is discriminatory.[18]

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15. O.E.C.D. Resolution, 12 October 1967, 2 Int'l Lawyer 326, 330 (1967).

16. Haight, "O.E.C.D. Resolution on the Protection of Foreign Property", 2 Int'l Lawyer 326, 328 (1967).

17. Treatment of Polish Nationals in Danzig, [1932] P.C.I.J., Series A/B, No. 44, p. 40.

18. Id, p. 28.

International Arbitration Tribunals[19] and National courts,[20] insofar as they have dealt with the issue, generally establish discrimination against alien property as contrary to international law.

(c) The teachings of qualified publicists of various nations hold that discrimination against alien property is contrary to international law.

The Restatement of the Foreign Relations Law of the United States succinctly states the view of a number of noted authorities[21] that a State acts contrary to international law if it injuriously treats an alien in a manner that discriminates against aliens

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19. -Standard Oil Tankers Case, 22 A.J.I.L. 404, 419-20 (1928);
-Norwegian Claims Case (Norway v. United States), Hague Court Reports (Scott) 39 (Perm.Ct.Arb. 1922)

20. -Banco Nacional de Cuba v. Sabbatino, supra note 7 at 867, (See note 8 supra re the status of rulings on international law in this case);
-Senembah Maatschappij N.V. v. Republiek Indonesie Bank Indonesia, and de Twentsche Bank N.V., Nederlandse Jurisprudentie No. 73 (1959), aff'd Nederlandse Jurisprudentie No. 350 (1959), translated in Domke, "Indonesian Nationalization Measures before Foreign Courts", 54 A.J.I.L. 305, 308 (1960);
-re Fried Krupp A/G, [1917] 2 Ch. 188, 192;
-Frankfurter v. Exner, [1947] 1 Ch. 629, 636-7;
-Anglo-Iranian Oil Co. v. S.U.P.O.R., [1955] I.L.R. 23, 39-40 (Civil Court of Rome, Italy 1954)(Although upholding the nationalization measures in question, the Court stated that laws which discriminate against alien property would not be enforced in Italian Courts);
-Koh-I-Noor L & C Hardtmuth v. Koh-I-Noor Tuzkarna L & C Hardtmuth, 26 I.L.R. 40 (Supreme Court, Austria 1958);
-S.A.R.L. "Koh-I-Noor L et C Hardtmuth"v. S.A. Agebel and Societe de Droit Tchecoslovaque Entreprise Nationale Koh-I-Noor, 47 I.L.R. 31 (Ct. of App. of Brussels, Belgium 1959).

21. -Rolin, "Avis de Monsieur le Professeur H. Rolin",6 Netherlands Int'l L. Rev. 260, 269 (1959);
-Verdross, supra note 6, 288-9;
-McNair, supra note 6, 247;
-Sohn, Proceedings and Committee Reports of the American Branch of the Int'l L. Ass. 31 (1959-60).

generally, aliens of his nationality, or against him because he is an alien.[22]

3. The Foreign Investors Act of 1975 discriminates against aliens.

It might be argued that the expropropriating paragraph of the Act can be applied to all violators of its provisions, regardless of nationality. Any such argument fails to meet the basic objection that these provisions (breach of which permits expropriation) impose requirements in a discriminatory manner. Sub-section 13(d)(1)(B) of the Act is clearly discriminatory in its selection of aliens. This is the paragraph that imposes a pre-acquisition (30 day) filing requirement - a requirement of a far different order from that in sub-section A.[23] Furthermore, a careful reading of sub-sections C and D leads to a very strong impression that they are directed only against those persons who are required to file before acquisition, that is, only sub-section B aliens.

4. It is a principle of international law that expropriation of alien property must be compensated.

(a) Customary international law requires compensation.

Both the Resolution on Permanent Sovereignty over Natural Resources,[24] and the Charter on the Economic Rights and Duties of States[25] stipulate that although a State may expropriate foreign property, compensation should be paid by the expropriating State.

