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INTERNATIONAL LAW--CORPORATIONS--STATE DENIED STANDING TO SUE FOR INJURY TO FOREIGN CORPORATION

The Barcelona Traction, Light and Power Company, Ltd., (hereinafter referred to as Barcelona Traction) was incorporated under Canadian law in 1911 with its main office in Toronto. Several subsidiaries were formed, all under Canadian law, to develop, produce, and distribute electric power in the vicinity of Catalonia, Spain. To finance these operations, the company issued both peseta and sterling bonds, the shares in some of the subsidiaries providing security to a Canadian bank for the sterling bonds. Revenue produced by the subsidiaries from their operations in Spain was used to service the bond interest. Servicing was suspended for the duration of the Spanish Civil War (1936-1940), but was resumed on the peseta bonds after the war. Barcelona Traction was unable to resume payments on the sterling bonds because the Spanish government would not permit the subsidiaries to convert their domestic revenue into foreign exchange. The reason offered by the Spanish government was that it could not be shown that this foreign currency was needed to repay a debt arising out of an importation of foreign capital into Spain. Complaints were tendered and negotiations initiated by Canada, the parent nation of Barcelona Traction, and Belgium, whose nationals owned approximately 88% of the shares of Barcelona Traction. These efforts were of no avail, and in 1948 three Spanish holders of sterling bonds petitioned a Spanish court to declare Barcelona Traction bankrupt for failure to make its interest payments. The court, without providing notice of its proceedings to any party outside Spain, appointed a receiver and seized the assets of the company and its subsidiaries in Spain. In 1949 the creditors elected trustees in bankruptcy who reorganized the company with a new headquarters located in Spain. New shares were printed and sold in 1952 at public auction to FECSA,[1] a Spanish corporation.

1. Fuerzas Electricas de Cataluna, S. A.

Great Britain, the United States, Canada, and Belgium made representation to the Spanish government on behalf of Barcelona Traction in 1948 following the declaration of bankruptcy. Originally, Great Britain was concerned only with the interests of British bondholders, but it subsequently supported the Canadian claims. The United States submitted its representation upon the request of the Canadian government and took no active part in the negotiations. The United States merely attempted to promote eventual settlement. Canada pressed its claim through official notes from 1948 to 1952. However, the enthusiasm with which these attempts were made waned early and led to a gradual diminishing of efforts which culminated in withdrawal from the affair in 1955. As early as 1951 the Canadian Secretary of State for External Affairs was reported as having told the Spanish Consul in Canada that "Canadian interests in this case are so slight that it is of little interest to us."[2] Belgium was much more aggressive in pursuing its complaint, as was expected since the property taken was owned predominately by Belgians. After making ineffectual formal complaints and a suggestion of arbitration, Belgium unilaterally referred the matter to the International Court of Justice in 1962. In 1964 the action was suspended, pending further action in Spanish courts, but was reopened in 1966. In reaching a decision in 1970, the Court avoided the merits and denied Belgium standing to sue. The Court held that in the absence of a small number of exceptional circumstances, no nation, other than that in which an enterprise is incorporated, may represent a cause of action before the I.C.J. arising out of an injury to that corporation. Barcelona Traction, Light and Power Co. Case (Second Phase), [1970] I.C.J. 3, 9 INT'L LEGAL MATERIALS 227 (1970).

This decision completes the I.C.J.'s definition of the right of a nation to represent one of its nationals in the international forum. In the Nottebohm Case[3] the Court had previously held that a nation could protect any person who was a citizen of that nation by birth or by blood, or who had been naturalized and possessed a real and effective

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2. As quoted in Barcelona Traction, Light & Power Co. Case (Preliminary Objections), [1964] I.C.J. 61-62.

