

Individuals and Corporations

Quick Reference Rules of Law

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LaGrand Case (Germany v. United States)

State (P) v. State (D)

I.C.J., 2001 I.C.J. 466.

NATURE OF CASE: Multiple plaintiff action against a state for violation of the Vienna Convention.

FACT SUMMARY: Germany (P) filed suit in the International Court of Justice against the United States (D), claiming that U.S. law enforcement personnel failed to advise aliens upon their arrests of their rights under the Vienna Convention.

RULE OF LAW

A state that breaches its obligations to another under the Vienna Convention on Consular Relations by failing to inform an arrested alien of the right to consular notification and to provide judicial review of the alien's conviction and sentence also violates individual rights held by the alien under international law.

FACTS: Article 36(1)(b) of the Vienna Convention on Consular Relations provides that a state trying an alien in a death sentence case must inform the alien of his rights to have his consular authorities informed of the arrest. Paraguay (P), Germany (P), and Mexico (P) filed suit in the International Court of Justice against the United States (D), claiming that U.S. law enforcement personnel failed to advise aliens upon their arrest of their rights, and that as a remedy for violation of the Vienna Convention, state courts should review and reconsider the death sentences to determine if the lack of consular access prejudiced the aliens. Germany's (P) case involved LaGrand and his brother, who was executed before the matter came to the I.C.J. The I.C.J. found that the United States (D) breached its obligations to Germany (P) under the Convention by not immediately informing LaGrand and his brother of the right of consular notification, and by failing to provide judicial review of the conviction and sentence.

ISSUE: Does a state that breaches its obligations to another under the Vienna Convention on Consular Relations by failing to inform an arrested alien of the right to consular notification and to provide judicial review of the alien's conviction and sentence also violate individual rights held by the alien under international law?

HOLDING AND DECISION: [Judge not stated in casebook excerpt.] Yes. A state that breaches its obligations to another under the Vienna Convention on Consular Relations by failing to inform an arrested alien of the right to consular notification and to provide judicial review of the alien's conviction and sentence also violates individual rights held by the alien under international law. The ordinary meaning of the clause "said authorities shall inform

the person concerned without delay of his rights under this subparagraph" of Article 36 suggests that the right to be informed of the rights under the Convention is an individual right of every national of a state that is party to the Convention.

ANALYSIS

Diplomatic efforts by the German ambassador and German Members of Parliament and the recommendation of Arizona's clemency board, failed to change the mind of Arizona Governor Jane Dee Hull, who insisted that the executions of the LaGrand brothers be carried out. Karl LaGrand was executed on February 24, 1999, by lethal injection, and Walter LaGrand was executed March 3, 1999, by gas chamber. Compare this case to a ruling by the I.C.J. involving Mexican nationals, *Avena and other Mexican Nationals (Mexico v. United States)*, 2004 I.C.J. 12, and the U.S. Supreme Court's refusal to give effect to the I.C.J.'s *Avena* decision in *Medellin v. Texas*, 128 S. Ct. 1346 (2008).

Quicknotes

BREACH The violation of an obligation imposed pursuant to contract or law, by acting or failing to act.

INTERNATIONAL LAW The body of law applicable to dealings between nations.

JUDICIAL REVIEW The authority of the courts to review decisions, actions, or omissions committed by another agency or branch of government.

Nottebohm Case (Liechtenstein v. Guatemala)

Country of citizenship (P) v. Country of residence (D)

I.C.J., 1955, I.C.J. 4 (1955).

NATURE OF CASE: Appeal by a state from the refusal of another state to admit one of its nationals.

FACT SUMMARY: Nottebohm (P), a German citizen, lived in Guatemala (D) for 34 years and applied for Liechtenstein (P) citizenship one month after the start of World War II.

RULE OF LAW

While nationality conferred on a party is normally only the concern of that nation, such nationality may be disregarded by other states where it is clear that it was a mere device/subterfuge.

FACTS: Nottebohm (P) was a German by birth. Nottebohm (P) lived in Guatemala (D) for 34 years, retaining his German citizenship and family and business ties with it. One month after the outbreak of World War II, Nottebohm (P) applied for citizenship with Liechtenstein (P), a neutral country. Nottebohm (P) had no ties with Liechtenstein (P) and intended to remain in Guatemala (D). Liechtenstein (P) approved the naturalization application and impliedly waived its three-year residency requirement. Nottebohm (P) briefly visited Liechtenstein (P) and, on his return to Guatemala (D), was refused admittance, being deemed a German national. Nottebohm's (P) Liechtenstein (P) citizenship was not honored. Liechtenstein (P) brought an action before the International Court to compel Guatemala (D) to recognize Nottebohm (P) as one of its nationals. Guatemala (D) challenged the validity of Nottebohm's (P) citizenship, the right of Liechtenstein (P) to bring the action and alleged its belief that Nottebohm (P) remained a German national.

