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THE PRIVATE CORPORATE ENTITY ON
THE INTERNATIONAL PLANE

Henry M. Gallagher, Jr.*

Protection of a client's assets in a foreign country has always been one of a lawyer's most uncertain problems. Today, with international trade depending increasingly upon foreign corporate entities, the protection of foreign assets is even more difficult than before. And the difficulty is the price which must be paid for benefits derived from organizing some form of legal person under foreign laws for the purpose of conducting foreign business.¹ Preservation of the value of assets held by such organizations often depends upon whether a tribunal will look through the formal corporate organization to the ultimate owner and consider his interest.

Foreign corporate entities have various generic names, but all possess important common characteristics. They are artificial persons which can sue and be sued in their own names in the country of their organization.² Although governments may contribute capital to them, they are usually private commercial organizations.³ At least some of their shareholders have limited liability.⁴ Corporate entities not infrequently are parts of a larger worldwide enterprise.⁵

This article is restricted to tracing some of the influences

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¹ Of course the principal benefit is economic. For an example Standard Oil (N.J.), to cut costs, maintains the bulk of its fleet under Panamanian registry through a subsidiary in Panama. See Hearings before the Permanent Subcommittee on Investigations of the Committee on Government Operation pursuant to S.R. 251, 82d Cong., 2d Sess. (1952).

² Ballantine, Corporations § 118 (1946); cf. *Anderson v. Abbott*, 321 U.S. 349 (1944); *United States v. Milwaukee Refrigerator Co.*, 142 Fed. 247, 255 (E.D. Wis. 1905).

³ Cf. *Kunglig Jamvagsstyrelsen v. Dexter and Carpenter*, 30 Fed. 891 (S.D.N.Y. 1924); see 2 Hackworth, *Digest of International Law* 477-479 (1941).

⁴ In some countries a limited partnership falls under this category. "The partnership... is a civil person... Hence, therefore, the partners are not the owners of the partnership property. [This principle is] well recognized in all countries... where the civil [as opposed to common] law is in force." Majority opinion of the United States-Chilean Claims Commission, *Chauncey v. Chile* ("Alsop Claim"), Perry's Rep. 20,21 (1901); cf. *Smith v. McMicken*, 3 La. Ann. 322 (1848).

⁵ Superficially such organizations resemble the familiar holding company. See Kronstein, *The Nationality of International Enterprises*, 52 Col. L. Rev. 983, 985 (1952).

behind foreign corporate difficulties and examining some of the representative cases.

I.

In an ordinary law suit there are usually two jurisdictional problems: (1) Is the corporation authorized locally to have standing before the court? (2) Was the corporation "doing business" in the jurisdiction when the cause of action arose?⁶ In an international adjudication neither formalities of authorization nor presence in a jurisdiction indicates the crucial problem. The problem of jurisdiction in international law is illustrated by the following hypothetical case:

The parent corporation, incorporated in country A, owns a substantial amount of the stock of a subsidiary, incorporated in country B. Country B confiscates the property of the subsidiary. As a result the parent wishes to sue country B in an international tribunal. Country B argues that the corporate entity is a creation of country B, is a national of country B, and therefore has no standing to sue country B in an international tribunal.

The problem is whether an international tribunal will pierce the corporate veil and hold that the subsidiary is actually owned by nationals of country A—thus conferring jurisdiction on an international tribunal.

Recently the problem was presented to a tribunal in the *Westhold Corporation* case.⁷ In deciding this case a panel of American commissioners, without mentioning any theory of corporate personality, looked through a Delaware corporation, with a large American interest, straight to the international enterprise.⁸ The *Westhold* claim was against Yugoslavia for the value of property nationalized there after World War II. United States companies could bring such a claim if, in addition to being incorporated here, they had at least a twenty percent American ownership of their securities.⁹ But the commission went further than this statutory stipulation, requiring a twenty percent *beneficial*

⁶ Compare *International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945).

⁷ U.S. International Claims Comm., Doc. No. 4-1235, Proposed Dec. No. 54 (hearing not requested), 47 Am. J. Int'l L. 623 (1953).