3. Nottebohm Case (Second Phase), [1955] I.C.J. 4.

nationality in that nation. A sovereign would be allowed, therefore, to protect an individual in an international court only if there existed a somewhat greater connection than mere formal citizenship; this connection had to be sufficiently close to create a "genuine link" between the sovereign and its citizen. The Nottebohm decision did not apply to the right of a sovereign to protect a corporation, and until the instant decision there was no clear statement of international law on the question.

Because a corporation is a legal fiction, there are two basic problems in considering which nation has the right to protect the corporation. First, it must be determined where the corporation exists. Second, it must be determined whether the place of corporate existence is also the place of corporate nationality. Of course the corporation has an existence in the nation in which it is incorporated but, as in the instant case, that nation may not be inclined to extend its diplomatic protection and representation to this fictitious entity if the corporation has an effectively foreign character.[4] Countries other than the nation of incorporation may have closer "links" with the corporation, especially if a substantial percentage of the owners or directors of the corporation is of an allegiance foreign to that of the incorporating nation, or if the real seat of control or the situs of operations is located outside of the incorporating nation. Allowing any of these nations to protect the corporation, however, could lead to chaos because the number of countries possessing these rights might change frequently due to the mobility of the operations, officers, and directors of the business or the free transferability of its stock. Perhaps because of the lack of a clearly meritorious solution, no single theory of corporate nationality has obtained a consensus among nations.[5] Ordinarily, a corporation is presumed to have an independent existence, the protection and regulation of which is accorded to the nation creating this existence.[6] Yet nations for varying

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4. Jones, Claims on Behalf of Nationals Who Are Shareholders in Foreign Companies, 26 BRIT. Y.B. INT'L L. 225, 236-37 (1949).

5. Id. at 237.

6. "The doctrine that the nationality of a company for the purposes of International Law is, irrespective of the nationality of the shareholders, that of the country under

reasons articulate exceptions to this general rule. For example, under municipal law many civil law countries will pierce the corporate veil and ascertain the siege social of the corporation in order to prevent avoidance of domestic laws.[7] Conversely, a nation might decide that a domestically incorporated enterprise was actually of foreign nationality for reasons relating to national security.[8] International arbitral reports indicate that some nations will attempt to extend the right to protect their citizens by claiming a right to recover for an injury inflicted upon a foreign corporation owned by these citizens. These nations disregard the place of incorporation as the exclusive test for determining corporate nationality. This is the view of Belgium, France, Germany, Switzerland, and, at times, the United States and Great Britain.[9] The latter two

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whose law it is incorporated is the one which, it seems to me, is now really firmly established." Beckett, Diplomatic Claims in Respect of Injuries to Companies, 17 TRANS. GROTIUS SOC'Y 175, 185 (1932) (footnotes omitted); see Note, Piercing the Corporate Veil Under International Law, 16 SYRACUSE L. REV. 779, 784 (1965).

7. The siege social is the true center of corporate activity. See Harris, The Protection of Companies in International Law in the Light of the Nottebohm Case, 18 INT'L & COMP. L.Q. 275, 280 (1969). Common law countries also deviate from the general rule. The English case of Foss v. Harbottle articulated an exception to the rule which applied when the directors committed a fraud, or a breach of trust, or failed to take steps necessary to protect the corporation. It also established an exception in the case of any act ultra vires. This exception had the effect of allowing the shareholders to take independent action for injuries to the corporate entity. Foss v. Harbottle, 2 Hare 461, 67 Eng. Rep. 189 (1843). While in the United States a domestic corporation is generally recognized as a being entitled to the protection of any United States citizen, the Department of State will not extend diplomatic representation on behalf of the corporation unless it is at least 50% beneficially owned by U.S. shareholders. P. LILLICH, INTERNATIONAL CLAIMS: THEIR ADJUDICATION BY NATIONAL COMMISSIONS 86-94 (1962).

8. Daimler Co. v. Continental Tyre & Rubber Co., [1916] 2 A.C. 307, 344 (English subsidiary of a German parent corporation held to have German nationality).

