Supreme Court of the United States

BANCO NACIONAL de CUBA, Petitioner,
v.
Peter L. F. SABBATINO, etc., et al.

No. 16.

Argued Oct. 22 and 23, 1963.
Decided March 23, 1964.

Mr. Justice HARLAN delivered the opinion of the Court.

[1] The question which brought this case here, and is now found to be the dispositive issue, is whether the so-called act of state doctrine serves to sustain petitioner's claims in this litigation. Such claims are ultimately founded on a decree of the Government of Cuba expropriating certain property, the right to the proceeds of which is here in controversy. The act of state doctrine in its traditional formulation precludes the courts of this country from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory.

I.

In February and July of 1960, respondent Farr, Whitlock & Co., an American commodity broker, contracted to purchase Cuban sugar, free alongside the steamer, from a wholly owned subsidiary of Compania Azucarera Vertientes- Camaguey de Cuba (C.A.V.), a corporation organized under Cuban law whose capital stock was owned principally by United States residents. Farr, Whitlock agreed to pay for the sugar in New York upon presentation of the shipping documents and a sight draft.

On July 6, 1960, the Congress of the United States amended the Sugar Act of 1948 to permit a presidentially directed reduction of the sugar quota for Cuba. [FN1] On the same day President Eisenhower exercised the granted power. [FN2] The day of the congressional enactment, the Cuban Council of Ministers adopted 'Law No. 851,' which characterized this reduction in the Cuban sugar quota as an act of 'aggression, for political purposes' on the part of the United States, justifying the taking of countermeasures by Cuba. The law gave the Cuban President and Prime Minister discretionary power to nationalize by forced expropriation property or enterprises in which American nationals had an interest. [FN3] Although a system of compensation was formally provided, the possibility of payment under it may well be deemed illusory. [FN4] Our State Department has described the Cuban law as 'manifestly in violation of those principles of international law which have long been accepted by the free countries of the West. It is in its essence discriminatory, arbitrary and confiscatory.' [FN5]

FN1. 74 Stat. 330.

FN2. Proclamation No. 3355, 74 Stat. c72, effective upon publication in the Federal Register, July 8, 1960, 25 Fed.Reg. 6414.

FN3. 'WHEREAS, the attitude assumed by the government and the Legislative Power of the United States of North America, which constitutes an aggression, for political purposes, against the basic interests of the Cuban economy, as recently evidenced by the Amendment to the Sugar Act just enacted by the United States Congress at the request of the Chief Executive of that country, whereby exceptional powers are conferred upon the President of the United States to reduce American sugar market as a threat of the participation of Cuban sugars in the political action against Cuba, forces the Revolutionary Government to adopt, without hesitation, all and whatever measures it may deem appropriate or desirable for the due defense of the national sovereignty and protection of our economic development process.
'WHEREAS, it is advisable, with a view to the ends referred to in the first Whereas of this Law, to confer upon the President and Prime Minister of the Republic full authority to carry out the nationalization of the enterprises and property owned by physical and corporate persons who are nationals of the United States of North America, or of enterprises which have majority interest or participations in such enterprises, even though they be organized under the Cuban laws, so that the required measures may be

adopted in future cases with a view to the ends pursued.

'Now, THEREFORE: In pursuance of the powers vested in it, the Council of Ministers has resolved to enact and promulgate the following.

'LAW No. 851 'ARTICLE 1. Full authority is hereby conferred upon the President and the Prime Minister of the Republic in order that, acting jointly through appropriate resolutions whenever they shall deem it advisable or desirable for the protection of the national interests, they may proceed to nationalize, through forced expropriations, the properties or enterprises owned by physical and corporate persons who are nationals of the United States of North America, or of the enterprises in which such physical and corporate persons have an interest, even though they be organized under the Cuban laws.' Record, at 98--99.

