Denver Journal of International Law & Policy

Volume 12
Number 2 *Spring*

Article 7

January 1983

The Act of State Doctrine: Ethiopian Spice v. Kalamazoo Spice

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Keywords

Compensation, International Claims, States, Appeals, Government, Military Government

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I. INTRODUCTION

From February to September 1974, revolutionary forces in Ethiopia liquidated the old empire and deposed Emperor Haile Selassie.[1] The revolution was the culmination of years of economic hardship, drought, famine and insurgency.[2] It completely altered the economic and political base of the country. At least one hundred entities were nationalized under the "Provisional Military Administrative Council Declaration of Economic Policy" (based on Ethiopian Socialism), which became effective February 3, 1975.[3]

Ethiopian Spice Extraction Share Company (ESESCO) was one of the nationalized companies. After the Ethiopian Government gained control, Kalamazoo Spice Extraction Company (Kal-Spice), an American corporation and major shareholder of ESESCO, reacted to protect its interests and minimize its losses by refusing to pay ESESCO for goods sold and delivered and an account stated. Two law suits followed, filed in the Federal District Court in Michigan.

The Michigan court invoked the act of state doctrine[4] to resolve the issues presented, and held that the doctrine precluded it from examining the validity and legality of the Provisional Military Government of Socialist Ethiopia's (PMGSE) actions. Therefore, all of Kal-Spice's claims were dismissed.[5] The case is currently on appeal in the United States Court of Appeals for the Sixth Circuit.

II. THE DISTRICT COURT OPINION

The court addressed the issues from the two cases in *Ethiopia Spice Extraction Share Company v. Kalamazoo Spice Extraction Company.*[6]

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1. Skurnik, *Revolution and Change in Ethiopia*, 68 Current History 206-07 (1975).

2. The upper middle class, consisting of teachers and other government employees, was striking for higher wages and greater benefits, while the majority of the population was suffering from lack of food, water and other basic necessities of life. *Id.* The insurgency began in 1962, when Eritrea was made a province of Ethiopia. Statement by E.W. Mulcahy, Acting Assistant Secretary for African Affairs, made before the Subcomm. on International Political and Military Affairs of the House Comm. on Foreign Affairs (Mar. 5, 1975), *reprinted in* 72 DEP'T ST. BULL. 38B (1975).

3. Ethiopian Spice Extraction Co. v. Kalamazoo Spice Extraction Co., 543 F. Supp. 1224, 1229 (W.D. Mich. S.D. 1982).

4. "The act of state doctrine in its traditional formulation precluded the courts of this country from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory." Banco Nacional De Cuba v. Sabbatino, 376 U.S. 398, 401 (1964).

5. ESESCO's motion for summary judgment and PMGSE's motion to dismiss were granted. 543 F. Supp. at 1233.

6. 543 F. Supp. 1224 (W.D. Mich. S.D. 1982).

Case one involved claims by ESESCO for goods sold and delivered[7] to Kal-Spice[8] prior to the expropriation and Kal-Spice's counterclaim alleging injury from the expropriation.[9] Case two involved claims by Kal-Spice for damages from the PMGSE based on the expropriation of the Kal-Spice shares of ESESCO stock.[10]

The Michigan Court heard five motions. In case one, ESESCO moved for partial summary judgment on the amount owed by Kal-Spice, while Kal-Spice moved[11] to have the PMGSE declared an indispensible party plaintiff, or alternatively, to have PMGSE declared already a party plaintiff. In case two, PMGSE moved to dismiss, and Kal-Spice moved to strike an affidavit filed in support of the motion to dismiss, and to consolidate the two cases.[12]

The court began its discussion by addressing ESESCO's motion for partial summary judgment. ESESCO supported the motion "with an affidavit and exhibits consisting of a purchase order dated October 18, 1974, bills of lading, invoices, and a statement of Kal-Spice to its auditors."[13] The purchase of spice, valued at $1,961,980.48[14] was completed prior to the expropriation. Applying the standards set forth in Fed. R. Civ. P. 56(d),[15] the court granted partial summary judgment, and set forth an

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7. The amended complaint included claims for goods sold and delivered, an account stated, disregard of separate corporate entitites and "breach of an agreement concerning oleoresin testing methods." *Id.* at 1226.