9. Harris, supra note 7, at 299-305.

nations are usually proponents of the "place of location" rule, but in past international arbitrations both have chosen whichever concept was most expedient,[10] regardless of its consistency with any general rule. Thus, the United States has claimed the right to protect both a corporation organized under its domestic law and a U. S. citizen injured as a result of a wrongful act committed against a foreign corporation.[11] Many of these latter claims were made in arbitrations with Latin American nations[12] which frequently demand a stipulation of domestic incorporation as a prerequisite for doing business in the country.[13] These arbitrations are cited often as indicators of the development of international law in this area, but their utility is limited for several reasons: first, some were decided in accordance with treaties;[14] second, many avoid any findings on the question of standing and simply announce a final award to one of the nations involved;[15] and three, most involve a situation in which no concurrent right of representation existed in the nation of incorporation because that nation was the one charged with committing the wrong.[16] Cases decided by the World Court, both prior to and after the Nottebohm decision, appear to assume that the nation of incorporation has a right of representation on the basis of that connection alone. In the Anglo-Iranian Oil Company Case[17] Great Britain was given standing to sue after

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10. Harris, supra note 7, at 286.

11. Harris, supra note 7, at 301-04.

12. For a discussion of these arbitrations see, G. KNIGHT, TREATMENT OF FOREIGN CORPORATIONS IN INTERNATIONAL LAW WITH PARTICULAR REFERENCE TO PROTECTION OF AMERICAN INTERESTS 31-61 (1938). The most significant, the Delagoa Bay Ry. arbitration, is discussed at note 20 infra and accompanying text.

13. E.g., El Triunfo Claim (United States v. El Salvador), 6 J. MOORE, A DIGEST OF INTERNATIONAL LAW 649 (1906) [hereinafter cited as 6 MOORE, DIGEST], [1902] PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES 838 (1903) [hereinafter cited as FOR. REL. U.S.], 15 U.N.R.I.A.A. 455, 467 (1902).

14. See Romano-Americana Claim (United States v. Great Britain), 5 G. HACKWORTH, DIGEST OF INTERNATIONAL LAW 840, 843 (1943) [hereinafter cited as 5 HACKWORTH, DIGEST], [1926] 2 FOR. REL. U.S. 308 (1941), Jones, supra note 4, at 240, 253.

15. Cf. Jones, supra note 4, at 237, 243.

16. See Jones, supra note 4, at 254-55.

17. Anglo-Iranian Oil Co. Case, [1952] I.C.J. 93.

showing that the injured corporation was incorporated in England. In determining the nationality of a corporation, the Court in the Interhandel Case (post-Nottebohm) referred to the injured corporation as the "Swiss company" after Switzerland claimed the corporation was of Swiss nationality.[18] The only significance to be drawn from the consideration of nationality in these cases is that the International Court of Justice had not given serious attention to the question resolved in the instant case and therefore did not have any established policy or practice from which to draw when Spain challenged Belgium's standing to sue on behalf of a company incorporated in Canada.

By a vote of fifteen to one (Judge ad hoc Riphagen, from Belgium, dissenting) the Court denied Belgium the right to represent Barcelona Traction because that right was vested only in the nation where the company was organized. Several exceptions were recongized, but none was found to apply in this case. In first facing the choice of law question, the Court found no applicable treaty and determined customary international law to be controlling. Such customary international law was silent on the distinguishing characteristics of the corporate form in the international community. The Court examined municipal law and, by analogy, adopted its principles as international law. It was noted that the most distinguishing feature of a corporation in municipal law was its independent legal personality. This independent personality allowed the owners of the corporation to enjoy limited liability for the obligations of the business, but gave them only limited rights in the operation of the corporation and in the remedies available in case of injury inflicted upon the business. Although a shareholder's interest in the economic welfare of the corporation was definitely affected when the corporation was injured, the injury directly affected only the corporation. The shareholder suffered only a derivative injury, and the corporation alone had the right to pursue legal redress.