FN4. See id., Articles 4--7. Payment for expropriated property would consist of bonds with terms of at least 30 years and bearing 2% annual interest. The interest was not to be cumulative from year to year and was to be paid only out of 25% of the yearly foreign exchange received by sales of Cuban sugar to the United States in excess of 3,000,000 Spanish long tons at a minimum price of 5.75 cents per English pound. (In the preceding 10 years the annual average price had never been that high and in only one of those years had as many as 3,000,000 Spanish long tons been sold. 307 F.2d at 862.) The bonds were to be amortized only upon the authority of the President of the National Bank. The President and Prime Minister of the Cuban state were empowered to choose the appraisers. It is not clear whether the bonds were to be paid at maturity if funds were insufficient at that time.

FN5. See State Dept. Note No. 397, July 16, 1960 (to Cuban Ministry of Foreign Relations).

Between August 6 and August 9, 1960, the sugar covered by the contract between Farr, Whitlock and C.A.V. [FN6] was loaded, destined for Morocco, onto the S.S. Hornfels, which was standing offshore at the Cuban port of Jucaro (Santa Maria). On the day loading commenced, the Cuban President and Prime Minister, acting pursuant to Law No. 851, issued Executive Power Resolution No. 1. It provided for the compulsory expropriation of all property and enterprises, and of rights and interests arising therefrom, of certain listed companies, including C.A.V., wholly or principally owned by American nationals. The preamble reiterated the alleged injustice of the American reduction of the Cuban sugar quota and emphasized the importance of Cuba's serving as an example for other countries to follow 'in their struggle to free themselves from the brutal claws of Imperialism.' [FN7] In consequence of the resolution, the consent of the Cuban Government was necessary before a ship carrying sugar of a named company could leave Cuban waters. In order to obtain this consent, Farr, Whitlock, on August 11, entered into contracts, identical to those it had made with C.A.V., with the Banco Para el Comercio Exterior de Cuba, an instrumentality of the Cuban Government. The S.S. Hornfels sailed for Morocco on August 12.

FN6. The parties have treated the interest of the wholly owned subsidiary as if it were identical with that of C.A.V.; hence no distinction between the two companies will be drawn in the remainder of this opinion.

FN7. 'WHEREAS, the attitude assumed by the Government and the Legislative Power of the United States of North America, of continued aggression, for political purposes, against the basic interests of the Cuban economy, as evidenced by the amendment to the Sugar Act adopted by the Congress of said country, whereby exceptional powers were conferred upon the President of said nation to reduce the participation of Cuban sugars in the sugar market of said country, as a weapon of political action against Cuba, was considered as the fundamental justification of said law.

'WHEREAS, the Chief Executive of the Government of the United States of North America, making use of said exceptional powers, and assuming an obvious attitude of

economic and political aggression against our country, has reduced the participation of Cuban sugars in the North American market with the unquestionable design to attack Cuba and its revolutionary process.

'WHEREAS, this action constitutes a reiteration of the continued conduct of the government of the United States of North America, intended to prevent the exercise of its sovereignty and its integral development by our people thereby serving the base interests of the North American trusts, which have hindered the growth of our economy and the consolidation of our political freedom.

'WHEREAS, in the face of such developments the undersigned, being fully conscious of their great historical responsibility and in legitimate defense of the national economy are duty bound to adopt the measures deemed necessary to counteract the harm done by the aggression inflicted upon our nation.

'WHEREAS, it is the duty of the peoples of Latin America to strive for the recovery of their native wealth by wrestling it from the hands of the foreign monopolies and interests which prevent their development, promote political interference, and impair the sovereignty of the underdeveloped countries of America.

'WHEREAS, the Cuban Revolution will not stop until it shall have totally and definitely liberated its fatherland.

'WHEREAS, Cuba must be a luminous and stimulating example for the sister nations of America and all the underdeveloped countries of the world to follow in their struggle to free themselves from the brutal claws of Imperialism.

'NOW, THEREFORE: In pursuance of the powers vested in us, in accordance with the provisions of Law No. 851, of July 6, 1960, we hereby,

'RESOLVE:

'FIRST. To order the nationalization, through compulsory expropriation, and, therefore, the adjudication in fee simple to the Cuban State, of all the property and enterprises located in the national territory, and the rights and interests resulting from the exploitation of such property and enterprises, owned by the jurisdical persons who are nationals of the United States of North America, or operators of enterprises in which nationals of said country have a predominating interest, as listed below, to wit:

'22. Compan a Azucarera Vertientes Camagu ey de Cuba.