⁸ The Commission was established by the International Claims Settlement Act of 1949, 64 Stat. 12 (1950), 22 U.S.C. § 1622 et seq. (1952). Though an American commission is not technically on the international plane, the treaty giving it jurisdiction and the nature of its problems required reliance on international standards. See note 17 infra.

⁹ 62 Stat. 2658, 2659 (1948), 22 U.S.C. § 1627 (1952).

interest in Americans, and refused jurisdiction because it found that the whole beneficial interest was a foreign interest.¹⁰

Disputes over whether the corporate veil will be pierced arise, though their basis may be a private controversy, because a national government has chosen to recognize one private party exclusively.¹¹ On the international plane the test arises when the governmental policy is made an issue.¹²

Government policy toward the corporate entity, ultimately decisive of its position in any international arbitration, often depends upon economic and social relationships which affect the stability of the national State. Economic and social factors which influence such policy have occasionally been the mainsprings of national court opinions.¹³ Government policy convolutions to meet economic and social requirements in recognizing corporate members of an international enterprise must be resolved within a framework of standards followed by most nations in their foreign dealings.¹⁴

Social and economic relationships of the corporate entity to the national State may vary markedly from the picture presented by the legal record of the corporate entity with the State.¹⁵ Variations between the fact and the record can result in serious in-

¹⁰ The tribunal cited the Senate committee report which advanced the view that "a substantial American beneficial interest should exist in an American juridical entity prior to the espousal of the entity's claim." Sen. Rep. No. 800, 81st Cong., 1st Sess. 10. (1949). Cf. *United States v. The Meacham*, 107 F. Supp. 997 (E.D. Va. 1952), *aff'd*, 207 F.2d 535 (4th Cir. 1953).

¹¹ This is often because of a preference for corporations organized under the State's own general corporation laws.

¹² Countries must espouse private claims and back them as a policy matter, thus becoming the nominal litigants before an international tribunal. See *Affair of the Mavrommatis Palestine Concessions*, P.C.I.J., Ser. A/B, No. 9 at 10, 12 (1924); *Anglo-Iranian Oil Company case*, I.C.J. Rep. 93, 112 (1952).

¹³ See *United States v. Aluminum Company of America*, 148 F.2d 416 (2d Cir. 1945). For a holding that an "ownerless" corporate entity was independent for the purpose of maintaining orderly economic processes, see *Moscow Fire Insurance Co. v. Bank of New York*, 280 N.Y. 286, 310, 318, 20 N.E.2d 758 (1939). Though much of this case was overruled by *United States v. Pink*, 315 U.S. 203 (1942), the reasonableness of this particular holding went unquestioned. *Id.* at 227, 228.

¹⁴ To the extent that harmony is an objective of national policy, which is a limitation of all legal theory. "International standards" are accepted practices among governments; the sanctions for their violation range from protests through retaliation by other governments and continual violators usually find themselves faced with war against a coalition of powers.

¹⁵ For a similar analysis of domestic corporate problems see Berle, *Theory of Enterprise Entity*, 47 Col. L. Rev. 343 (1947).

ternational differences as to the status of the corporate entity and as to who owns its property.

Challengers of a corporate entity's status before an international tribunal are generally trying to prove or disprove its "nationality," a usual requirement of jurisdiction as is illustrated by the *Westhold* case.¹⁶ Enterprises with international managements often find themselves opposing the policies of national States, whereas in fact a "national" is generally expected to support the policy of his government.¹⁷ The State may raise an objection of "nationality," and in meeting this argument both national and international tribunals have found themselves breaking traditional theories of corporate personality.¹⁸ In piercing the corporate veil these tribunals not infrequently imply that neither the traditional "fiction" nor "existence" theories, with their standard exceptions, fits the case at hand.¹⁹ Conversely, where the theories can be used to justify an otherwise appropriate result, they are followed as a reason for refusing to look behind corporate papers.