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22. Restatement (second) of the Foreign Relations Law of the United States, section 166 (1962).

23. See section I.B.2 of this memorial, supra at page 4.

24. Supra note 5, article 3.

25. G.A. Resolution 3281 (XXIX) December 1974, article 2 para. 2(c).

The American Convention on Human Rights also provides that no one may be deprived of his property without compensation.[26]

Although none of these three sources specifies what the standard of compensation is to be, all make clear that some compensation is required.

The O.E.C.D. Draft Convention on the Protection of Foreign Property is more specific as to standards of compensation: it must be prompt, represent the genuine value of the property, and be effectively transferable.[27]

Similar standards are set in the provisions for compensation contained in 54 bilateral treaties between developing and developed countries.[28] It is submitted that the wide-spread practice of embodying this provision in conventions reflects its place in customary international law.

Soviet bloc countries have indicated some dissent from the general compensation principle.[29] However, it is submitted that their disagreement must be with the standard of compensation, not with a compensation requirement per se, because since the Second World War the practice of concluding global compensation

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26. 9 Int'l Leg. Materials 99, 107 (1970) (Signed by 12 Latin American countries on Nov. 22, 1969).

27. O.E.C.D. Draft Convention, supra note 12, article 3.

28. Landau, "Compensation upon the Taking of an Alien's Property", Amer. Bus. L.J. 31, 32 (1974) (Twelve of such treaties are between the United States and developing countries).

29. See, for example, "Reply of the USSR delegation to memorandum of 2 May 1922, "S. Mills, The Genoa Conference 409 (1922).

agreements between Communist States and, States whose nationals' property has been affected has become quite general.[30]

Even if state practice with regard to the compensation issue is seen to be less than unanimous, it has been clearly established that a State may be bound by a regional custom, as long as it has consented to the rule.[31] It is submitted that the adherence of all West European and North American States (and particularly of the United States) to the compensation rule is settled.[32]

(b) General principles recognized by civilized nations require compensation

The constitutions of 58 developing countries proclaim adherence to the principle of compensation.[33] So, too, do the constitutions of such developed countries, as France, the United States, Austria, Italy, Lichtenstein, the United Kingdom and Canada (the latter two in terms of both statutes and common law interpretations of constitutional principles).[34]

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30. J. Castel, International Law 991 (1965) (Such agreements have been concluded between Communist and non-Communist States, and between Communist States inter se.)

31. -Asylum case (Colombia v. Peru), [1950] I.C.J. 276-7;
-North Sea Continental Shelf Cases (Fed. Rep. of Germany v. Denmark, Fed. Rep. of Germany v. the Netherlands) (separate opinion of President Bustamante Y Rivero), [1969] I.C.J. 64.

32. -See the O.E.C.D. Draft Convention, supra note 12, article 3;
-The U.S. position was made clear in 1938:
"The Government of the United States merely adverts to a self-evident fact when it notes that the applicable precedents and recognized authorities on international law support its declaration that, under evey rule of law and equity, no government is entitled to expropriate private property, for whatever purpose, without provision for prompt, adequate and effective compensation therefor..." (Letter from the Acting Secretary of State Christian Herter, supra note 11).

33. Landau, supra note 28, at 33.

34. Anderson, "Municipal Laws on Confiscation", 21 A.J.I.L. 525 (1927).

Two authors[35] have suggested that this source of international law should be interpreted in terms of the needs and aspirations of man in the international community:

> General principles are defined in terms of the human activity which requires regulation; the norms take their definition from the needs of a society which is an economically interdependent unit. In order to insure the flow of private funds into the development process and to bring order to the economic relations between nations foreign investment must not be threatened with uncompensated expropriation. Thus, the uncompensated taking of property from a foreign investor is violative of a general principle of law recognized by civilized nations. This norm might be distasteful to developing nations, but they must accept the principle as defined or be denied their existence as members of the international community.[36]

(c) Judicial decisions require compensation.