The Court applied this logic to the law of nations and held that only the nation in which the corporation was formed had a right to maintain an action arising out of an injury to that corporation. The injured interests on the part of citizens of many other nations were disregarded.

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18. Interhandel Case, [1959] I.C.J. 6.

This basic rule has exceptions, of course, just as municipal law has exceptions to its rule in order to prevent abuse of the corporate structure. Municipal law will "lift the corporate veil" for the benefit of shareholders but only when the directors of the corporation are guilty of mismanagement or when similar cases warrant extraordinary relief. The Court mentioned several situations that might arise at an international level and give a nation, other than the nation of incorporation, a right to protect the corporation. For example, if the corporation ceased to exist, the country in which it was created would have no national left to protect. Therefore, protection could be tendered by the nations of the shareholders. Belgium argued that Barcelona Traction was "practically defunct"[19] as a result of the Spanish expropriation, but the Court said this description lacked legal precision and could not override the fact that the company was still technically in existence in Canada. In dismissing this argument, the Court overruled the old, but influential, arbitration decision in the Delagoa Bay Ry. Case.[20] The Court conceded that Belgium would have standing in this case if Canada could not take the action necessary to protect the interests of the corporation. This exception would have been applicable if the nation of incorporation had also been the nation committing the alleged wrong. Or, this exception might have applied if there had been an insufficient link connecting the country with standing and the corporation. On this point

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19. This term was used persuasively in the Delagoa Bay Ry. arbitration. 6 MOORE, DIGEST 648.

20. Delagoa Bay Ry. Case (Great Britain & United States v. Portugal), 2 J. MOORE, HISTORY AND DIGEST OF THE INTERNATIONAL ARBITRATIONS TO WHICH THE UNITED STATES HAS BEEN A PARTY 1865 (1898), 6 MOORE, DIGEST 647 (state may present a claim on behalf of a shareholder-national who is injured by an act of a foreign state against a foreign corporation); see [1902] FOR. REL. U.S. 848-52 (1903). A similar argument, citing Delagoa Bay Ry. as authority, was made in the Romano-Americana Claim, supra note 14, at 840. More recently, the United States recognized the creation of a cause of action in U.S. citizens when Cuba expropriated property belonging to a Cuban corporation that was 90% owned by American shareholders. Banco Nacional de Cuba v. Farr, 383 F.2d 166 (2d Cir. 1967), cert. denied, 390 U.S. 956 (1968).

the Court restated what it classified as the traditional rule -- that the right of diplomatic protection adhered to the nation in which the registered office of the corporation was located or under whose laws the corporation was created. The Court proceeded to note, however, that some states require a greater link between the corporation and its protecting state. Reference was made to the practice in civil law states of ascertaining the siege social of a corporation and establishing the right of diplomatic protection only in the nation qualifying under that analytical test. But, under either the common law or civil law tests there was a right in Canada to represent Barcelona Traction, and this was sufficient to eliminate a concurrent right in Belgium. Both Spain and Belgium argued that an application of the rule in the Nottebohm Case, which required a "genuine link" or "nexus" between a naturalized citizen and the state in order for the state to have a right of protection, would result in a favorable decision to them. The Court dismissed these arguments and found no factual or legal basis for analogizing the Nottebohm decision to the instant case.

Having exhausted its possibilities under municipal law, Belgium attempted to obtain standing by showing injury to its economy as a result of the Spanish action, thereby creating a direct injury to Belgian sovereignty. The Court dismissed this argument by reiterating its distinction between an injury to an interest and an injury to a right. Whereas Belgium had suffered no injury to a right as Canada possibly had Canada still possessed the exclusive right to represent Barcelona Traction in an action against Spain. Canada's unwillingness since 1955 to exercise this right was merely one of its prerogatives as a sovereign.