The futility of traditional doctrine in certain cases was recognized implicitly by international tribunals at a relatively early

¹⁶ The organic agreement establishing an international tribunal ("compromis" or "statute") determines both the jurisdiction and the area within accepted standards where the parties agree the tribunal shall operate. See Ralston, *The Law and Procedure of International Tribunals* 5 (1926); Oppenheim, *International Law* (8th ed., Lauterpacht, 1949).

¹⁷ Opposition may be social as well as economic. Withdrawal of technical or financial support from a local corporate entity by an international enterprise may affect national economic balance. Also the entity's customs and practices involve individuals in schemes of morality and pressures whose origins may lie deep in an alien culture. See Ehrlich, *Fundamental Principles of the Sociology of Law* 62 (Moll. transl. 1936); Commons, *Institutional Economics* 700-710 (1934). Generally, see Meyer & Torczyner, *Corporations in Exile*, 43 *Col. L. Rev.* 364 (1943); Berge, *Cartels: Challenge to a Free World* (1944); Edwards, *Economic and Political Aspects of International Cartels* (1944); Hamilton, *Cartels, Patents and Politics*, 23 *Foreign Affairs* 582 (1945).

¹⁸ Corporate "nationality" is even more tenuous than that of natural persons. An English judge remarked that a corporation "can be neither loyal nor disloyal. It can be neither friend nor enemy." Lord Parker, quoting Buckley, L.J., in *Continental Tyre & Rubber Co. v. Daimler*, [1916] 2 *A.C.* 307, 344.

¹⁹ On the theories see Maitland, *Introduction to and Translation of Gierke's Political Theory of the Middle Ages* (1900), and 3 *Collected Papers* 310 (1911); Dewey, *The Historical Background of Corporate Legal Personality*, 35 *Yale L.J.* 655 (1926). The standard exceptions are discussed by Judge Sanborn in *United States v. Milwaukee Refrigerator Co.*, 142 *Fed.* 247 (E.D. Wis. 1905). Cf. the discussion of abstractions generally in Cohen, *A Preface to Logic* 89, 94-98 (1944).

date. This enabled them to avoid some of the pitfalls into which national courts have fallen.²⁰ Some theories were developed ad hoc, such as that which justified piercing the corporate veil where "control" is in unfriendly alien hands.²¹ This theory, useful in penalizing unwanted outside influence, has its drawbacks in the difficulty of finding who "controls" a given corporate act and in providing only uncertain protection to local industry from summary liquidation.²²

The cases summarized below present much dicta which common law lawyers will recognize at once as attempts to apply ad hoc theories to particular facts where older "rules" would not fit. The bold use of such reasoning to reconcile theory to fact, though as yet of limited success, has already created a new climate of legal thought, as the *Westhold* decision shows.²³ Further development should insure the security of property which is so necessary to the establishment and growth of flourishing international trade.

II.

Early cases had few theoretical difficulties. For example, in rejecting a claim against France an early British international claims tribunal remarked that although all the capital was supplied by Britishers, "the institutions on behalf of which claims

²⁰ For instance, anti-trust laws have been only imperfectly successful in regulating international enterprise for the sake of national business morality. See, e.g., *United States v. Imperial Chemical Industries, Ltd.*, 105 F. Supp. 215, 237 (S.D.N.Y. 1952), and *British Nylon Spinners v. Imperial Chemical Industries*. [1953] 1 Ch. 19. Also note Justice Frankfurter's Concurrence in *United States v. Pink*, 315 U.S. 203, 235-236 (1941).

²¹ For a general analysis from this point of view see Domke, *The Control of Corporations*, 3 Int'l. L.Q. 52 (1950). Some reasoning used in early opinions of international tribunals was almost wholly lacking any theoretical basis. See note 37 infra.

²² Who controls? A mere three percent of ownership has had "control" in some cases. See Hearing before Senate Committee on Interstate Commerce on S. 1725, 74th Cong., 1st Sess. 469 (1935); F.T.C. Report on Utility Corporations, Sen. Doc. No. 92, part 72-A, 74th Cong., 1st Sess. 135-151 (1935). Management sometimes has control, but what skill groups in management are important to the decision? See Berle and Means, *The Modern Corporation and Private Property* 238 (1932). Creditors may control by coercion or statutory protection. Labor, consumers and other groups may be controlling elements. See Galbraith, *The Concept of Countervailing Power* (1952). On the need for local economic stability see note 13 supra.