ISSUE: Must a nation automatically recognize the citizenship conferred on a party by another nation?

HOLDING AND DECISION: [Judge not stated in casebook excerpt.] No. As a general rule, matters concerning citizenship are solely the concern of the granting nation. It alone will normally bear the burdens or attain the benefits from the conferral of citizenship on a party. However, the conferring state may not require other states to automatically accept its designation unless it has acted in conformity with the general aim of forging a genuine bond between it and its national. Here, no relationship exists between Liechtenstein (P) and Nottebohm (P). There was never an intent to reside in Liechtenstein (P), no business or family connections, no acceptance of traditions and the severing of old ties, etc. The change in nationality was a more convenience/subterfuge mandated by the war. Under

such circumstances, Guatemala (D) was not forced to recognize it. Dismissed.

ANALYSIS

A state putting forth a claim must establish a *locus standi* for that purpose. This is almost exclusively a showing of nationality of the claimant. The real claimant must have continuously and without interruption from the time of the injury to the making of an award been a national of the state making the claim and must not have been a national of the state against whom the claim has been filed. International Law 347 (8th Ed. 1955) Vol. 1.

Quicknotes

LOCUS STANDI Standing to bring suit in court.

NATIONALITY The country in which a person is born or naturalized.

Iran-United States Claims Tribunal, Case No. A/18

Dual citizens (P) v. Iran (D)

Dec. No. 32-A/18-FT, 5 Iran-U.S. Cl. Trib. Rep. 251 (1984-I).

NATURE OF CASE: Jurisdictional consideration by arbitral tribunal.

FACT SUMMARY: People with dual Iranian-U.S. citizenship (P) filed claims against Iran (D) in an arbitral tribunal in The Hague under a Claims Settlement Declaration, which was part of the Algiers Accords reached in the aftermath of the 1979 Iranian seizure of U.S. diplomatic and consular personnel in Iran (D) as hostages. Iran (D) challenged the jurisdiction of the tribunal.


RULE OF LAW

The Claims Settlement Declaration arbitral tribunal has jurisdiction over claims against Iran by dual Iran-United States nationals if the dominant and effective nationality of the claimant is that of the United States.

FACTS: Iranian militants seized U.S. diplomatic and consular personnel in Iran (D) as hostages after the 1979 Iranian revolution. The United States seized Iranian assets in the United States, and people and companies with claims against Iran (D) filed suit in U.S. courts, levying attachments against blocked Iranian assets. Algeria mediated a solution in January 1981, and the Algiers Accords was adopted by both states. The Algiers Accords included a Claims Settlement Declaration, and created an arbitral tribunal in The Hague to hear claims by the nationals of either state against the government of the other state. Certain people with dual Iranian-U.S. citizenship (P) filed claims against Iran (D) in the tribunal, and Iran (D) challenged its jurisdiction.

ISSUE: Does the Claims Settlement Declaration arbitral tribunal have jurisdiction over claims against Iran (D) by dual Iran-United States nationals (P) if the dominant and effective nationality of the claimant is that of the United States?

HOLDING AND DECISION: [Judge not stated in casebook excerpt.] Yes. The Claims Settlement Declaration arbitral tribunal has jurisdiction over claims against Iran (D) by dual Iran-United States nationals (P) if the dominant and effective nationality of the claimant is that of the United States. The text of the Claims Settlement Declaration is not completely unambiguous on the issue, but the 1930 Hague Convention as modified by recent developments in international law, precedent, and legal literature suggest a person's dominant and effective nationality is determined by the stronger factual ties between the person concerned and one of the states whose nationality is involved. Factors to consider when determining the stronger

factual ties include residence, center of interests, family ties, and participation in public life. Use of the word "national" or "nationals" in the Algiers Accords must be understood in a way that is consistent with this rule of international law, and jurisdiction under the Claims Settlement Agreement in these cases involving persons with dual citizenship against Iran (D) when the dominant and effective nationality of the person during the relevant period was that of the United States.


ANALYSIS

In 1982, the tribunal closed to new claims by private individuals. In total, it received approximately 4,700 private U.S. claims, ordered payments by Iran (D) to U.S. nationals totaling over \$2.5 billion.