'SECOND. Consequently, the Cuban State is hereby subrogated in the place and stead of the juridical persons listed in the preceding section, in respect of the property, rights and interests aforesaid, and of the assets and liabilities constituting the capital of said enterprises.' Record, at 102--105.

Banco Exterior assigned the bills of lading to petitioner, also an instrumentality of the Cuban Government, which instructed its agent in New York, Societe Generale, to deliver the bills and a sight draft in the sum of $175,250.69 to Farr, Whitlock in return for payment. Societe Generale's initial tender of the documents was refused by Farr, Whitlock, which on the same day was notified of C.A.V.'s claim that as rightful owner of the sugar it was entitled to the proceeds. In return for a promise not to turn the funds over to petitioner or its agent, C.A.V. agreed to indemnify Farr, Whitlock for any loss. [FN8] Farr, Whitlock subsequently accepted the shipping documents, negotiated the bills of lading to its customer, and received payment for the sugar. It refused, however, to hand over the proceeds to Societe Generale. Shortly thereafter, Farr, Whitlock was served with an order of the New York Supreme Court, which had appointed Sabbatino as Temporary Receiver of C.A.V.'s New York assets, enjoining it from taking any action in regard to the money claimed by C.A.V. that might result in its removal from the State. Following this, Farr, Whitlock, pursuant to court order, transferred the funds to Sabbatino, to abide the event of a judicial determination as to their ownership.

FN8. C.A.V. also agreed to pay Farr, Whitlock 10% of the $175,000 if C.A.V. ever obtained that sum. 307 F.2d at 851.

[The court decides that Cuba could still sue in the United States though it was an unfriendly power, rejects the contention that the case should be decided by New York law, then turns to the act of state doctrine.]

IV.

The classic American statement of the act of state doctrine, which appears to have taken root in England as early as 1674, Blad v. Bamfield, 3 Swans. 604, 36 Eng.Rep. 992, and began to emerge in the jurisprudence of this country in the late eighteenth and early nineteenth centuries, see e.g., Ware v. Hylton, 3 Dall. 199, 230, 1 L.Ed. 568; Hudson v. Guestier, 4 Cranch 293, 294, 2 L.Ed. 625; The Schooner Exchange v. M'Faddon, 7 Cranch 116, 135, 136, 3 L.Ed. 287; L'Invincible, 1 Wheat. 238, 253, 4 L.Ed. 80; The Santissima Trinidad, 7 Wheat. 283, 336, 5 L.Ed. 454, is found in Underhill v. Hernandez, 168 U.S. 250, p. 252, 18 S.Ct. 83, at p. 84, 42 L.Ed. 456, where Chief Justice Fuller said for a unanimous Court:

> 'Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves.'
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> Following this precept the Court in that case refused to inquire into acts of Hernandez, a revolutionary Venezuelan military commander whose government had been later recognized by the United States, which were made the basis of a damage action in this country by Underhill, an American citizen, who claimed that he had had unlawfully assaulted, coerced, and detained in Venezuela by Hernandez.

None of this Court's subsequent cases in which the act of state doctrine was directly or peripherally involved manifest any retreat from Underhill. See American Banana Co. v. United Fruit Co., 213 U.S. 347, 29 S.Ct. 511, 53 L.Ed. 826; Oetjen v. Central Leather Co., 246 U.S. 297, 38 S.Ct. 309, 62 L.Ed. 726; Ricaud v. American Metal Co., 246 U.S. 304, 38 S.Ct. 312, 62 L.Ed. 733; Shapleigh v. Mier, 299 U.S. 468, 57 S.Ct. 261, 81 L.Ed. 355; United States v. Belmont, 301 U.S. 324, 57 S.Ct. 758, 81 L.Ed. 1134; United States v. Pink, 315 U.S. 203, 62 S.Ct. 552, 86 L.Ed. 796.

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V.