²³ Supra note 7.

are made . . . were in the nature of French corporations."²⁴ The corporate claimants were creatures of French law, said the tribunal, and "their end and object were not authorized by, but were directly opposed to, British law . . ."²⁵

But changing conditions toward the end of the nineteenth century demanded new results. In one case Cerruti, an Italian, formed a Colombian corporate entity, and company property was seized when he fell out of political favor. Italy espoused Cerruti's claim against Colombia and demanded the value of the property; the dispute was finally submitted to President Grover Cleveland. In his award President Cleveland followed the example of Colombia in her confiscation, penetrating the corporate veil to give the claimant the value of his property.²⁶ After a vigorous protest of this refusal to recognize the corporate entity exclusively Colombia finally executed the award.²⁷

Several interesting cases came up in the Venezuelan arbitrations under protocols of 1903. A New York Company, for instance, owned two thirds of the stock of a Venezuelan corporation organized to collect tolls. Venezuela unilaterally cancelled this right, and Kunhardt & Co., the New York company, presented a claim for the value of its stock. Over Venezuelan objections the Commission looked behind the corporate entity and gave Kunhardt the standing of claimant, but made no award because it said that loss was not proved.²⁸

For the most part Venezuelan commissions found themselves hamstrung by traditional theory, however. Thus, in refusing to look through corporate papers where a German interest sought damages for injury to its Venezuelan affiliate, the German-Venezuelan Commission stated that "this Commission can not take jurisdiction of a claim which is not owned by a German subject."²⁹ The Germans had "only a right to an accounting for their con-

²⁴ Daniel v. Commissioners for Claims on France, reported in Knapp, 2 P.C. Rep. 48 (1833). This commission functioned under an Anglo-French treaty of 1818 similarly to the *Westhold* tribunal. Supra note 8.

²⁵ See also Long v. Commissioners for Claims on France, Knapp, 2 P.C. Rep. 51 (1833).

²⁶ President Cleveland may have thought the company analagous to a United States limited partnership. See dissent of the American Commissioner in *Chauncey v. Chile*, Perry's Rep. 20, 21 (1901).

²⁷ II Moore, International Arbitrations 2120, 2122 (1898); 6 A.J. Int'l L. 1018-1029 (1912).

²⁸ Ralston, Venezuelan Arbitrations of 1903 66-67 (1904).

²⁹ Brewer, Moller & Co. case, id. at 597.

tribution" of capital and were "not the legal owners of the debt or of any interest therein."³⁰

Before the Spanish Treaty Claims Commission established under the United States-Spanish peace treaty of 1899,³¹ a number of corporate entities argued that they must be recognized as exclusive owners of claims against Spain. Typical of these difficult cases is that of the *Constancia Sugar Company* claim.³² A Spanish noble and his brother owned and controlled the stock of this corporation, except for a small block held by directors to satisfy New York law. "A deed was made [of the property at issue] . . . by the Apezteguia brothers [the Spanish stockholders] to the *Constancia Sugar Company* during the war, before the damages complained of were committed, but was never recorded under the laws of Spain until after the war was over. The Apezteguia brothers apparently continued in possession of the property, and managed it exactly as they had before the deed was made The holding of the commission sustained the claimant [corporation] . . . holding the same as it had in all corporation cases."³³

The United States Assistant Attorney General complained that these cases made the corporate entity "so impenetrable that an international tribunal may not look through it to determine whether persons excluded from participating in awards by express terms of the convention or treaty, may nevertheless participate in an award made to a corporation in which they may hold stock" and that this result "has seemed utterly at variance with a treaty and enabling statute which provide for indemnity to American citizens only."³⁴

A famous early twentieth century claim was advanced against Chile by the United States on behalf of a Chilean corporate entity, *Alsop & Co.*³⁵ Although United States citizens owned the

³⁰ *Ibid.* See also *Baasch & Romer* case under the Netherlands-Venezuelan protocol of 1903, *id.* at 906-910; *Compagnie Generale des Eaux de Caracas* case, *id.* at 271.

