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American gave an award in favour of the claimant on the ground that the Commission's jurisdiction was "to hear and determine claims of American nationals," and that whether a claimant is or is not an American national is a question for the relevant law of the United States. The Umpire concurred in this viewpoint.[79]

In 1909 the United States asserted its right to prosecute the claim of an American company against Nicaragua despite the fact that between the date of the injury and the date of the claim the majority shareholding had been bought at a discount by a British subject who stood to make a profit.[80] Whether the State Department would take up a claim or not was discretionary and depended upon the extent of genuine American holding.

While one may uphold an interpretation of the jurisdiction of a claims tribunal to the effect that the national character of the shareholding is irrelevant, provided the corporation itself is a national of the claimant State, a substantive rule of law to the same effect can result only from the domicile theory and not from the theory of effective control. Yet it would be difficult to establish consistency between such a rule and the decision in *The "I'm Alone,"*[81] which refused compensation for the loss of the vessel on the ground that the persons in effective control were nationals of the respondent State.

(iv) *Where the corporation is a national of a third State*

The question of a claimant State presenting the claim of a national shareholder in a corporation which is a national of a third State, arose in the *Standard Oil Company Tankers* case,[82] a claim brought by several oil corporations against Germany for the destruction, during the First World War, of vessels being operated under requisition by Great Britain and owned by British companies, subsidiaries of the plaintiffs. The interposition of the United States in making the claim on behalf of American shareholders in a British corporation was upheld.

Although the Commission in this case relied specifically upon the terms of the Treaty of Berlin, under which Germany was obligated to compensate for damages suffered by American shareholders in a British corporation, there would appear to be no good reason why, in the absence of an express treaty provision, a case arising on similar facts should not be assimilated to the case

[79] Hackworth, Vol. V, p. 833. A significant aspect of the decision is the relevance attributed to the fact that the subsidiary, though controlled from Canada, operated in the United States and employed American labour. A similar interpretation was adopted by the United States–Mexican Claims Commission in *Greenstreet, Receiver of the Burrowes Rapid Transit Co. (U.S.)* v. *United Mexican States*, U.N. Rep., Vol. IV, p. 462 (1929).

[80] Hackworth, Vol. V, p. 837.

[81] (*G.B.* v. *U.S.*), U.N. Rep., Vol. III, p. 1609 (1935). Actually the rules relating to damages in international law look to ultimate benefit and are not contingent in operation on the formalities of incorporation. Hence the decision is only of indirect relevance to the nationality of claims.

[82] U.N. Rep., Vol. VII, p. 301 (1926). *Agency of Canadian Car and Foundry Co. Ltd.*, Hackworth, Vol. V, p. 833, where the contention of Germany that the United States could not press its claim because the stock was entirely owned by a Canadian corporation was dismissed on the grounds that under American law the subsidiary was an American national.

where the injured corporation is a national of the defendant State. Every argument for lifting the veil of corporate personality in the latter case would apply *a fortiori* in the former. Furthermore the availability to a State of the right to claim on behalf of national shareholders in a national corporation of some third State would be an equitable necessity in so far as the argument can be admitted that the State of which the injured corporation is a national cannot claim on behalf of such corporations where the shareholders, or a substantial proportion of them, are not also nationals; otherwise the defendant State would be able to act with impunity in causing damage to such a corporation, a licence which it does not possess even in the case of acts done towards its own national corporations.

In the *Delagoa Bay Railway* case[83] the United States claimed on behalf of a shareholder in a British corporation, which in turn had been injured through acts done by the Portuguese Government to a Portuguese corporation, the emphasis being on the protection of the ultimate interest owned by the American national. Great Britain's claim was also put forward on the basis of protecting British shareholders.

(d) Partnerships

Unless a partnership has separate legal personality in municipal law, it is the interests of the individual partners which are protected by international law, and the partnership cannot itself be a claimant unless the arbitration agreement refers to "firms," in which case partnerships can be included by interpretation.[84]

(e) Assignees and mortgagees

An international injury is one which is done to an alien. It follows that a domestic wrong cannot be transformed into an international one by assignment, for an assignee cannot have greater rights than his assignor. Conversely, where the injury is an international one, assignment, at least to a national of the same State as that of the assignor, whether the assignment be by law or by will, will not defeat a claim, although it may be the occasion for a reluctance on the part of the State to espouse the claim. Umpire Parker of the United States–German Mixed Claims Commission remarked:

> The United States in its discretion may decline to press a claim in favour of one who has voluntarily transferred his allegiance from it to another nation, or in favour of an alien who has acquired a claim by purchase. This, however, involves a question of political policy rather than the exercise of a legal right.[85]

[83] Moore, I. A., p. 1865 (1893).

[84] Lillich, "The Jurisprudence of the Foreign Compensation Commission: Eligible Claimants," I.C.L.Q., Vol. 13 (1964), at p. 907.

[85] *Administrative Decision* (No. V), U.N. Rep., Vol. VII, p. 119 at p. 150 (1924). See also *The Landreau* claim (*U.S., Peru*), *ibid.* Vol. 1, p. 347 (1922); *cf. Phelps* v. *McDonald*, 99 U.S. 298 (1879); *Alsop* claim (*U.S., Chile*), A.J., Vol. 5 (1911), p. 1079 (assignment to liquidators); *Dobozy* claim, I.L.R., Vol. 26,