The Permanent Court of International Justice and the International Court of Justice have taken the position that under international law expropriation is only lawful when accompanied by fair compensation.[37] So, too, have international arbitration tribunals.[38]

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35. -Fulton, "Mitigating the Rigors of the Act of State Doctrine", 20 Syracuse L.R. 705, 720 (1968-9).
-O'Connel, 1 International Law 1, 3-9 (1965).

36. Fulton, supra note 35, at 720.

37. -Chorzow Factory Case (Merits), [1928] P.C.I.J., Series A, No. 17, 4, 46-48;
-Case concerning the Barcelona Traction, Light and Power Co. Ltd. (Belgium v. Spain), Second Phase, [1970] I.C.J. 3, 233-9 [hereinafter cited as Barcelona Traction].

38. -Norwegian Claims Case, supra note 19;
-De Sabla Claim, [1933-34] Ann.Dig. 241 (No. 92) (United States-Panama Claims Commission, 1933).

The proposition has also found much support in national courts, on the grounds either of international law, or of the public policy of the nation concerned.[39] Some courts have enforced confiscations of alien property, but these have been based on 'Act of State' considerations, not on principles of international law.[40]

(d) The teachings of qualified publicists of various nations hold that expropriation of alien property without compensation is contrary to international law.

The authorities supporting this view are legion.[41] A typical statement is that of Bin Cheng: "Both as regards expropriation and requisition, the payment of compensation to the individuals who have been deprived of their property is now considered indispensible.[42]

Some recent writers would except from compensation requirements developing nations which expropriate as part of a program of general social and economic reform.[43] However, it is clear that if there is such an exception under international law, it does

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39. -Anglo-Iranian Oil Co. v. Jaffrate (The Rose Mary), [1953] 1 W.L.R. 246 (Supreme Court of Aden);
-U.R.S.S. v. Intendant General Bourgeois es-qualite et Societe La Ropit, [1927-28] Ann.Dig. 67 (No. 42)(Court of Cassation, France 1928);
-Societe Potasas Ibericas v. Nathan Bloch, [1938-40] Ann.Dig. 150 (No. 54)(Cass. civ., France 1939);
-S.A.R.L. Koh-I-Noor (Belgium), supra note 20.
-Koh-I-Noor L & C Hardtmuth (Austria), supra note 20.

40. This issue is more fully dealt with in Part II.B.4 of this memorial, infra pages 19-20.

41. B. Wortley, Expropriation in International Law 34-5 (1959).

42. B. Cheng, General Principles of Law as Applied by International Courts and Tribunals, 47, (1953).

43. For example, Dawson and Watson, "Prompt, Adequate and Effective: A Universal Standard of Compensation?" 30 Fordham L. Rev. 727 (1962).

not apply to the legislation presently under consideration.

5. The Foreign Investors Act of 1975 provides for the expropriation of alien property without compensation.

The terms of the legislation exclude any compensation for a seizure of property under subsection 13(d)(1)(D).

II. NATIONAL COURTS ARE NOT REQUIRED BY INTERNATIONAL LAW TO APPROVE THIS CLAIM BY THE UNITED STATES

A. The claim of the United States Government is inconsistent with internationally recognized principles of corporation and contract law.

1. The claim of the United States Government as shareholder is contrary to established principles of corporation law.

The United States Government never seized, or purported to seize, the assets or rights of AMERIND. It seized only the shares, and these only temporarily. (Under the legislation it is required to sell them to the highest bidder as soon as possible.)[44] Its claims for payment have all been made in its capacity as shareholder. Thus all claims in dispute here come not from AMERIND but from AMERIND's (new) shareholders.[45]

The CNFP contract was made with the AMERIND corporation. AMERIND is a legal person, separate and distinct from its shareholders. "An incorporated company's assets are its property and not the property of its shareholders for the time being."[46] This is a fundamental principle of corporation law, well-established in

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44. The Securities Exchange Act, as amended, section 13(d)(1)(D), Special Agreement, Annex C.