Quicknotes

JURISDICTION The authority of a court to hear and declare judgment in respect to a particular matter.

NATIONALITY The country in which a person is born or naturalized.

Eritrea Ethiopia Claims Commission, Partial Award, Civilian Claims, Eritrea's Claims 15, 16, 23 & 27-32

Eritrea (P) v. Ethiopia (D)

44 I.L.M. 601 (2005).

NATURE OF CASE: Review of denationalization procedures.

FACT SUMMARY: Ethiopia (D) denationalized nationals that voted for the creation of an independent state of Eritrea (P). Eritrea (P) challenged the action.


RULE OF LAW

In time of war, a state may denationalize persons whose second nationality is that of an enemy state, provided denationalization is not arbitrary.

FACTS: A new state of Eritrea (P) was admitted to the United Nations in May 1993 after persons of Eritrean origin voted overwhelmingly in favor of establishing the new state from a portion of Ethiopia (D). Persons who obtained an Eritrean "national identity card" were allowed to vote. After the 1998-2000 border war between Eritrea (P) and Ethiopia (D), approximately 66,000 people who voted were still living in Ethiopia (D). Ethiopia (D) claimed that because they voted, they were Eritrean nationals, and could therefore be expelled to Eritrea (P) under international law as enemy nationals. Eritrea (P) argued that they never relinquished their Ethiopian nationality and were being unlawfully denationalized and expelled. A bilateral claims commission that was established by Eritrea (P) and Ethiopia (D) concluded that persons still living in Ethiopia (D), who also voted to create Eritrea (P), were dual nationals—they acquired Eritrean nationality by voting in the referendum, and retained Ethiopian nationality by continuing to live in Ethiopia (D) and receive the benefits of Ethiopian nationality.

ISSUE: In time of war, may a state denationalize persons whose second nationality is that of an enemy state, provided denationalization is not arbitrary?

HOLDING AND DECISION: [Judge not stated in casebook excerpt.] Yes. In time of war, a state may denationalize persons whose second nationality is that of an enemy state, provided denationalization is not arbitrary. International law does not prohibit states from permitting nationals to possess another nationality, but also does not prohibit states from prohibiting the possession of another nationality. Ethiopia (D) allowed Ethiopians who had also acquired Eritrean nationality to continue to exercise their Ethiopian nationality, while agreeing with Eritrea (P) that these people would have to choose one nationality or the other at some future time.

The war then came, and Ethiopia (D) denationalized dual nationals falling in six groups: (1) those who Ethiopia (D) believed posed a security risk; (2) those who chose to

leave Ethiopia (D) during the war and go to Eritrea (P); (3) those who remained in Ethiopia (D); (4) those who were in third countries or who left Ethiopia (D) to go to third countries; (5) those who were in Eritrea (P); and (6) those who were expelled for other reasons.

International law limits states' power to deprive persons of their nationality through the Universal Declaration of Human Rights, Article 15 of which states that "no one shall be arbitrarily deprived of his nationality." Because deprivation of nationality is serious, with lasting consequences to those affected, those affected must be given adequate notice of the proceedings, the opportunity to present a case against denationalization before an objective decision maker, and the opportunity for outside review.

With respect to the first group, Ethiopia's (D) complex process of identifying and denationalizing security risks fell short of this standard. But given the wartime circumstances, the loss of Ethiopian nationality after being identified through the security process was not arbitrary or contrary to international law.

As to the second group, their decision to leave one country for another while the two are at war is a serious act that could not be without consequences. The termination of the Ethiopian nationality of these persons was not arbitrary and not in violation of international law.

There was no evidence that members of the third group threatened Ethiopian security, and there was no process for identifying individuals warranting special consideration, and no possibility of review or appeal. Such a wide-scale deprivation of Ethiopian nationality of persons remaining in Ethiopia (D) is arbitrary and contrary to international law.

The same is true for members of the fourth group: There is no evidence that they, by their "mere presence" in third countries could be presumed to be security threats, or that Ethiopia (D) employed an individualized assessment process to determine their potential threat. They were allowed to contest their treatment only through Ethiopian diplomatic or consular establishments abroad. Members of this group were arbitrarily deprived of their Ethiopian citizenship in violation of international law.

Ethiopia's (D) denationalization of members of the fifth group was not arbitrary or otherwise unlawful, even though their mere presence in Eritrea (P) was not proof of security risk, because there are evident risks and wartime impediments to communication to provide notice of denationalization.