8. Kal-Spice established ESESCO under Ethiopian law in 1966, owned approximately eighty percent of the ESESCO shares, and contracted with ESESCO to purchase all of the oleoresin spice produced. *Id.*

9. Specifically, Kal-Spice claimed: 1) expropriation of all of its shares; 2) wrongful deprivation of shareholder rights; 3) output contract violation; and 4) wrongful appropriation and conspiracy to appropriate trade secrets. *Id.*

10. "[T]he complaint in Case Two is essentially the same as the first Count of the Counterclaim brought against ESESCO in Case One." *Id.* at n.2.

11. *Id.* at 1226.

12. *Id.*

13. *Id.*

14. *Id.* at 1233.

15. Rule 56 (c) and (d) provide:

> (c) Motion and proceedings thereon
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> The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.
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> (d) Case not fully adjudicated on motion
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> If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing on the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in

Order[16] granting ESESCO judgment for the amount claimed.

After summarily dismissing ESESCO's request that Kal-Spice provide a bond,[17] the court turned to the PMGSE's motion to dismiss. The PMGSE based its motion on immunity under the Foreign Sovereign Immunities Act, a lack of minimum contacts sufficient to establish personal jurisdiction, improper venue and the act of state doctrine.[18] Finding the act of state doctrine dispositive, the court utilized the remainder of the opinion to discuss and apply the doctrine.

III. THE ACT OF STATE DOCTRINE

The act of state doctrine has traditionally required that courts refrain from making determinations that could possibly have a negative impact on U.S. relations with foreign sovereigns.[19] The doctrine purportedly first appeared in England as early as 1674,[20] and has been applied in the United States since the turn of the nineteenth century.[21] The case of *Underhill v. Hernandez*,[22] is often credited with containing the classic American statement of the act of state doctrine. The plaintiff Underhill, a U.S. citizen, brought suit against defendant Hernandez, a Venezuelan general of the revolutionary government, alleging that he had been illegally de-

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> good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

Fed. R. Civ. P. 56 (c) & (d) (1963). The result reached by the court in granting the motion for summary judgment is consistent with Alfred Dunhill of London, Inc. v. The Republic of Cuba, 425 U.S. 682 (1972), where the Supreme Court refused to apply the act of state doctrine to accounts owing prior to the time of the 1960 intervention by the Cuban Government in the Cuban cigar manufacturing industry.

16. In pertinent part, the Order stated that Kal-Spice received a quantity of spice for ESESCO, and that the principal amount of $1,961,980.48 was due and owing for such spice, with interest thereon. 543 F. Supp. at 1233.

17. The court did not feel that there was any real danger of Kal-Spice not paying a judgment if judgment was rendered in ESESCO's favor. Furthermore, the court noted a lack of authority in support of such a request. *Id.* at 1227.

18. *Id.*

19. The act of state doctrine is not international law, and is not required or restricted by the U.S. Constitution. It does, however, have constitutional underpinnings.

> It arises out of the basic relationships between branches of government in a system based on the separation of powers. It concerns the competency of dissimilar institutions to work and implement particular kinds of decisions in the area of international relations. It expresses the view that the engagement of the judicial branch in the task of passing on the validity of foreign acts of State may hinder rather than further the country's pursuit of goals both for itself and for the community of nations as a whole.

J.G. CASTEL, INTERNATIONAL LAW 1162 (1976).

20. *See* Blad v. Banfield, 3 Swanst 604 (1674), *reprinted in* 36 Eng. Rep. 992.

21. Schooner Exchange v. M'Faddon, 7 Cranch 116 (1812).

22. 168 U.S. 250 (1897).

tained by Hernandez. The Supreme Court acknowledged that Hernandez's acts were governmental acts. As such, they were not the proper subject of adjudication:

> Every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves.[23]

After the *Underhill* decision, the act of state doctrine remained virtually unchanged for approximately fifty years, and was applied by the Supreme Court in actions concerning acts of state by the Governments of Costa Rica,[24] Mexico,[25] and the Soviet Union.[26] Had the doctrine remained unchanged, resolution of the conflicts in *Ethiopia Spice* would have been straightforward and uncomplicated; Kal-Spice would have been denied recovery. The doctrine has been modified however, making application of the doctrine to these facts somewhat more difficult.