45. Special Agreement, Annex B, at Page 6.

46. Re George Newman & Co., [1895] 1 Ch. 674, 685.

municipal law.[47] This court has explicitly recognized the principle and endorsed its application to international disputes:

> 38. In this field international law is called upon to recognize institutions of municipal law that have an important and extensive role in the international field.... 41.....The concept and structure of the limited liability company are founded on and determined by a firm distinction between the separate entity of the company and that of the shareholder, each with a distinct set of rights. The separation of property rights as between company and shareholder is an important manifestation of this distinction. So long as the company is in existence the shareholder has no right to the corporate assets .... 50.....If the Court were to decide the case in disregard of the relevant institutions of municipal law it would , without justification, invite serious legal difficulties. It would lose touch with reality, for there are no corresponding institutions of international law to which the Court could resort.[48]

2. AMERIND cannot unilaterally alter the contract.

The United States Government cannot claim through AMERIND. AMERIND contracted on February 27, 1975 to ship the plastics to CNFP. Shipment was made June 4 without any attempt to alter this contract. One of the terms of the contract was that payment should be made to CANIND in Canada.[49] AMERIND, a legal person with contractual rights and obligations, cannot unilaterally alter the terms of its contracts on the whim of persons who happen to become its new shareholders.

> If there is one thing which more than another public policy requires it is that men of full age and competent understanding

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47. Pullman Car Co. v. Missouri Pacific Co., 115 U.S. 587 (1885); Macaura v. Northern Insurance Co., [1925] A.C. 619 (House of Lords); Salomon v. Salomon, [1897] A.C. 22 (House of Lords).

48. Barcelona Traction, supra note 37; see section II.C. of this memorial for the exception to this principle, infra at page 22.

49. Special Agreement, Annex B, Pages 5, 6 and clarification "Annex B, paragraph 1" in letter from Katherine Hope Larson, December 18, 1975.

> shall have the utmost liberty of contracting and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by Courts of justice.[50]
>
> In making the contract, he [here AMERIND] set in motion a piece of machinery which he had no power to stop by his own unilateral action save by releasing the company [here CNFP] from the contract.[51]

That a contract, once made, is binding according to its terms is a well-established principle, recognized not only in the Anglo-American common law but also in the French Civil Code.[52] It is thus irrelevant, on this point, whether American or French law governs the contract. This Court in the Barcelona Traction case (quoted above) has stressed that such basic principles of municipal law have to be recognized by international law.

Our submission is supported not only by well-established law but also by good sense. This Court does not know why payment was ordered to be made to CANIND, or what other arrangements and considerations are related to it. To open up this contract is to undo one thread of a spider's web.

By these established and sensible principles CNFP is free to discharge the contract according to its terms by payment to CANIND. That is enough to defeat the applicant's claim. We would add that it is doubtful whether, even by mutual agreement with AMERIND, CNFP may legally refuse to pay CANIND. We submit that CANIND has a legally enforceable claim before the French court as an intended

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50. Printing & Numerical Registering Co. v. Sampson, (1875) L.R. 19 Eq. 462, 465.

51. Re Schebsman, [1943] 2 All E.R. 768, 772.

52. Code Civil, article 1134 (74e ed. Petits Codes Dalloz 1974-75).

third party beneficiary. Both French[53] and American[54] law (unlike the narrow "English rule") recognize the right of third parties to enforce payment.

B. The claim for payment is an attempt by the United States to enforce its legislation beyond its own jurisdiction and need not be recognized by French Courts.

1. Whether the seizure should be enforced is distinct from the question whether the legislation is valid.

In this dispute it is not sufficient for the United States to prove that its legislation meets international legal standards. It must further be proved, by the applicant, that the French Court which disposed of this case violated international law.