³¹ II Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements Between the United States and Other Powers, 1776-1909, 1692 (1910).*

³² Spanish Treaty Claims Commission, *Table of Cases* 163 (1910). This body was similar to the *Westhold* commission, see note 8 *supra*.

³³ Spanish Treaty claims commission, *Tables of cases* 163, 164 (1910). Compare the *Narcisa Sugar Company* case, *id.* at 166.

³⁴ Brown, *Final Report on Spanish Claims* 16, 18. Compare discussion of the *Westhold* case and note 10 *supra*. Cf. *Fritz Schulz v. Raimés & Co.*, 100 Misc. 697, 166 N.Y. Supp. 567 (Sup. Ct. 1917).

³⁵ *Alsop Claim, Case No. 3, United States-Chilean Claims Commission, Perry's Report (1901).*

whole capital of this company, the United States-Chilean Claims Commission refused jurisdiction on the ground that the corporate entity was a Chilean national, whose claim could not be advanced by the United States.³⁶ Dissatisfaction with this result on both sides led to its submission to the King of England who, in his opinion, recognized the international enterprise sufficiently to award compensation to the claimant.³⁷

Increasing attention was paid to international enterprises after World War I.³⁸ War claims were adjudicated in a number of mixed tribunals which advanced highly diverse doctrines.³⁹ The crux of most corporate claims cases seems to have been the effect on corporate entities of either enemy ownership or of assumption of management by an enemy government during the war.

When, for instance, the German subsidiary of an English company objected to paying its parent for goods sold and delivered before the war, the Anglo-German mixed tribunal found against it, observing that the German government had taken over its management during the war.⁴⁰ A bow was made to tradition also: "Creditor and debtor," said the tribunal, are not "judicially the same person."⁴¹ Similarly the Anglo-Bulgarian tribunal allowed recovery in a case against a Bulgarian corporate defendant, refusing to abandon jurisdiction although most of the defendant's shares and management were in non-Bulgarian

³⁶ *Id.*, Decision No. 4 (1901).

³⁷ The basis of this opinion seems to have been that to decide otherwise "would practically exclude the possibility of any real decision on the equities of the claim put forward." Award of H.M., King George V, 5, 9. Compare the United States attitude in the Mexican oil cases, Documents on the Foreign Relations of the United States, 1913, 1003. See also Jones, Claims on Behalf of Nationals who are Shareholders in Foreign Companies, 26 *Brit. Y.B. Int'l L.* 225, 237-242 (1949).

³⁸ For instance, United States diplomatic assistance was given to an American-owned British company in Africa. II *Foreign Relations of the United States* 245-251 (1920).

³⁹ The decisions of these tribunals are collected in 1 to 9 *Recueil des Decisions des Tribunaux Arbitraux Mixtes institues par les traites de paix (1922-1930)*.

⁴⁰ *Chamberlain & Hookam, Ltd. v. Solar Zahlerwerke G.m.b.h.*, *id.* at 722 (1922).

⁴¹ *Id.* If the Germans had not used the property for war purposes, a different result might have been reached. Cf. a somewhat similar situation in United States courts, *Taylor v. Standard Gas Company*, 206 U.S. 307 (1939). Compare also *Societe Anonyme des Salines du Haras c. Deutsche Bank*, *supra* note 39, vol. 4 at 861.

hands.⁴²

Tribunals litigating French interests evolved the theory of "control."⁴³ A French interest recovered against a Turkish company in an early case because of the defendant's German character.⁴⁴ Germans held 41.5% of the defendant's stock and 10% was owned by a German-controlled Turkish company; 12 out of 27 directors were Germans and a German presided at board meetings, which were held at Berlin; finally, the company was operated as part of a "German group" represented by the Deutsche Bank. "It is quite conformable to the spirit of the [Versailles] Treaty to take a greater account of the real economic circumstances than of the merely outward circumstances," stated the tribunal.⁴⁵