Belgium's final argument, upon principles of equity, was also rejected. The Court viewed the application of equity in international law as a means of deviating from the letter of the law to be used only when necessary to avoid an unreasonable outcome. Here one of the consequences of granting standing to Belgium would be to create a dangerous precedent which might permit similar future claims from a multitude of nations and breed insecurity among lesser developed nations which desire to promote internal investment of foreign capital.

The holding of the majority was hardly an expression of unified sentiments. Eight judges filed separate opinions, one judge dissented, and two submitted a joint declaration in which they voiced apprehension over the use of language found in the Nottebohm Case although that case had been expressly distinguished.[21]

Judge Fitzmaurice was displeased with the majority decision becuase he felt it was decided upon a technicality and did not extend its analogy to municipal law far enough. He referred to the instances in which the shareholders could lift the corporate veil and sue for a wrong done to the company. If international law was to remain faithful to the analogy, it should give the government of the shareholders a right to sue when the government of the corporation refused to pursue an action to obtain redress for injury to the corporation. Fitzmaurice suggested that the failure of international law to provide adequate remedies in such a situation as found in the instant case signified a lack of development as a legal system. The right to sue in behalf of national shareholders should be extended in international law more frequently than under municipal law because the company's government is not under the duty to act in the best interests of the company; yet the management of the company is obligated to act in furtherance of the best interests of the shareholders. Therefore, Fitzmaurice would prefer to see the nation of incorporation have something less than an exclusive right of representation of the corporation; providing protection for the corporation when the nation with the first right to represent it chooses not to exercise that right would be more realistic and would advance the development of the fledgling system of international law.

Judge Tanaka, in another separate opinion concerning protection of the parties actually injured by the wrongful

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21. Separate opinions were filed by the following judges: President Bustamante y Rivero (Brazil); Gros (France); Morelli (Italy); Tanaka (Japan); Ammoun (Lebanon); Padilla Nervo (Mexico); Fitzmaurice (Great Britain); and Jessup (United States). The dissenting opinion was filed by Judge ad hoc Riphagen (Belgium), and a joint qualifying declaration was submitted by Judges Oneyeama (Nigeria) and Petren (Sweden).

act in question, agreed with the majority premise that the national state of the corporation should have the right, above that of the nation of the shareholders, to protect the corporation. He thought, however, that the Court should take a more flexible approach toward recognizing alternative rights of representation when the bond of nationality between the company and its nation of incorporation was not effective. For example, if the state of incorporation chooses not to bring an action against the wrongdoing state, then the nation of the shareholders would inherit this right. Tanaka would extend this right even when the corporation was composed of shareholders of diverse nationalities; the rights of diplomatic protection would exist concurrently until judgment was rendered or satisfaction obtained. At that time all other rights would be extinguished. Independent rights would spring into existence when it appeared either legally or factually that the national state of the company could not be expected to exercise its right to protect the company.

Tanaka saw no reason why international law could not recognize a right of protection of the shareholders of a company when the company is injured regardless of any right of protection of the company. It is not necessary to limit the granting of such a right to exceptional circumstances. He also saw a practical answer to Spain's contention that Belgium had not exhausted its local remedies in Spanish courts before submitting this case to the International Court of Justice. This prerequisite must have been satisfied since Barcelona Traction had pursued the action far enough to obtain 531 judgments by Spanish courts. The only reason, therefore, that Tanaka did not dissent was that he was hesitant to accuse any nation or its court system of denying justice to a party. In order to warrant such a description, the actions of the Spanish courts must have been motivated by bad faith. This serious charge was not founded sufficiently by the Belgian allegations to justify a dissent.