Preliminarily, we discuss the foundations on which we deem the act of state doctrine to rest, and more particularly the question of whether state or federal law governs its application in a federal diversity case. [FN20]

> FN20. Although the complaint in this case alleged both diversity and federal question jurisdiction, the Court of Appeals reached jurisdiction only on the former ground, 307 F.2d at 852. We need not decide, for reasons appearing hereafter, whether federal question jurisdiction also existed.

We do not believe that this doctrine is compelled either by the inherent nature of sovereign authority, as some of the earlier decision seem to imply, see Underhill, supra; American Banana, supra; Oetjen, supra, 246 U.S. at 303, 38 S.Ct. at 311, 62 L.Ed. 726, or by some principle of international law. If a transaction takes place in one jurisdiction and the forum is in another, the forum does not by dismissing an action or by applying its own law purport to divest the first jurisdiction of its territorial sovereignty; it merely declines to adjudicate or makes applicable its own law to parties or property before it. The refusal of one country to enforce the penal laws of another (supra, pp. 932--933) is a typical example of an instance when a court will not entertain a cause of action arising in another jurisdiction. While historic notions of sovereign authority do bear upon the wisdom or employing the act of state doctrine, they do not dictate its existence.

[14] That international law does not require application of the doctrine is evidenced by the practice of nations. Most of the countries rendering decisions on the subject to follow the rule rigidly. [FN21] No international arbitral or judicial decision discovered suggests that international law prescribes recognition of sovereign acts of foreign governments, see 1 Oppenheim's International Law, s 115aa (Lauterpacht, 8th ed. 1955), and apparently no claim has ever been raised before an international tribunal that failure to apply the act of state doctrine constitutes a breach of international obligation. If international law does not prescribe use of the doctrine, neither does it forbid application of the rule even if it is claimed that the act of state in question violated international law. The traditional view of international law is that it establishes substantive

principles for determining whether one country has wronged another. Because of its peculiar nation-to-nation character the usual method for an individual to seek relief is to exhaust local remedies and then repair to the executive authorities of his own state to persuade them to champion his claim in diplomacy or before an international tribunal. See United States v. Diekelman, 92 U.S. 520, 524, 23 L.Ed. 742. Although it is, of course, true that United States courts apply international law as a part of our own in appropriate circumstances, Ware v. Hylton, 3 Dall. 199, 281, 1 L.Ed. 568; The Nereide, 9 Cranch 388, 423, 3 L.Ed. 769; The Paquete Habana, 175 U.S. 677, 700, 20 S.Ct. 290, 299, 44 L.Ed. 320, the public law of nations can hardly dictate to a country which is in theory wronged how to treat that wrong within its domestic borders.

FN21. In English jurisprudence, in the classic case of Luther v. James Sagor & Co., (1921) 3 K.B. 532, the act of state doctrine is articulated in terms not unlike those of the United States cases. See Princess Paley Olga v. Weisz, (1929) 1 K.B. 718. But see Anglo-Iranian Oil Co. v. Jaffrate, (1953) 1 Weekly L.R. 246, (1953) Int'l L.Rep. 316 (Aden Sup.Ct.) (exception to doctrine if foreign act violates international law). Civil law countries, however, which apply the rule make exceptions for acts contrary to their sense of public order. See, e.g., Ropit case, Cour de Cassation (France), (1929) Recueil Ge ne ral Des Lois et Des Arre ts (Sirey) Part I, 217; 55 Journal Du Droit International (Clunet) 674 (1928), (1927--1928) Ann.Dig., No. 43; Graue, Germany: Recognition of Foreign Expropriations, 3 Am.J.Comp.L. 93 (1954); Domke, Indonesian Nationalization Measures Before Foreign Court, 54 Am.J.Int'l L. 305 (1960) (discussion of and excerpts from opinions of the District Court in Bremen and the Hanseatic Court of Appeals in N.V. Verenigde Deli- Maatschapijen v. Deutsch-Indonesische Tabak-Handelsgesellschaft m.b.H., and of the Amsterdam District Court and Appellate Court in Senembah Maatschappij N.V. v. Republiek Indonesie Bank Indonesia); Massouridis, The Effects of Confiscation, Expropriation, and Requisition by a Foreign Authority, 3 Revue Helle nique De Droit International 62, 68 (1950) (recounting a decision of the court of the first instance of Piraeus); Anglo-Iranian Oil Co. v. S.U.P.O.R. Co., (1955) Int'l L.Rep. 19, (Ct. of Venice), 78 Il Foro Italiano Part I, 719; 40 Bla tter fu r Zu rcherische Rechtsprechung No. 65, 172--173 (Switzerland). See also Anglo- Iranian Oil Co. v. Idemitsu Kosan Kabushiki Kaisha, (1953) Int'l L.Rep. 312 (High Ct. of Tokyo).