Typical of cases where "control" reasoning was used to refuse recovery are two cases in which the companies were found to be nationals of other Allied countries, rather than French or enemy. In one case a German defendant was held to be English because its parent, an English company, held 980 out of its 1000 shares.⁴⁶ In the other case a French claimant was held to be Belgian because it was actually a branch office of a Belgian company, nominally incorporated but with no substantial position in the French economy.⁴⁷ And, in a case where Ottoman State Bank claimed French nationality, it was held not a French cor-

⁴² James Dawson & Son v. Balkanische Handels u. Industrie A.G., supra note 39, vol. 3 at 534. The court distinguished Continental Tyre & Rubber Co. v. Daimler. [1891] 2 A.C. 307, as applying to "laws regarding trading with its enemy" only. Cf. McNair in 4 Brit. Y.B. Int'l L. 44, 53 (1923); The Unitas [1950] 2 All E.R. 219 (P.C.).

⁴³ See note 21 supra.

⁴⁴ Societe du Chemin de fer de Damas-Hamah c. la Compagnie du chemin de fer de Bagdad, supra note 39, vol. 1 at 401.

⁴⁵ Id. at 402. (Author's translation). Cf. a case where a Franco-Bulgarian tribunal held for two Turkish companies owned by French shareholders. Regie Generale de Chemins de fer, etc. c. Etat bulgare, supra note 39, vol. 3 at 594.

⁴⁶ Elmore Metall A.G. c. Grunberg, supra note 39, vol. 5 at 777.

⁴⁷ Societe Anonyme "La Providence" a Rehon c. Roheisverbande, Gesellschaft, etc., supra note 39, vol. 5 at 780. Cf. Societe Anonyme du charbonnage Frederic Henri c. Etat Allemande, supra note 39, vol. 1 at 422, 427-428, which follows the French view. In French national courts the veil has been pierced where only a local branch office was incorporated. Lanco v. Singer Co. [Rennes 1930] 58 Clunet 1099 (1931); Societe Remington Typewriter [Cass. Req. 1931] Dalloz I, 121 (1936); Societe Universal Film v. Societe Dupont [Lille 1941] II, 21 (Sirey 1941). Courts refused, generally, to pierce the veil where a substantial domestic establishment was maintained. See, e.g., French State v. J. Graf & Co. [Cass. 1930] 58 Clunet 654 (1931). For another view see Domke, Problems of International Law in French Jurisprudence, 36 A.J. Int'l L. 24, 33 (1942).

poration although there was a substantial French interest in the corporation. The tribunal argued that along with nationality of shareholders "all the administrative, financial and other elements which are liable to ensure control of a company to nationals of a certain power" must be considered.⁴⁸

But "control" has not been the decisive criterion in other cases. "Control" was unsuccessfully argued before a German-Belgian tribunal which refused to allow recovery against a Turkish corporate entity with German stock ownership.⁴⁹ And the Hungarian-Roumanian tribunal awarded a German-owned Hungarian company specific performance of a mining concession contract cancelled by Roumania.⁵⁰ Also recovery was denied by the Austro-Yugoslav tribunal to an Austrian-owned German company whose sugar refinery in Belgrade had been confiscated.⁵¹

Claims arising after World War I posed decreasing theoretical difficulty since national governments increasingly realized that domestic owners of foreign corporations deserved protection.⁵²

However, there were other problems which caused difficulty—principally arguments for a special standard of proof of corporate personality⁵³ and "control" arguments aimed at reading

⁴⁸ *De Neuflyze c. Etat Allemand et Deutsche Bank*, supra note 39, vol. 8 at 158. Cf. some decisions in the Egyptian mixed tribunals, e.g. *The Commercial and Agency Company of Egypt v. The Manufacturers Life Insurance Co.*, Commercial Tribunal of Alexandria, 23 *Gazette des Tribunaux Mixtes d'Egypte* 306 (1932-33).

⁴⁹ *Societe des Transports Fluveaux en Orient c. Societe Imperiale Ottomane du chemin de fer de Bagdad*, supra note 39, vol. 9 at 664. Recovery would have been doubtful anyway, since the "Belgian" claimant was really part of an Anglo-German enterprise.

