CASE 2–6

Barcelona Traction, Light, and Power Co. Case

Belgium v. *Spain*

International Court of Justice, 1970.
International Court of Justice Reports, vol. 1970, p. 3 (1970).

The Barcelona Traction, Light, and Power Co. was incorporated under Canadian Law in 1911 for the supplying of electricity in Spain. In 1938 Spain declared the company bankrupt and took other actions detrimental to it and its shareholders. Since an alleged 88 percent of the shareholders were Belgian, Belgium brought suit against Spain.

JUDGMENT OF THE COURT . . .

When a state admits into its territory foreign investments or foreign nationals, whether natural or juristic persons, it is bound to extend to them the protection of the law and assumes obligations concerning the treatment to be afforded them. . . .

SEPARATE OPINION OF JUDGE PADDILLA NERVO [OF MEXICO]: . . .

The history of the responsibility of states in respect to the treatment of foreign nationals is the history of abuses, illegal interference in the domestic jurisdiction of weaker states, unjust claims, threats and even military aggression under the flag of exercising rights of protection, and the imposing of sanctions in order to oblige a government to make the reparations demanded.

Special agreements to establish arbitral tribunals were on many occasions concluded under pressure, by political, economic or military threats.

The protecting states, in many instances, are more concerned with obtaining financial settlements than with preserving principles. Against the pressure of diplomatic protection, weaker states could do no more than to preserve and defend a principle of international law, while giving way under the guise of accepting friendly settlements, either giving the compensation demanded or by establishing claims commissions which had as a point of departure the acceptance of responsibility for acts or omissions, where the government was, neither in fact nor in law, really responsible.

In the written and oral pleadings the Applicant has made reference, in support of his thesis, to arbitral decisions of claims commissions—among others those between Mexico and the United States, 1923.

> These decisions do not necessarily give expression to rules of customary international law, as . . . the Commissions were authorized to decide these claims "in accordance with the principles of international law, justice and equity," and, therefore, may have been influenced by other than strictly legal considerations. . . .[37]

[37] Schwarzenberger, *International Law,* vol. 1, p. 201.

MAP 2–6 ▫ Spain (1970)

Now the evolution of international law has other horizons and its progressive development is more promising, as Rosenne wrote:

> There is present in the world today a widespread questioning of the contemporary international law. This feeling is based on the view that for the greater part international law is the product of European imperialism and colonialism and does not take sufficient account of the completely changed pattern of international relations which now exists. . . .
>
> Careful scrutiny of the record of the Court may lead to the conclusion that it has been remarkably perceptive of the changing currents of international thought. In this respect it has performed a major service to the international community as a whole, because the need to bring international law into line with the present-day requirements and conditions is real and urgent.[38]

The law, in all its aspects, the jurisprudence and the practice of states, changes as the world and the everyday requirements of international life change, but those elements for its progressive evolution should take care that their decisions do, in the long run, contribute to the maintenance of peace and security and the betterment of the majority of mankind.

In considering the needs and the good of the international community in our changing world, one must realize that there are more important aspects than those concerned with economic profit making; other legitimate interests of a political and moral nature are at stake and should be considered in judging the behavior and operation of the complex international scope of modern commercial enterprises.

It is not the shareholders in those huge corporations who are in need of diplomatic protection, it is rather the poorer or weaker states, where the investments take place, who need to be protected against encroachment by powerful financial groups, or against unwarranted diplomatic pressure from governments who appear to be always ready to back at any rate their national shareholders, even when they are legally obliged to share the risk of their corporation and follow its fate, or even in case of shareholders who are not or have never been under the limited jurisdiction of the state of residence accused of having violated in respect of them certain fundamental rights concerning the treatment of foreigners. It can be said that, by the mere fact of the existence of certain rules concerning the treatment of foreigners, these have certain fundamental rights that the state of residence cannot violate without incurring international responsibility; but this is not the case of foreign shareholders as such, who may be scattered all over the world and have never been or need not be residents of the respondent state or under its jurisdiction.

In the case of the *Rosa Gelbtrunk* claim between Salvador and the United States, the President of the arbitration commission expressed a view which may summarize the position of foreigners in a country where they are resident. This view is expressed as follows:

> A citizen or subject of one nation who, in the pursuit of commercial enterprise, carries on trade within the territory and under the protection of the sovereignty of a nation other than his own, is to be considered *as having cast his lot* with the subjects or citizens of the state in which he *resides* and carries on business. (Italics added.)
>
> "In this case," Schwarzenberger remarks, "the rule was applied to the loss of foreign property in the course of a civil war. The decision touches, however, one aspect of a much wider problem: the existence of international minimum standards, by which, regarding foreigners, territorial jurisdiction is limited." . . .

Much has been said about the justification for not leaving the shareholders in those enterprises without protection.