[15] Despite the broad statement in Oetjen that 'The conduct of the foreign relations of our government is committed by the Constitution to the executive and legislative * * departments,' 246 U.S. at 302, 38 S.Ct. at 311, 62 L.Ed. 726, it cannot of course be thought that 'every case or controversy which touches foreign relations lies beyond judicial cognizance.' Baker v. Carr, 369 U.S. 186, 211, 82 S.Ct. 691, 707, 7 L.Ed.2d 663. The text of the Constitution does not require the act of state doctrine; it does not irrevocably remove from the judiciary the capacity to review the validity of foreign acts of state.

The act of state doctrine does, however, have 'constitutional' underpinnings. It arises out of the basic relationships between branches of government in a system of separation of powers. It concerns the competency of dissimilar institutions to make and implement particular kinds of decisions in the area of international relations. The doctrine as formulated in past decisions expresses the strong sense of the Judicial Branch that its engagement in the task of passing on the validity of foreign acts of state may hinder rather than further this country's pursuit of goals both for itself and for the community of nations as a whole in the international sphere. Many commentators disagree with this view; [FN22] they have striven by means of distinguishing and limiting past decisions and by advancing various considerations of policy to stimulate a narrowing of the apparent scope of the rule. Whatever considerations are thought to predominate, it is plain that the problems involved are uniquely federal in nature. If federal authority, in this instance this Court, orders the field of judicial competence in this area for the federal courts, and the state courts are left free to formulate their own rules, the purposes behind the doctrine could be as effectively undermined as if there had been no federal pronouncement on the subject.

FN22. See, e.g., Association of the Bar of the City of New York, Committee on International Law, A Reconsideration of the Act of State Doctrine in United States Courts (1959); Domke, supra, note 21; Mann, International Delinquencies Before Municipal Courts, 70 L.Q.Rev. 181 (1954); Zander, The Act of State Doctine, 53 Am.J.Int'l L. 826 (1959). But see, e.g., Falk, Toward a Theory of the Participation of Domestic Courts in the International Legal Order: A Critique of Banco Nacional de Cuba v. Sabbatino, 16 Rutgers L.Rev. 1 (1961); Reeves, Act of State Doctrine and the Rule of Law--A Reply, 54 Am.J.Int'l L. 141 (1960).

We could perhaps in this diversity action avoid the question of deciding whether federal or state law is applicable to this aspect of the litigation. New York has enunciated the act of state doctrine in terms that echo those of federal decisions decided during the reign of Swift v. Tyson, 16 Pet. 1, 1 0 L.Ed. 865.

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[16] However, we are constrained to make it clear that an issue concerned with a basic choice regarding the competence and function of the Judiciary and the National Executive in ordering our relationships with other members of the international community must be treated exclusively as an aspect of federal law. [FN23] It seems fair to assume that the Court did not have rules like the act of state doctrine in mind when it decided Erie R. Co. v. Tompkins. Soon thereafter, Professor Philip C. Jessup, now a judge of the International Court of Justice, recognized the potential dangers were Erie extended to legal problems affecting international relations. [FN24] He cautioned that rules of international law should not be left to divergent and perhaps parochial state interpretations. His basic rationale is equally applicable to the act of state doctrine.

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FN23. At least this is true when the Court limits the scope of judicial inquiry. We need not now consider whether a state court might, in certain circumstances, adhere to a more restrictive view concerning the scope of examination of foreign acts than that required by this Court.

FN24. The Doctrine of Erie Railroad v. Tompkins Applied to International Law, 33 Am.J.Int'l L. 740 (1939).

VI.