2. The United States never effectively seized CANIND's right to payment.

Both CANIND and CNFP are byond U.S. territorial jurisdiction and thus it is impossible for the United States Government (or U.S. Courts) to prevent payment. That Government now looks to a French Court to enforce its decrees extra-territorially. As we noted above, the United States neither seized nor purported to seize the plastics shipped to CNFP. The legislation is directly only at seizure of shares. Shipment according to contract was never interfered with. Yet the United States now claims the debt owed by CNFP.

3. There is no basis in international law for the demand of the United States Government that a foreign court execute its decrees.

Whereas there is some authority, albeit limited, for the

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53. Code Civil, article 1121 (74e ed. Petits Codes Dalloz 1974-75).

54. 17A C.J.S. Contracts section 519(3).

proposition that a seizure of property fully effected within jurisdiction by a foreign state should be recognized,[55] we submit that there is no legal basis at all for the proposition that a French Court should execute a foreign law which has been ineffective. On the contrary, such a proposition is in direct conflict with the fundamental principle of territorial sovereignty of States.

> The imposition of a penalty normally reflects the exercise by a State of its sovereign power, and it is an obvious principle that an act of sovereignty can have no effect in the territory of another State.[56]

Claims such as this one by the United States have a history of failure in foreign courts. The following judgment is typical:

> The debtor is resident in the Federal Republic. The question thus arises whether the confiscation enacted in the Czechoslavak Republic produces an effect in the Federal Republic. Even if the Court had to proceed on the premise that this question must be judged in accordance with Czechoslavak law and that the debt here in question was intended to be included in the confiscation of the assets of the society, this result would not follow. The effect of sovereign acts is limited to the territorial sphere of the sovereign authority which decrees such acts.[57]

Similar lawsuits[58] including some in the United States[59] have

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55. Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 406, 415 (1964); Restatement (Second) Foreign Relations Law of the U.S. section 7(1) (1965); Luther v. Sagor, [1921] K.B. 532; Cheshire's Private International Law 139 (9th ed., 1974, P. North ed.) [Hereinafter Cheshire].

56. Cheshire, supra note 55, at 137, 143; and see, 8 Halsbury's Laws of England, Conflict of Laws, section 664 (4th ed., 1974).

57. Expropriation of Sudeten German Co-operative Society Case, [1957] I.L.R. 35, 36 (Fed.Sup.Ct., Fed. Rep. of Germany 1957).

58. Confiscation of assets of German-controlled company in The Netherlands Case, 32 I.L.R. 12 (Fed.Sup.Ct., Fed. Rep. of Germany 1960); Molnar v. Wilsons A/B, [1954] I.L.R. 30 (Sup.Ct., Sweden 1954).

59. Tabacalera Severiano Jorge S.A. v. Standard Cigar Co., 392 F.2d 706.

come to the same conclusion. These decisions reflect the basic principle reiterated in many others[60] that national courts will not recognize purported seizures of property situated outside the seizing state's jurisdiction.

4. Even if the seizure had been effectively completed within the jurisdiction of the United States, there is no rule of international law compelling recognition of such acts of foreign States by national courts.

It is not denied that some national courts have sometimes recognized seizures of property effected by foreign States within their own jurisdiction. However it is submitted that such decisions constitute an international exception and reflect the exercise of a judicial discretion, not the application of an accepted rule that acts of State should be recognized (so there is no opinio juris).

Some Courts, notably the United States Supreme Court, have enunciated the "act of state" doctrine according to which the judiciary refrains from examining the validity of a taking of property within its own territory by a foreign government. In the famous Sabbatino case the Supreme Court bluntly stated: "the act of stale doctrine is applicable even if international law has ben violated."[61]

We submit that decisions which explicitly decline to apply international law are not a useful source for its elucidation and should be ignored by this Court. Furthermore, the doctrine has been

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60. The Jupiter (No. 3), [1927] P. 250; Laane & Balster v. Estonian State Steamship Line, [1949] S.C.R. 530; also many of the cases cited in note 67, infra.