In *Banco National de Cuba v. Sabbatino*,[27] the Cuban Government expropriated the property of a Cuban corporation principally owned by U.S. residents. To obtain permission to ship its sugar cargo, an American commodity broker agreed to enter into contracts with the Cuban Government identical to those it entered into with the expropriated corporation.[28] When, however, the Cuban Government presented the bill of lading in New York to collect proceeds for the sugar, the broker refused to pay. Taking their case to the courts, the Cubans were denied recovery in

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23. *Id.* at 252.

24. American Banana Company v. United Fruit Company, 213 U.S. 347 (1909), was an antitrust action. The Court disposed of the case stating "[a] conspiracy in this country to do acts in another jurisdiction does not draw to itself those acts and make them unlawful, if they are permitted by local law." *Id.* at 359.

25. Oetjen v. Central Leather Co., 246 U.S. 297 (1918) and Ricaud v. American Metal Co., 246 U.S. 304 (1918), companion cases, both arose out of acts that occurred during the 1913-15 Mexican civil war. In *Oetjen*, one of the revolutionary forces seized hides to help finance the military effort. When the hides arrived in the United States, Oetjen unsuccessfully brought suit to regain title. *Ricaud* involved appropriation of lead bullion. The Court, denying recovery, concluded that:

> The fact that the title to the property in controversy may have been in an American citizen, who was not in or a resident of Mexico at the time it was seized for military purposes by the legitimate Government of Mexico, does not affect the rule of law that the act within its own boundaries of one sovereign State cannot become the subject of reexamination and modification in the courts of another.

Id. at 310. *See also* Shapleigh v. Mier, 299 U.S. 468 (1937).

26. In United States v. Belmont, 301 U.S. 324 (1942), the Court dealt with questions arising from Russian nationalization decrees, and the Lithuanian Agreement, a Soviet Government assignment to the Government to claims owed by American nationals.

27. 376 U.S. 398 (1964).

28. *Id.* at 404.

both the district court[29] and the court of appeals,[30] ostensibly because the Cuban Government's act violated customary international law.

The expropriation was the Cuban response to a U.S. decision to reduce the Cuban sugar quota.[31] The U.S. State Department described the Cuban action as "manifestly in violation of those principles of international law which have long been accepted by the free countries of the West. It is in its essence discriminatory, arbitrary and confiscatory."[32] Recognizing that expropriations "take place for a variety of reasons, political and ideological as well as economic,"[33] the Supreme Court, in affirming the court of appeals, invoked the act of state doctrine and refrained from judicial interference. The Court stated that the judicial branch will not examine the validity of an expropriation "within its own territory by a foreign sovereign government, extant and recognized by this country at the time of suit, in the absence of a treaty or other unambiguous agreement regarding controlling legal principles, even if there is a taking violating international law."[34] The Court suggested that expropriations could be controlled by extrajudicial means, such as discontinuing foreign aid, freezing assets, and allowing the marketplace to react.[35]

Sabbatino is important for two reasons. First, the Court recognized that a treaty or other agreement could modify the act of state doctrine. Second, Congress reacted to the *Sabbatino* holding by passing the Hickenlooper Amendment to the Foreign Assistance Act of 1961.[36] This

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29. 193 F. Supp. 375 (S.D.N.Y. 1961).

30. 307 F.2d 845 (2d Cir. 1962).

31. One day after Congress passed an amendment to the Sugar Act of 1948 permitting a presidential proclamation of reduction, President Eisenhower reduced the quota. Determination of Cuban Sugar Quota, 25 Fed. Reg. 6414 (1960).

32. Dep't of State Note No. 397 to the Cuban Ministry of Foreign Relations, dated July 16, 1960, relevant part *reprinted at* 376 U.S. 403 (1964).

33. 376 U.S. at 435.

34. *Id.* at 428.

35. *Id.* at 435. Developing countries depend on foreign investments. If companies are expropriated, the flow of capital into developing countries will naturally cease, making the actual and long term effect of judicial relief insignificant.