[17] If the act of state doctrine is a principle of decision binding on federal and state courts alike but compelled by neither international law nor the Constitution, its continuing vitality depends on its capacity to reflect the proper distribution of functions between the judicial and political branches of the Government on matters bearing upon foreign affairs. It should be apparent that the greater the degree of codification or consensus concerning a particular area of international law, the more appropriate it is for the judiciary to render decisions regarding it, since the courts can then focus on the application of an agreed principle to circumstances of fact rather than on the sensitive task of establishing a principle not inconsistent with the national interest or with internationl justice. It is also evident that some aspects of international law touch much more sharply on national nerves than do others; the less important the implications of an issue are for our foreign relations, the weaker the justification for exclusivity in the political branches. The balance of relevant considerations may also be shifted if the government which perpetrated the challenged act of state is no longer in existence, as in the Bernstein case, for the political interest of this country may, as a result, be measurably altered. Therefore, rather than laying down or reaffirming an inflexible and all-encompassing rule in this case, we decide only that the (Judicial Branch) will not examine the validity of a taking of property within its own territory by a foreign sovereign government, extant and recognized by this country at the time of suit, in the absence of a treaty or other unambiguous agreement regarding controlling legal principles, even if the complaint alleges that the taking violates customary international law.

There are few if any issues in international law today on which opinion seems to be so divided as the limitations on a state's power to expropriate the

property of aliens. [FN26] There is, of course, authority, in international judicial [FN27] and arbitral [FN28] decisions, in the expressions of national governments, [FN29] and among commentators [FN30] for the view that a taking is improper under international law if it is not for a public purpose, is discriminatory, or is without provision for prompt, adequate, and effective compensation. However, Communist countries, although they have in fact provided a degree of compensation after diplomatic efforts, commonly recognize no obligation on the part of the taking country. [FN31] Certain representatives of the newly independent and underdeveloped countries have questioned whether rules of state responsibility toward aliens can bind nations that have not consented to them [FN32] and it is argued that the traditionally articulated standards governing expropriation of property reflect 'imperialist' interests and are inappropriate to the circumstances of emergent states. [FN33]

FN26. Compare, e.g., Friedman, Expropriation in International Law 206--211 (1953); Dawson and Weston, 'Prompt, Adequate and Effective': A Universal Standard of Compensation? 30 Fordham L.Rev. 727 (1962), with Note from Secretary of State Hull to Mexican Ambassador, August 22, 1938, V Foreign Relations of the United States 685 (1938); Doman, Postwar Nationalization of Foreign Property in Europe, 48 Col.L.Rev. 1125, 1127 (1948). We do not, of course, mean to say that there is no international standard in this area; we conclude only that the matter is not meet for adjudication by domestic tribunals.

FN27. See Oscar Chinn Case, P.C.I.J., ser. A/B, No. 63, at 87 (1934); Chorzow Factory Case, P.C.I.J., ser. A., No. 17, at 46, 47 (1928).

FN28. See, e.g., Norwegian Shipowners' Case (Norway/United States) (Perm.Ct.Arb.) (1922), 1 U.N.Rep.Int'l Arb.Awards 307, 334, 339 (1948), Hague Court Reports, 2d Series, 39, 69, 74 (1932); Marguerite de Joly de Sabla, American and Panamanian General Claims Arbitration 379, 447, 6 U.N.Rep.Int'l Arb.Awards 358, 366 (1955).

FN29. See, e.g., Dispatch from Lord Palmerston to British Envoy at Athens, Aug. 7, 1846, 39 British and Foreign State Papers 1849--1850, 431-- 432. Note from Secretary of State Hull to Mexican Ambassador, July 21, 1938, V Foreign Relations of the United States 674 (1938); Note to the Cuban Government, July 16, 1960, 43 Dept. State Bull 171 (1960).

FN30. See, e.g., McNair, The Seizure of Property and Enterprises in Indonesia, 6 Netherlands Int'l L.Rev. 218, 243--253 (1959); Restatement, Foreign Relations Law of the United States (Proposed Official Draft 1962), ss 190--195.