⁵⁰ *Ungarische Erdgas A.G. c. Etat roumain*, supra note 39, vol. 9 at 448. The tribunal noted that (Author's translation) "during the whole time the companies in question pursued their activities, the State benefited in many ways, both directly by imposts . . . and indirectly from the fact that they constituted an important element of richness and of work in the economic life of the country." *Id.* at 450.

⁵¹ *Oesterreichische Credit Anstalt et al c. Etat S.H.S.*, supra note 39, vol. 7 at 794. Claimant's argument was that the compensation which Yugoslavia had paid was not enough.

⁵² See, e.g., the case of *Ferrocarril del Pacifico de Nicaragua*, where the United States Treasury exempted a Maine corporation from taxation because its capital was held by the Nicaraguan government. II Hackworth, *Digest* 474 (1941). This decision was not followed in the Chinese Government Agency case in 1933 because of government policy, *Id.* at 482.

⁵³ (Summarily rejected), *Madera Co. (Ltd.)*, Claim No. 88, Case No. 41, *Further Decisions and Opinions of the Commissioners, Claims Commission Between Great Britain and Mexico* 67 (1933).

a special meaning into treaty clauses.⁵⁴ Traditional theory also found its followers in cases where protection of economic stability seemed more desirable than protection against alien influence. Such a case before a United States-German mixed commission resulted in an award to a predominantly British-owned New York corporation which employed 140 people in its office and 2,000 in its New Jersey plant.⁵⁵

CONCLUSION

As suggested above, no final formulation of the relevant international standards has been attempted in this article. However, economic and social factors seem decisive in the results of the cases examined, with traditional theory posing the greatest difficulties. A more broad index of legal thought on this subject can be found in agreements between nations which deal with compensation claims. Though these agreements show increased concern with individual stockholders, they have retained the concept that a corporation has a nationality separate from its "control." They increasingly recognize that the nationality of a corporation has a bearing only on questions which are not concerned with the measurement of beneficial interest.⁵⁶ As the *Westhold* opinion suggests, there is now a better understanding of the limits

⁵⁴ *Seè*, e.g., Interoceanic Railway of Mexico et al, Claims No. 79 and 85, Case No. 53, id. at 18.

⁵⁵ United States on behalf of Agency of Canadian Car & Foundry Co. v. Germany ("Black Tom" case), Mixed Claims Commission between United States and Germany, Opinions and Decisions 314 (June 15, 1939). See also *Robert Dollar v. Canadian C. & F. Co.*, 100 Misc. 564, 166 N.Y.Supp. 34 (Sup. Ct. 1917), *aff'd*, 180 App. Div. 895, 167 N.Y.Supp. 1124 (1st Dep't 1917). The same theories were used to deny recovery where enemy management and less important interests were involved. See Majority Award of the Arbitral Tribunal instituted by the Reparations Commission and the Government of the United States to decide the claim of the Standard Oil Company to certain tankers (1926), 22 A.J. Int'l L. 404 (1928). Cf. provisions for similar cases after World War II, 19 Dep't of State Bull. 704 (1948), 21 Dep't of State Bull. 576, 580 (1949).

⁵⁶ Before World War I "all claims . . . of corporations" were included where claims were to be settled, e.g., United States-Venezuelan convention of 1866. Some allied shareholders in German companies were protected by the Versailles Treaty. See Nielsen, *International Law Applied to Reclamations* 61 (1933). Mexican claims conventions had various devices, such as "allocation" of corporate claims to shareholders. See, e.g., General Claims Convention between United States and Mexico, Art. I, T.I.A.S. No. 678. World War II peace treaties provided for adjudication of claims of United Nations nationals with "ownership interests in corporations or associations which are not United Nations nationals," e.g., Treaty of Peace with Italy, Art. 74(b).

of personality of a corporate entity on the international plane than that which existed when tribunals relied largely on traditional theories.

Both national social-economic interests and international enterprises (as well as foreign shareholders) can expect better protection as the operating international standards come more clearly into focus.