The lengthiest, and least harmonious opinion was submitted by Judge Jessup. He agreed that under the allegations set forth, Belgium had no right of diplomatic protection because that nation's failure to produce evidence tended to prove its claim that a substantial number of the owners of Barcelona Traction were Belgian nationals. This opinion repudiated the existence of any right of diplomatic

protection in Canada. Jessup did, however, recognize the right of a state to extend its protection to a corporation possessing its nationality. The first crucial question posed by Jessup was how the court should determine the nationality of a corporation. Several methods, including the siege social, control, and location of incorporation tests were mentioned, but no discussion was included until the link theory was introduced. Here Jessup suggested that the link joining the corporation and its national state should be one which establishes a real and serious connection between the two parties. This was done in the Nottebohm Case with regard to natural persons and could very easily be applied to corporations through the process known as "lifting the veil." By this means the scant connection existing between a corporation and a nation as a result of a "charter of convenience" could be identified and the right of diplomatic protection awarded on a more substantial ground. The term "charter of convenience" is a direct allusion to the nautical counterpart, the "flag of convenience," which is encouraged by nations with permissive and relatively inexpensive ship registration laws.[22] It is the practice of international law to disregard any one of these "Panlibhon"[23] flags as conclusive proof of nationality and to require a more penetrating examination

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22. A flag of convenience is defined as the "flag of any country allowing the registration of foreign-owned and foreign-controlled vessels under conditions which, for whatever the reasons, are convenient and opportune for the persons who are registering the vessels." B. BOCZEK, FLAGS OF CONVENIENCE 2 (1962).

23. The term "Panlibhon" refers to Panama, Liberia, and Honduras, all of which have liberal registration laws for merchant vessels and allow clear financial advantages to the owners of the vessels. For a discussion of this topic see, Note, PANLIBHON Registration of American-Owned Merchant Ships: Government Policy and the Problem of the Courts, 60 COLUM. L. REV. 711 (1960). For a discussion of similar practices in the field of corporations see, E. KOLDE, INTERNATIONAL BUSINESS ENTERPRISE 249 (1968). For facility in comparison, descriptions of some of the factors affecting the ultimate decision of whether to incorporate in Belgium (ch. 4), Canada (ch. 7), or Spain (ch. 30) may be found in LEGAL ASPECTS OF FOREIGN INVESTMENT (W. Friedmann ed. 1959).

into the true nationality of the vessel. Jessup was of the opinion that the application of this inquiry into the true identity of a corporation would be the same as the practice of lifting the corporate veil.[24] Furthermore, he noted that to lift the veil in this case would reveal no genuine connection between Canada and Barcelona Traction because the company was essentially a holding company with its operative elements in Spain and its owners in Belgium. Notably, all the planning involved in the management of the company came from Belgium.

As an alternative to examining the nationality of the corporation, Jessup proposed that the court determine which nations had interests that were involved. This approach had been used previously by the United States before several arbitration tribunals. Anticipating a question which might arise in a situation where protection was available to two or more countries, Jessup pointed out that double protection already existed in the case of an employee of the United Nations and that multiple protection had existed in cases decided by arbitration tribunals in the Delagoa Bay Ry.,[25] Tlahualilo,[26] and Mexican Eagle Oil Co. cases.[27]

Jessup criticized the decision reached by the Court because it led to an irrational result. He questioned who would be awarded diplomatic protection of a multi-national consortium in which the enterprise was a combination of businesses from various nations, no one of which held a majority interest in the overall operation. Finally, Jessup found no standing on the part of Belgium because that nation had not shown that its nationals had a sufficient interest in Barcelona Traction to warrant a right of diplomatic

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24. Judge Jessup wanted to apply the "link theory" of the Nottebohm Case to naturalized persons, ships, and corporations. Barcelona Traction, Light & Power Co. Case, 9 INT'L LEGAL MATERIALS 227, 309 (1970); cf. Jessup, The United Nations Conference on the Law of the Sea, 59 COLUM. L. REV. 234, 256 (1959).