36. The Foreign Assistance Act of 1961, 22 U.S.C. §2370 (e)(2) (1961) provides:

> (2) Notwithstanding any other provision of law, no court in the United States shall decline on the ground of the federal act of state doctrine to make a determination on the merits giving effect to the principles of international law in a case in which a claim of title or other right to property is asserted by any party including a foreign state (or a party claiming through such state) based upon (or traced through) a confiscation or other taking after January 1, 1959, by an act of that state in violation of the principles of international law, including the principles of compensation and other standards set out in this subsection: *Provided*, that this subparagraph shall not be applicable (1) in any case in which an act of a foreign state is not contrary to international law or with respect to a claim of title or other right to property acquired pursuant to an irrevocable letter of credit of not more that 180 days duration issued in good faith prior to the time of the confiscation or other taking, or (2) in any case with respect to which the President determines that application of the act of state doctrine is required in that particular case by the foreign policy inter-

amendment, which applies to expropriations that violate international law, established a presumption that adjudication on the merits will not embarrass the executive branch in conducting foreign policy. However, the amendment is limited to cases in which the property has found its way back into the United States.[37]

The Supreme Court next addressed the issues surrounding the act of state doctrine in *First National City Bank v. Banco Nacional de Cuba.*[38] The case involved a $15 million First National City Bank loan, in 1958, to the Banco Nacional's predecessor in interest. One year later, in 1959, Castro seized all of First National City's Cuban branches. In retaliation, First National sold the collateral securing the $15 million loan, and realized a profit of $1.8 million on the transaction. Banco Nacional sued to recover the $1.8 million, and First National, by way of setoff and counter-claim, asserted its right to the $1.8 million based on the expropriated property.

The district court,[39] holding that *Sabbatino* was overruled by the Hickenlooper Amendment, ruled in favor of First National.[40] The court of appeals reversed, stating that the congressional action did not govern the case.[41] The Supreme Court, in a splintered plurality decision, reversed the court of appeals and permitted judicial examination of the acts of state. The Court applied the Bernstein exception,[42] which permits judicial review of an act of state where the executive branch expressly states that application of the act of state doctrine would not advance the interests of foreign policy. Justices Rehnquist, Burger and White stated that although the judicial and executive branches of the government are and should remain separate,[43] where the executive branch states that application of the

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ests of the United States and a suggestion to this effect is filed on his behalf in that case with the court.

37. 543 F. Supp. at 1229.

38. 406 U.S. 759 (1972), *reh. den.* 409 U.S. 897 (1972).

39. 270 F. Supp. 1004 (S.D.N.Y. 1967).

40. On a motion for summary judgment, the district court ruled in favor of First National on all except "the amounts by which the proceeds of the sale of collateral exceeded the amount that could properly be applied to the loan by petitioners . . . . [First National] then waived any recovery on its counterclaim over and above the amount recoverable by respondent on its complaint on its merits." 406 U.S. at 761.

41. 431 F.2d 394 (2d Cir. 1970).

42. In Bernstein v. N.V Nederlandsche-Amerikaanische, 173 F.2d 71 (2d Cir. 1949), the court invoked the act of state doctrine and held that it was restrained from reviewing the official acts of the Nazi government. Subsequent to that decision, the State Department issued a release condemning the acts of the Nazi party and relieving "American courts from any restraint upon the exercise of their jurisdiction to pass upon the validity of the acts of Nazi officials." Letters from Jack B. Tate, Acting Legal Advisor, Department of State, to Attorneys for the Plaintiff in Civil Action No. 31-555 in the United States District Court for the Southern District of New York, dated April 13, 1949, pertinent part *reprinted at* 210 F.2d 376. In view of the Executive policy, the Second Circuit amended and reversed its earlier mandate at 210 F.2d 375 (2d Cir. 1954). This exception is commonly referred to as the Bernstein exception.