FN31. See Doman, supra, note 26, at 1143--1158; Fleming, States, Contracts and Progress, 62--63 (1960); Bystricky, Notes on Certain International Legal Problems Relating to Socialist Nationalisation, in International Assn. of Democratic Lawyers, Proceedings of the Commission on Private International Law, Sixth Congress (1956), 15.

FN32. See Anand, Role of the 'New' Asian-African Countries in the Present International Legal Order, 56 Am.J.Int'l L. 383 (1962); Roy, Is the Law of Responsibility of States for Injuries to Aliens a Part of Universal International Law? 55 Am.J.Int'l L. 863 (1961).

FN33. See 1957 Yb.U.N.Int'l L.Comm'n (Vol. 1) 155, 158 (statements of Mr. Padilla Nervo (Mexico) and Mr. Pal (India)).

The disagreement as to relevant international law standards reflects an even more basic divergence between the national interests of capital importing and capital exporting nations and between the social ideologies of those countries that favor state control

of a considerable portion of the means of production and those that adhere to a free enterprise system. It is difficult to imagine the courts of this country embarking on adjudication in an area which touches more sensitively the practical and ideological goals of the various members of the community of nations. [FN34]

> FN34. There are, of course, areas of international law in which consensus as to standards is greater and which do not represent a battleground forconflicting ideologies. This decision in no way intimates that the courts of this country are broadly foreclosed from considering questions of international law.

> When we consider the prospect of the courts characterizing foreign expropriations, however justifiably, as invalid under international law and ineffective to pass title, the wisdom of the precedents is confirmed.
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The possible adverse consequences of a conclusion to the contrary of that implicit in these cases in highlighted by contrasting the practices of the political branch with the limitations of the judicial process in matters of this kind. Following an expropriation of any significance, the Executive engages in diplomacy aimed to assure that United States citizens who are harmed are compensated fairly. Representing all claimants of this country, it will often be able, either by bilateral or multilateral talks, by submission to the United Nations, or by the employment of economic and political sanctions, to achieve some degree of general redress. Judicial determinations of invalidity of title can, on the other hand, have only an occasional impact, since they depend on the fortuitous circumstance of the property in question being brought into this country. [FN36] Such decisions would, if the acts involved were declared invalid, often be likely to give offense to the expropriating country; since the concept of territorial sovereignty is so deep seated, any state may resent the refusal of the courts of another sovereign to accord validity to acts within its territorial borders. Piecemeal dispositions of this sort involving the probability of affront to another state could seriously interfere with negotiations being carried on by the Executive Branch and might prevent or render less favorable the terms of an agreement that could otherwise be reached. Relations with third countries which have engaged in similar expropriations would not be immune from effect.

> FN36. It is, of course, true that such determinations might influence others not to bring expropriated property into the country, see p. 943, infra, so there indirect impact might extend beyond the actual invalidations of title.

The dangers of such adjudication are present regardless of whether the State Department has, as it did in this case, asserted that the relevant act violated international law. If the Executive Branch has undertaken negotiations with an expropriating country, but has refrained from claims of violation of the law of nations, a determination to that effect by a court might be regarded as a serious insult, while a finding of compliance with international law would greatly strengthen the bargaining hand of the other state with consequent detriment to American interests.

Even if the State Department has proclaimed the impropriety of the expropriation, the stamp of approval of its view by a judicial tribunal, however, impartial, might increase any affront and the judicial decision might occur at a time, almost always well after the taking, when such an impact would be contrary to our national interest. Considerably more serious and far- reaching consequences would flow from a judicial finding that international law standards had been met if that determination flew in the face of a State Department proclamation to the contrary. When articulating principles of international law in its relations with other states, the Executive Branch speaks not only as an interpreter of generally accepted and traditional rules, as would the courts, but also as an advocate of standards it believes desirable for the community of nations and protective of national concerns. In short, whatever way the matter is cut, the possibility of conflict between the Judicial and Executive Branches could hardly be avoided.

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[18] However offensive to the public policy of this country and its constituent States an expropriation of this kind may be, we conclude that both the national interest and progress toward the goal of establishing the rule of law among nations are best served by maintaining intact the act of state doctrine in this realm of its application.

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