Finally, the termination of the Ethiopian nationality of all persons in the sixth group was arbitrary and unlawful,

Continued on next page.

since in many cases, most or all dual nationals were sometimes rounded up by local authorities and forced into Eritrea (P) for reasons that cannot be established.

▶ ANALYSIS

As the commission stated, the consequences of denationalization are high to the persons affected, and yet the standard applied to determine its legality under international law seems low: The Universal Declaration of Human Rights only requires that denationalization not be "arbitrary." The commission's focus was therefore on the procedures followed by Ethiopia (D) in the denationalization process, the circumstances in which it occurred, and the actions of, and consequences to, the persons affected. Its decision may have been different had the process not taken place during and in the aftermath of war.



Quicknotes

INTERNATIONAL LAW The body of law applicable to dealings between nations.

NATIONALITY The country in which a person is born or naturalized.

REFERENDUM Right constitutionally reserved to people of state, or local subdivision thereof, to have submitted for their approval or rejection, under prescribed conditions, any law or part of law passed by a lawmaking body.



Barcelona Traction, Light and Power Company, Ltd. (Belgium v. Spain)

State of shareholders (P) v. Expropriating state (D)

I.C.J. 1970 I.C.J. 3.

NATURE OF CASE: Action for damages for the expropriation of a corporation.

FACT SUMMARY: Belgium (P) brought an action for damages against Spain (D) on the ground that its nationals as shareholders of the Barcelona Traction Co., incorporated and registered in Canada, had been seriously harmed by actions of Spain (D) resulting in expropriation.



RULE OF LAW

The state of the shareholders of a corporation has a right of diplomatic protection only when the state whose responsibility is invoked is the national state of the company.

FACTS: The Barcelona Traction, Light, and Power Co. was incorporated and registered in Canada for the purpose of developing and operating electrical power in Spain (D). After the Spanish Civil War, the company was declared bankrupt by a Spanish court and its assets were seized. After the Canadian interposition ceased, Belgium (P) brought an action for damages against Spain (D) for what it termed expropriation of the assets of the Traction Co. on the ground that a large majority of the stock of the company was owned by Belgian (P) nationals. Spain (D) raised the preliminary objection that Belgium (P) lacked standing to bring suit for damages to a Canadian company.

ISSUE: Does the state of the shareholders of a company have a right of diplomatic protection if the state whose responsibility is invoked is not the national state of the company?

HOLDING AND DECISION: [Judge not stated in casebook excerpt.] No. In order for a state to bring a claim in respect of the breach of an obligation owed to it, it must first establish its right to do so. This right is predicated on a showing that the defendant state has broken an obligation toward the national state in respect of its nationals. In the present case it is therefore essential to establish whether the losses allegedly suffered by Belgian (P) shareholders in Barcelona Traction were the consequence of the violation of obligations of which they are beneficiaries. In the present state of the law, the protection of shareholders requires that recourse be had to treaty stipulations or special agreements directly concluded between the private investor and the state in which the investment is placed. Barring such agreements, the obligation owed is to the corporation, and only the state of incorporation has standing to bring an action for violations of such an obligation. Nonetheless, for reasons of equity a

theory has been developed to the effect that the state of the shareholders has a right of diplomatic protection when the state whose responsibility is invoked is the national state of the company. This theory, however, is not applicable to the present case, since Spain (D) is not the national state of Barcelona Traction. Barcelona Traction could have approached its national state, Canada, to ask for its diplomatic protection. For the above reasons, the Court is of the opinion that Belgium (P) lacks standing to bring this action.

▶ ANALYSIS

The Restatement of the Foreign Relations Law of the United States, § 185, states that failure of a state to pay just compensation for the taking of the property of an alien is wrongful under international law, regardless of whether the taking itself is conceived as wrongful. Such a wrongful taking is characterized either as tortious conduct or as unjust enrichment.



Quicknotes

DIPLOMATIC PROTECTION The act by which a state, on behalf of one of its citizens who is an injured party, intervenes when a rule of international law has been violated.

EQUITY Fairness; justice; the determination of a matter consistent with principles of fairness and not in strict compliance with rules of law.

EXPROPRIATION The government's taking of property pursuant to its eminent domain powers.

NATIONALITY The country in which a person is born or naturalized.

SHAREHOLDER An individual who owns shares of stock in a corporation.

STATE OF INCORPORATION Where a corporation's articles of incorporation are filed.