43. The Court noted that "juridical acts of state of a foreign power could embarass the conduct of foreign relations by the political branches of the government. 406 U.S. at 765.

act of state doctrine would not advance the interests of American foreign policy:

> [i]t would be wholly illogical to insist that such a rule, fashioned because of fear that adjudication would interfere with the conduct of foreign relations, be applied in the face of an assurance from that Branch of the Federal Government that conducts foreign relations that such a result would not obtain.[44]

Justice Douglas, concurring, felt neither the Bernstein exception nor the act of state doctrine should be invoked. *National City Bank v. Republic of China*[45] provided that "a sovereign's claim may be cut down by a counterclaim or setoff,"[46] and relief could be permitted on that basis alone. Justice Powell, also concurring, rejected the application of *Sabbatino*, stating the decision "was not compelled by the principles as expressed therein,"[47] and believed that federal courts have an obligation to hear cases dealing with expropriations, unless so doing would interfere with delicate foreign relations. The four dissenters felt the Bernstein exception "was an abdication of the judicial function to the Executive Branch," and that *Sabbatino* dictated the opposite result.[48]

Another exception to the act of state doctrine, the commercial activity exception, was applied by the Supreme Court in *Alfred Dunhill of London, Inc. v. Republic of Cuba*.[49] After Cuba confiscated the major cigar manufacturing companies, three importers mistakenly paid the Cuban Government for preconfiscation shipments of cigars. After the former owners established their right to the sum already paid, Dunhill brought suit to recover the excess monies paid. In response to Cuba's assertion that their action was an act of state, the Court stated:

> We decline to extend the act of state doctrine to acts committed by foreign sovereigns in the cause of their purely commercial operations. Because the act relied on by respondents in this case was an act arising out of the conduct by Cuba's agents in the operation of cigar businesses for profit, the act was not an act of state.

Thus, the commercial activity exception provides another way around judicial noninterference with acts of state. With the historical function and recent modifications of the act of state doctrine in mind, the

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44. *Id.* at 769-70.

45. 348 U.S. 356 (1954).

46. 406 U.S. at 771.

47. *Id.* at 774.

48. 543 F. Supp. 1229. *First National City Bank v. Banco Nacional De Cuba* could be the type of case that prompted Erwin Griswold of Washington, former U.S. solicitor general and Dean of Harvard Law School, to say "[t]he Supreme Court has caused its own overburdened case load by handing down opinions that provide 'no precedent' for the district courts . . . ." Winter, *Its Own Fault: Critiquing the Supreme Court*, 69 A.B.A.J. 424 (1983). With a 3-1-1-4 split, it is difficult, if not impossible, to state the rule of law decided in *First National City Bank*.

49. 425 U.S. 682 (1976).

district court began its analysis.

IV. ANALYSIS

The district court stated that "there is no dispute that the action of the PMGSE in nationalizing shares of ESESCO held by Kal-Spice was an act of state."[50] Next, the court summarily disposed of the *Dunhill* commercial activity exception, and stated that the Bernstein exception was also inapplicable because there had been no statement by the executive branch.[51]

Subsequent to the district court's ruling, the executive branch made a statement regarding the act of state doctrine in this case. Therefore, the Bernstein exception may apply to this case. In a November 19, 1982 letter,[52] the Department of State discussed two issues. The Department stated that where there is a controlling legal standard for compensation, such as is found in the Treaty of Amity and Economic Relations between the United States and Ethiopia[53] (Treaty), "we believe that the presumption should be that adjudication would not be inconsistent with foreign policy interests under the Act of State Doctrine."[54] Also, the Department stated "[i]n general this Department's experience provides little support for a presumption that adjudication of acts of foreign states in accordance with relevant principles of international law would embarrass the conduct of foreign policy."[55] The Department of State's letter clearly supports judicial resolution of this case. The Sixth Circuit's decision should reflect the Department's view, and the Bernstein exception, if it really does exist, should be invoked.

The district court devoted the remainder of its opinion to the resolution of three issues: namely the applicability of the Treaty; the Hickenlooper Amendment; and the significance of the location of the taking. First, it attempted to invoke the *Sabbatino* modification to the act of state doctrine, going to the treaty to find "controlling legal principles" to resolve the dispute.[56] Article VIII, § 2 of the Treaty provided as follows:

> Property of nationals and companies of either High Contracting Party, including interests in property, shall receive the most constant protection and security within the territories of the other High Con-

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50. 543 F. Supp. at 1229.

