SYMPOSIUM

MULTINATIONAL CORPORATIONS AND THE ENERGY CRISIS

Foreign Governmental Control of Multinational Corporations Marketing in the United States

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FOREIGN GOVERNMENTAL CONTROL OF MULTINATIONAL CORPORATIONS MARKETING IN THE UNITED STATES

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It seems appropriate to begin this discussion of foreign governmental control of multinational corporations marketing in the United States by briefly reviewing the structure of the petroleum industry and the historical events leading to the Arab oil embargo. The traditional point of reference is the "Seven Sisters," the seven largest oil companies which together account for approximately 70 percent of the world's oil supply: British Petroleum, Exxon, Gulf, Mobil, Royal Dutch/Shell, Standard Oil of California, and Texaco. Two of these seven, Royal Dutch/Shell and British Petroleum (BP), have a predominantly non-American ownership. The remaining five are American owned. These five American owned multinational enterprises and Shell Oil Company, the American subsidiary of Royal Dutch/Shell have the largest shares of the U.S. market for petroleum products, a total of approximately 40 percent. BP ranks seventeenth in terms of U.S. market share with 1.15 percent of the market.[1]

Each of the "Seven Sisters" has a myriad of branches and subsidiaries around the world which engage in exploring, producing, transporting and refining crude oil, and transporting and marketing refined petroleum products.[2] Each also engages in numerous joint ventures with the other firms, especially on the exploration level.

The focal point of foreign governmental pressure on these and smaller multinational oil firms is at the production level. Until 1960 the oil companies had little difficulty in dominating the governments of the non-U.S. producer nations. In that year the oil producing nations formed the Organization of Petroleum Exporting Countries (OPEC) to prevent the oil companies from exploiting the oil producing countries by dealing with them individually and to curb competition which would cause lower prices for crude oil.[3] The OPEC countries gradually solidified their power and, in 1971, proposed a gradually increasing rate of "participation" by the OPEC countries in the producing companies operating within their boundaries.

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1. National Petroleum News, May 1973, at 111.

2. M. Adelman, The World Petroleum Market (1971); E. Penrose, The Growth of Firms, Middle East Oil and Other Essays 139-246 (1971).

3. Statement of the Secretary General of the OPEC to the Second International Symposium on Energy, Rome, March 11-13, 1968 (OPEC Bull., April 1968).

The importance of "participation" can be seen in the recent experiences of the largest and most well-known producing company, the Arabian American Oil Company (Aramco) which is chartered under the laws of Saudi Arabia. Saudi Arabia is the world's third largest producer of petroleum, after the United States and Russia, and is the world's largest exporter of petroleum. Aramco produces 95 percent of all Saudi oil.[4] Until 1972 Aramco was owned by four of the largest American oil multinationals: Standard Oil of California (Socal), Texaco and Exxon, each of which owned thirty percent of Aramco's stock and Mobil, which owned the remaining ten percent. In 1972 the Saudi government demanded and received 25 percent "participation" in the affairs of the company. This meant that the Saudi government acquired 25 percent of all Aramco's assets in Saudi Arabia, including refineries, ports, ships, wellheads, pumping plants and offices. The Saudi government also received 25 percent of all of the crude oil produced by Aramco, to handle as it saw fit. The "participation" did not give the Saudis any stock or assets of Aramco's American parent companies. In June 1974, the Saudis increased their participation in Aramco to 60 percent.[4.1]

Before the advent of participation Aramco's policies were decided by a small executive committee composed of representatives from the parent companies. Its decisions were presented as a *fait accompli* to Aramco's board of directors which included Ahmed Zaki Yamani, the Saudi Oil Minister.[5] After participation was achieved Saudis were placed on the executive committee.

The Saudis' successful demand for participation has recently been surpassed by Kuwait, the second largest exporter of petroleum, which demanded and received a 60 percent participation in the Kuwait Oil Company, which was jointly owned by Gulf Oil and British Petroleum. Moreover, an agreement among the OPEC countries calls for increasing amounts of participation in all countries until 1982 when a 51 percent level is scheduled to be achieved.

Emboldened by OPEC's success in obtaining participation, the Organization of Arab Petroleum Exporting Countries (OAPEC)[6] agreed in October 1973 to use their power over the production of oil to achieve their political goals vis-a-vis Israel. They agreed to take three specific actions: an embargo on oil sales to nations friendly to the Israelis; a

4. *See* Mosley, *The Richest Oil Company in the World*, N.Y. Times, March 10, 1974, § 6 (Magazine), at 22 [hereinafter cited as Mosley].

4.1. Smith, *Saudis to Increase their Share in Aramco From 25% to 60%*, N.Y. Times, June 11, 1974, at 1, col. 3.

5. Mosley, *supra* note 4, at 24.

6. Algeria, Bahrain, Egypt, Kuwait, Libya, Qatar, Saudi Arabia, Syria and the United Arab Emirates.

reduction in the amount of oil produced from wells within their territory; and an increase in the price of crude oil.

Before the embargo Saudi Arabia produced about 8.3 million barrels of oil a day of which one million barrels were exported to the United States. After the embargo was imposed all shipments of oil to the United States were stopped and production was reduced to about six million barrels a day.