61 Supra note 55, at 431.

thoroughly discredited by legislative reversal[62] and the criticism of writers.[63] In any event, even the United States Supreme Court in the Sabbatino case clearly admitted: "That international law does not require application of the doctrine is evident by the practice of nations....International law does not prescribe use of the doctrine."[64]

The "act of state" decisions of the Courts in the United States and the United Kingdom are an international aberration, and even these Courts have not been consistent in applying the doctrine.[65]

There are numerous cases where national courts have refused to enforce foreign legislative or executive decrees. Frequently this refusal is based on the well-established principle that no State is required to enforce the penal measures of another, directly or indirectly.[66]

National Courts have also frequently refused to recognize the

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62. The United States Congress substantially repealed the Sabbatino decision by enacting the "Second Hickenlooper Amendment". See 79 Stat. 653, 22 U.S.C. section 2370(e)(2)(Supp.I., 1965).

63. Kline, "An examination of the competence of national courts to prescribe and apply international law" 1 U. San Franc. L.R. 49, 123 (October, 1966); Jennings, "The Sabbatino Controversy", 20 Record of the Bar Ass'n of the City of New York 81 (Feb. 1965).

64. Supra note 55, at 421, 422.

65. Vladikavkazsky Ry. Co. v. New York Trust Co., 263 N.Y. 369 (1934); Plesch v. Banque Nationale de la Rep. d'Haiti 77 N.Y.S. 2d 43, aff'd per curiam 298 N.Y. 573 (1948); Rep. of Iraq v. First National City Bank, 241 F. Supp. 567 (1965); The Rose Mary, supra note 39.

66. Folliott v. Ogden, 3 Term Rep. 726 (1789); Huntington v. Attrill, [1892] A.C. 150; Banco de Vizcaya v. Don Alfonso, [1935] 1 K.B. 140; Huntington v. Attrill, 146 U.S. 657 (1892); Rep. of Iraq v. First National City Bank, supra note 65; See Cheshire, supra note 55.

acts of foreign States for reasons of public policy.[67]

5. National courts are entitled to apply "public policy" criteria in determining whether to recognize acts of foreign States.

Whenever a State seeks to enforce its legislation or decrees in a foreign court there arises a potential conflict of laws. Courts have solved this conflict not with an inflexible rule, but with a discretionary case by case approach in which they measure the claims of the foreign State against domestic public policy criteria. Where the foreign act clashes with domestic public policy the Court will refuse to recognize the act. This we submit, is the general principle of law recognized by national courts as evidenced by their customary practice.[68] It is also a realistic accommodation between the sometimes conflicting concepts of territorial sovereignty and comity among nations. Even the English cases recognize that:

> The true limits of the principle that the Courts of this country will afford recognition to legislation of foreign states.... rests in considerations of international law or in the scarcely less difficult considerations of public policy, as understood in these courts, ultimately I believe the latter is the governing consideration.[69]

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67. Koh-I-Noor L et C Hardtmuth (Austria), supra note 20; S.A.R.L. Koh-I-Noor (Belgium), supra note 20; Koh-I-Noor Tuzkarna L & C Hardtmuth Narodni Podnik v. Fabrique de Crayons Hardtmuth, 26 I.L.R. 44 (Ct. of App. of Turin, Italy 1958); Entreprise Nationale L et C Hardtmuth, Fabrique de Crayons Koh-I-Noor v. Fabrique de Crayons Koh-I-Noor, L et C Hardtmuth, 26 I.L.R. 50 (Cour d'appel de Paris, France 1958); Molnar v. Wilsons A/B, supra note 58; Vladikavkazsky Ry. Co., supra note 65; Rep. of Iraq v. First National City Bank, supra note 65; Bauer Marchal et Cie v. Pioton and Others, [1955] I.L.R. (Cass., France 1955); and see note 39 supra.

68. Supra note 67.

69. Re Helbert Wagg & Co., [1956] 1 All E.R. 129, 140.

It is our submission that no French court is required to enforce or recognize a foreign act contrary to French law. For this Court to accept the applicant's claim is to place the laws and acts of the United States above those of France, and to apply those foreign laws to French territory in derogation of French sovereignty.