51. *Id.*

52. Dep't of State Letter from Davis R. Robinson, Legal Advisor to The Honorable Rex E. Lee, Solicitor General of the United States, Nov. 19, 1982, *reprinted in* 83 DEP'T ST. BULL. No. 2070, at 70 (1983).

53. Treaty of Amity and Economic Relations Between the United States of America and Ethiopia, Sept. 7, 1951, 4 U.S.T. 2137, T.I.A.S. No. 2864 [hereinafter cited as Treaty].

54. *Id.*

55. *Id.* This sentence was a quote taken from a Department of State letter written in 1975 regarding the *Dunhill* case. *See* Dep't of State Letter from Monroe Leigh, Legal Advisor to the Solicitor General of the United States, Nov. 26, 1975, *reprinted in* Alfred Dunhill of London, Inc. v. Cuba, 425 U.S. 682, 706 (1976).

56. 543 F. Supp. at 1229.

> tracting Party. Such property shall not be taken except for a public purpose, nor shall it be taken without *prompt* payment and *just* and *effective* compensation.[57] (emphasis added).

Agreeing with the argument put forth by the PMGSE, the court decided that the terms "prompt," "just" and "effective" are not defined, and found the terms to be "inherently general, doubtful, and susceptible of a multiple interpretation."[58] Upon this basis, the court held that the Treaty did not provide controlling legal principles upon which to render a decision.[59]

The district court's holding concerning the Treaty faces two problems. First, the holding contradicts the basic principle in treaty interpretation which states that the ordinary and usual meaning of the terms are to be applied.[60] Second, the holding is in conflict with the Department of State's letter which indicates that the Treaty sets forth controlling legal standards.[61] The Supreme Court has stated that "[a]lthough not conclusive, the meaning attributed to Treaty provisions by the government agencies charged with their negotiation and enforcement is entitled to great weight."[62] Thus, the Sixth Circuit could either reverse the district court based upon the obvious meaning of the Treaty or in deference to the Department of State's interpretation of the Treaty words.

The second issue that the court discussed was the applicability of the Hickenlooper Amendment.[63] Quoting extensively from *Banco Nacional de Cuba v. First National City Bank of New York*,[64] the court held that the amendment only applied to confiscated property that was being marketed in the United States. Because the assets in Ethiopian Spice were in Ethiopia, not the United States, the court ruled that the Hickenlooper Amendment did not apply.[65]

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57. Treaty, art. VIII, § 2.

58. 543 F. Supp. at 1230.

59. The court did state that the Restatement (Second) of Foreign Relations Law of the United States §§ 187-90 defined these terms. *Id.* However, the court reasoned that "reliance on that authority as accurately expressing the meaning intended by the government of Ethiopia in its Treaty agreement, despite the absence of any reference thereto, would be unwarranted." *Id.*

60. In United States v. D'Auterive, 10 Howard 607, 622 (1850), the Supreme Court stated "compacts between governments or nations, like those between individuals, should be interpreted according to the natural, fair, and received acceptation of the terms in which they are expressed," and in De Geofrey v. Riggs, 133 U.S. 258, 270 (1889), the Court stated that "[i]t is a rule, in construing treaties as well as laws, to give sensible meaning to all their provisions if that be practicable. The interpretation, therefore, . . . which would render a treaty null and inefficient cannot be admitted . . . it ought to be interpreted in such a manner as that it may have its effect, and not prove vain and nugatory." *See also* Santovincenzo v. Egan, 284 U.S. 30, 40 (1931).

61. See note 52 *supra*.

62. Kolorat v. Oregon, 366 U.S. 187 (1961).

63. 543 F. Supp. at 1231.

64. 431 F.2d 394 (2d Cir. 1970). For a discussion of the case at the Supreme Court level, see notes 38-48 *supra* and accompanying text.

65. 543 F. Supp. at 1231.