Perhaps modern international business practice has a tendency to be soft and partial towards the powerful and the rich, but no rule of law could be built on such flimsy bases.

Investors who go abroad in search of profits take a risk and go there for better or for worse, not only for better. They should respect the institutions and abide by the national laws of the country where they chose to go.

[38] Rosenne, *The Law and Practice of the International Court*, vol. 1, pp. 17–18 (1965).

Denial of Justice

Denial of Justice: A gross deficiency in administration of justice.

A **denial of justice** is said to exist "when there is a denial, unwarranted delay or obstruction of access to courts, gross deficiency in the administration of judicial or remedial process, failure to provide those guarantees which are generally considered indispensable to the proper administration of justice, or a manifestly unjust judgment. An error of a national court which does not produce a manifest injustice is not a denial of justice."[39]

As with the expropriation cases, the states which advocate the application of a "national standard" emphasize that notions of justice are relative to each society, and whether or not there has been a denial of justice with respect to a particular case requires an understanding of the judicial system of the society where the case arose.

Both the "international standard" and the "national standard" are illustrated in the next case.

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[39] Art. 9, Harvard Draft Convention on the Responsibility of States for Damage done in their Territory to the Person or Property of Foreigners, 1929.

Laprès-Rosiers sci

société civile immobilière au capital de € 2.000 Adresse du siège social:
17 rue Eugénie Eboué, 92600 Asnières-sur-Seine
RCS Nanterre : 881946669

Rapport de gestion afférant à l'exercice 2020

La Société, dont l'objet consiste en l'acquisition, la gestion et l'administration de biens immobiliers et toutes activités y liées, son premier exercice a démarré le premier mars 2020 et a été clos le 31 décembre 2020.

Au cours de cet exercice, la Société n'a réalisé aucun chiffre d'affaires et une perte de 15.672 Euros.

La Société conserve des montants de liquidités suffisants pour ses besoins.

Fait à Paris, le premier juin 2021.

Laprès, prénom : Mae Mei
Gérante

Laprès-Rosiers sci

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ASSEMBLEE DES ASSOCIES

Tenue au siège de la Société à 10 heures le premier juin 2021

Tous les associés étant présents et consentant à la tenue de l'Assemblée, le quorum est réuni.

L'Assemblée est présidée par la gérante, Madame Laprès, prénom : Mae Mei.

L'Assemblée se réunit pour approuver les comptes et affecter le résultat de l'exercice démarré le premier mars 2020 et a été clos le 31 décembre 2020 et pour donner quitus au gérant de la Société pour son rapport de gestion et pour sa gestion au cours de cet exercice.

L'Assemblée sur sa demande lui donne acte de ses déclarations et reconnait la validité de la convocation.

La Présidente déclare la discussion ouverte.

Personne ne demandant plus la parole, la Présidente met aux voix les résolutions suivantes à l'ordre du jour.

PREMIERE RESOLUTION

L'Assemblée, après avoir pris connaissance des comptes de l'exercice clos le 31 décembre 2020, approuve lesdits comptes tels qu'ils lui sont présentés.

Cette résolution est approuvée à l'unanimité.

DEUXIEME RESOLUTION

L'Assemblée constate qu'au cours de cet exercice, la Société n'a réalisé aucun chiffre d'affaires et une perte de 15.672 Euros.

L'Assemblée décide d'affecter ces pertes au compte du report à nouveau.

Cette résolution est approuvée à l'unanimité.

TROISIEME RESOLUTION

Après avoir entendu lecture du rapport de gestion du Gérant relatif à l'exercice clos le 31 décembre 2020, l'Assemblée approuve ledit rapport de la gérance en toutes ses parties et donne au Gérant quitus de l'exécution de son mandat pour ledit exercice.

Cette résolution est approuvée à l'unanimité.

QUATRIEME RESOLUTION

L'Assemblée donne pouvoir à tout porteur d'un original ou d'une copie certifiée conforme pour accomplir toutes formalités auprès de tout tiers et auprès de l'Administration, et en particulier auprès du Greffe du Tribunal de Commerce de Nanterre.

Cette résolution est approuvée à l'unanimité.

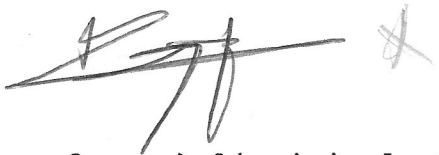
L'ordre du jour étant épuisé, la séance est levée a 10 heures 30.

De tout ce qui précède, il a été dressé en six exemplaires dont un reproduit sur le registre des délibérations, le présent procès-verbal qui a été signé par la Présidente et les autres participants à l'Assemblée.

Fait à Paris, le premier juin 2021.

Mae Mei Laprès

Gérante



Copie certifiée conforme à l'original, Paris le premier juin 2021

Mae Mei Laprès

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Gérante