C. CANIND as shareholder has title to property purportedly seized by the United States.

1. CANIND has status to sue as shareholder.

CANIND, or Canada on its behalf, is entitled to come before the French Court or this Court to claim payment. This Court has recognized that:

> 93....in the field of diplomatic protection as in all other fields of international law, it is necessary that the law be applied reasonably.[70]

In this case, unlike in Barcelona Traction, the expropriating State (the United States) is also the national State of the corporation (AMERIND) whose shareholders are being expropriated. The law would not be "applied reasonably" if it required that only the United States Government be allowed to protect the interests of these alien shareholders. Appointment of the fox to patrol the henhouse is small comfort for the chickens.

It is submitted also that since the United States seizure is in furtherance of legislation whose operative feature is the alien nationality of (controlling) shareholders, it would be inconsistent

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70. Barcelona Traction, supra note 37, at 48.

in passing on its legality to look only to the 'nationality' of the corporate fiction.[71] Furthermore, the United States, (unlike Spain in Barcelona Traction) having invoked international law and waived procedural objections, can hardly deny its operation to protect the shareholders.

2. CANIND, as shareholder, has a legally recognized claim.

As a general rule a shareholder has no legal claim to a corporation's assets.[72] There is, however an exception to this rule. Where its application leaves the wronged shareholder remediless he can claim in his own right. The exception was recognized by this Court in the Barcelona Traction case (but on the facts of that case was not applied):

> 47....The situation is different if the act complained of is aimed at the direct rights of the shareholder as such. It is well known that there are rights which municipal law confers upon the latter distinct from those of the company, including the right to any declared dividend, the right to attend and vote at general meetings, the right to share in the residual assets of the company on liquidation. Whenever one of his direct rights is infringed, the shareholder has an independent right of action....[73]

Here of course the company (AMERIND) has not been harmed at all: the seizure operates only against the shareholders (CANIND).

When a State takes action against the rights of shareholders there comes into existence a "severed company", outside of its territory, which holds the assets for the benefit of the expro-

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71. Banco Nacional de Cuba v. Sabbatino, supra note 7, rev'd on other grounds supra note 55.

72. See P.14 of this memorial supra.

73. Barcelona Traction, supra note 37, at 37.

priated shareholder.[74] To come to any contrary conclusion is to allow a State to do indirectly that which it cannot do directly:

> The adoption of any other view would result in largely invalidating the rule of territoriality. Foreign assets of any significance are probably owned - in the majority of cases - by juridical persons, and not by individuals. As such, as we have said, they are not amenable to confiscation, according to the generally accepted rule of the territorial limitation of State intervention. Any confiscating State could remove this barrier, as far as the assets of juridical persons are concerned, by the artificial device of confiscating the shares in a juridical person instead of confiscating its assets. This result, which we cannot possibly approve, demonstrates that the alternative view is workable.[75]

Applying these principles, CANIND, as shareholder is entitled to the debt situated in France.

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74. Confiscation of assets of German-controlled company in The Netherlands case, supra note 58; Confiscation of shares of German-controlled company in The Netherlands case, 32 I.L.R. 26 (Fed.Sup.Ct., Fed.Rep. of Germany 1960); Expropriation of Czechoslavak Co-operative Society (German) Case, 32 I.L.R. 19 (Fed.Sup.Ct., Fed. Rep. of Germany 1960).

75. Confiscation of assets of German-conrolled Company in The Netherlands case, supra note 58, at 15.

CONCLUSION

It is respectfully requested that this Honourable Court:

1. Dismiss all claims for declarations or damages sought by the United States;
2. Grant France a declaration that the decision of the French Court met the requirements of international law;
3. Grant France a declaration that the Foreign Investors Act of 1975 violates international law and is therefore invalid.

All of which is respectfully submitted.

P.D. Jackson

R. van Banning

Agents for France