The third and final issue the district court discussed was another exception to the act of state doctrine, which involves the location of the property taken.[66] This exception was discussed in *Republic of Iraq v. First National City Bank*,[67] where the Republic of Iraq, by virtue of an ordinance, claimed funds that were located in a New York bank.[68] Although the promulgation of the Ordinance was an act of state, the court refused to invoke the doctrine. The court reasoned:

> Under the traditional application of the act of state doctrine, the principle of judicial refusal of examination applies only to a taking by a foreign sovereign of property within its own territory; when property confiscated is within the United States at the time of the attempted confiscation, our courts will give effect to acts of state only if they are consistent with the policies and law of the United States. (citations omitted).[69]

Attempting to apply this exception, Kal-Spice argued that because the stock certificates were located in the state of Michigan, the taking was outside of the country of Ethiopia, and not subject to the act of state doctrine.

The court quoted the general rule that "the situs of corporate stock is deemed to be in the state where the corporation has its domicile, which is ordinarily the state under whose laws the corporation was created. . . ."[70] Because ESESCO was an Ethiopian corporation, the court held that the "confiscation of the shares of stock was a taking within its own territory by the PMGSE which is encompassed by the act of state doctrine."[71] Thus, the court could not apply this or any other exception to the act of state doctrine.

V. CONCLUSION

In *Ethiopian Spice*, the district court resolved issues involving amounts due for spices sold and delivered and the expropriation of shares of stock by applying the act of state doctrine. Under the doctrine, the court held that it could not make a judicial determination concerning an act of the PMGSE. The many exceptions to the rule, including the Bernstein and *Sabbatino* exceptions, were deemed inappropriate.

Subsequent to this decision, the Department of State made a statement concerning this case. First, the Department stated that a judicial abstention would not advance the interests of foreign policy. Next, the Department said that the U.S.-Ethiopian Treaty provided controlling legal principles to resolve the issues presented. The Sixth Circuit's decision

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66. *Id.*

67. 353 F.2d 47 (2d Cir. 1965), *cert. denied* 382 U.S. 1027 (1966).

68. The funds belonged to King Faisal II of Iraq, who was killed in the 1958 revolution. Faisal's estate administrator and the Republic claimed title to the funds. 353 F.2d at 50.

69. *Id.* at 51.

70. 543 F. Supp. at 1231-32.

71. *Id.* at 1232.

must acknowledge and reflect the Department's view. The plain words of the Treaty appear to provide an answer to this dispute. Furthermore, the Bernstein exception, if it is a recognized exception, can be invoked to provide Kal-Spice relief.

Robert M. Cooper

Humanitarian Intervention: A Possibility for Northern Ireland

Northern Ireland has been embroiled in conflict throughout this century. Due to the most recent eruptions of political and religious conflict in Northern Ireland, there have been losses of life and property, and erosion of the civil liberties of a minority group as well. Human rights involve the most sensitive areas of an individual's relationship to his society and to his state. Because most governments are reluctant to surrender their traditional authority over matters affecting their citizens, a valid question is raised: Which countries and organizations have the right to intervene in a situation involving human rights violations? A more specific question may also be asked: How is it possible for states and international organizations to justify their inaction in Northern Ireland and elsewhere after claiming to embrace the idea that human rights are to be recognized and enforced, and not merely conferred? Although this paper will examine the very recent history of the problem in Northern Ireland, the types of human rights violations being perpetrated, and international treaties and organizations dealing with these violations, its main focus will be the possibility of humanitarian intervention.

In 1948 the United Nations adopted the Universal Declaration of Human Rights (Declaration or Universal Declaration).[1] The Declaration begins: "All human beings are born free and equal in dignity and rights."[2] It continues by naming civil and political rights, such as "life, liberty and security of person, . . . freedom from arbitrary arrest, detention or exile, . . . the right to own property [and] freedom of thought, conscience and religion."[3] Also included are economic, social and cultural rights, such as "the right to work, and the right to a standard of living adequate for health and well being."[4] Although the Universal Declaration has been in existence for nearly thirty years, it was not until President Carter's administration focused upon human rights as an integral component of American foreign policy that the issue dominated the international arena.

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1. Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217A(III) art. 1, U.N. Doc. A/810, at 71 (1948) [hereinafter cited as Declaration].

2. *Id.* art. 1.

3. *Id.* art. 23.

4. *Id.*