25. Delagoa Bay Ry. Case, supra note 20.

26. Tlahualilo Case (Great Britain v. Mexico), [1913] FOR. REL. U.S. 993 (1919).

27. Mexican Eagle Oil Co. Case (Great Britain v. Mexico), 8 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 1272 (1967). See also Jones, supra note 4, at 241-42.

protection. This was strictly a failure to meet the requirements of evidence. This technicality was the only means by which Jessup was able to agree with the majority of the Court. Jessup, however, never specified what percentage of the outstanding shares of the company Belgium would have had to identify as belonging to its nationals before it could have a right of diplomatic protection.

The problem before the Court in Barcelona Traction was to fashion a rule which would provide an adequate degree of protection for corporations lacking in unity of nationality among its owners, headquarters, and operations. Such a rule ideally would be easily applied and would permit an accurate prediction of the outcome. The rule adopted by the Court satisfied this latter goal, yet failed to establish a minimum standard of protection for the shareholders of foreign corporations. The Court recognized that the rule which it was adopting was a synthesis of the independent juridical personality and nationality of a corporation and the rule of international law that a nation may represent a claim only on behalf of its nationals. Because this synthesis evolves from an abstraction and a generalization, its foundation is tenuous and must be modified by equitable principles in order to avoid injustice. The decision of the Court and the separate opinions of several judges differed on the matter of creating an exception for the situation in which a significant number of shareholders are nationals of a state other than the state of incorporation. The Court apparently felt that whatever injustice this exception might alleviate would be outweighed by the possible flood of claims which would arise from every state having a shareholder who could qualify under the exception. The separate opinions indicated that the principles of equity should prevail. A recent analysis of the practice of nations on this topic reveals that there are essentially two policies: one, recognition of a right of representation in the nation possessing the real and serious seat of corporate control, and two, allocation of the right only to the location of incorporation.[28] Yet, it was concluded after an examination of the actual practices in the international community, that "[t]he two policies are identical in that the result of each is that there is some real connection between the company and the protecting State beyond the formal link

28. Harris, supra note 7, at 298-99.

of incorporation."[29] The author of this study has suggested that the existing practices be revised either in accordance with the rule of the Nottebohm Case or based upon a single factor which would demonstrate the genuine connection sought by the Nottebohm rule. Examples of this single factor are the location of the seat of control, the nationality of the majority of the shareholders, or the nationality of the directors of the corporation.[30]

Although any one of these revisions would detract from the ease of predicting the right to represent a claim based upon an injury to a corporation, the analysis required to allocate the right would be only slightly more difficult than that which the Court now conducts in determining the nationality of a naturalized person, and probably no more difficult than the current international practice of determining the true nationality of a ship flying a flag of convenience.[31] The rule adopted by the Court is designed to minimize litigation before the I.C.J. and to facilitate the determination of the existence of standing to sue in cases which are presented to the Court. This goal of administrative ease, however, was achieved at the cost of denying protection to many shareholders who invest in a foreign corporation which is later injured by a third nation.

The lack of harmony between the rule adopted by the I.C.J. in the instant case and the actual practice of the nations upon whose support the I.C.J. depends may seriously decrease the utility of the court as an effective forum for the settlement of disputes between nations. Unfortunately, this may have the effect in some instances of inhibiting international trade, although this projected result probably overestimates the importance of the I.C.J. as an effecutal stabilizing force in international relations. A collateral consequence of this decision is the diminution of respect for the Court after it took the better part of a decade in order to dismiss the case on what one of the judges described as a technicality. The obvious

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29. Harris, supra note 7, at 310.

30. Harris, supra note 7, at 315-16.

31. G. KNIGHT, supra note 12, at 91-92.

32. Barcelona Traction, Light & Power Co. Case, 9 INT'L LEGAL MATERIALS 227, 278 (1970) (Fitzmaurice, J., concurring).

consequence of this delay is that nations will have even less motivation to pursue peaceful redress for alleged wrongs before what is currently the only permanent judicial body established for this purpose.