For the OAPEC countries as a whole the embargo meant that U.S. oil imports fell from 6.5 million barrels a day in October 1973 to two million barrels a day in January 1974. In addition, the price increases for crude oil imposed by the OAPEC countries resulted in a doubling of prices for crude oil between October 1973 and March 1974.[7]

One result of the Arab embargo was a charge by Senator Frank Church that the large American multinational oil companies "have in fact become the policing agents of the Arabs' boycott against the United States." The Senator also noted that the U.S. Government had permitted American owned multinational oil companies to negotiate jointly with the producing countries without fear of prosecution under U.S. antitrust laws. He concluded by calling for a "great national debate" on what could be done to avoid future dependence on Middle Eastern oil.[8]

In the context of this symposium our debate concerns the international law implications of the Arab oil embargo as an example of foreign governmental control of multinational corporations marketing in the United States. More particularly we must focus upon the question of what, if anything, U.S. courts or agencies can do to prevent the detrimental effects of such actions on the American economy. The answer to this question can be found in the rules of international law governing jurisdictional competence as exercised by national courts.

I. JURISDICTION

The merits of the two opposing interpretations of the objective territorial principle of legislative jurisdiction based upon the local "effect" of extraterritorial conduct have been debated *ad infinitum*, if not *ad nauseam*, in scholarly journals. Therefore, I will devote my attention to the problems which arise in the context of adjudicatory jurisdiction, *i.e.*, under what circumstances may the forum court assert judicial power over specific individuals and legal entities?

In the oil industry, companies such as Aramco are involved only in

7. *See* Tanner, *Oil Shipments to U.S. Renewed by Saudi Arabia*, Wall St. J., March 26, 1974, at 2, col. 2; Smith, *Saudi Oil Output Up by Million Barrels*, N.Y. Times, March 26, 1974, at 55, col. 7.

8. Wash. Post, Dec. 8, 1973, § A, at 9, col. 4; Press Release, Dec. 7, 1973 (from the office of Senator Frank Church).

producing oil. They sell it to their parent companies who process and sell the various petroleum products at wholesale or retail. Since the production companies are at the heart of the Arab embargo and reductions in production, the first question is: can these foreign subsidiaries or branches be brought within the legitimate jurisdictional reach of U.S. courts?

In the United States this judicial power, usually referred to as in personam jurisdiction, is limited by the Due Process clauses of the Federal Constitution[9] which permit a court to assert adjudicatory jurisdiction over a defendant alien corporation only when that corporation has certain minimum contacts with the forum of such a nature and quality that the maintenance of the suit does not offend traditional American ". . . notions of fair play and substantial justice."[10] This is a test of fairness in the circumstances determined by analyzing and weighing the competing interests of the parties, *i.e.*, the defendant's interest in not being forced to defend a suit in a foreign court, the plaintiff's interest in vindicating his claim in the court of his choice and the public's interest in the issue.

In addition to this constitutional requirement the court must assert its personal jurisdiction and notify the defendant corporation of the suit by valid service of process pursuant to relevant statutes and court rules. To be valid, service must be made in a manner reasonably calculated to notify the defendant of the proceeding and afford it a reasonable opportunity to appear and be heard.[11] The court must also determine that the venue of the suit is proper. Venue is a rule of convenience rather than a constitutional right that restricts the location of the trial to forums which are mutually convenient to parties and witnesses.[12]

An analysis of the pertinent precedents under these constitutional guidelines reveals that the foreign producing companies may legitimately be brought within American jurisdiction in certain circumstances. In the *Swiss Watch* case the Justice Department contended that since the American parent companies carried out agreements made by their Swiss subsidiaries, the parent was acting as an agent of the subsidiary, thereby subjecting the subsidiaries to the jurisdiction of U.S.

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9. U.S. CONST. amends. V & XIV.

10. International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945); Hanson v. Denckla, 357 U.S. 235 (1958); McGee v. International Life Ins. Co., 355 U.S. 220 (1957); Hazard, *A General Theory of State-Court Jurisdiction*, 1965 SUPREME COURT REV. 241; Kurland, *The Supreme Court, The Due Process Clause and The In Personam Jurisdiction of State Courts*, 25 U. CHI. L. REV. 569 (1958).

11. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950).

12. Some special venue statutes are collected in 28 U.S.C. §§ 1391-1403 (1970); *see* 15 U.S.C. § 22 (1970) (antitrust); 46 U.S.C. § 688 (1970) (Jones Act); Note, *Doing Business as a Test of Venue and Jurisdiction Over Foreign Corporations in the Federal Courts*, 56 COLUM. L. REV. 394 (1956).

courts. The court did not specifically rule on the argument, rather it stated:

> Jurisdiction over the parent is not being sought through a subsidiary but jurisdiction of the subsidiary is being sought through the parent. We are free of the danger that a corporation may be drawn into litigation in a strange forum by the acts of someone relatively unfamiliar with its major policies and unimportant in its corporate hierarchy. Here, the court already has jurisdiction over the parental policy making body which gave its deliberate assent to the alleged unlawful enterprise.[13]

The next question is whether the alien parent of an American subsidiary such as Royal Dutch/Shell or British Petroleum is subject to an American court's adjudicatory jurisdiction. The answer here is also "yes." An alien parent may come within U.S. jurisdiction because of its own activities, because of a seizure of its property located in the United States, or because of its relations with American subsidiaries or affiliates.

A. *The Parent's Activities*

In several cases an alien corporation has been "found" in the U.S. forum court because of its own activities. For example, in the *Alcoa* case one of the defendants, Limited, was a Canadian holding company whose operations principally involved integrating the manufacturing and selling operations of its subsidiaries which were located outside the United States. The court found that the company was present in the Southern District of New York because it maintained large permanent offices and bank accounts in New York and because the officers of the company in New York arranged loans for the subsidiaries.[14]

In the *Hoffman* case, Alfa Romeo, an Italian company, had negotiated and signed a franchise agreement in New York granting exclusive sales and distribution rights in the district. The court found that: "A foreign manufacturer of cars transacts business by promoting the sale of its products through a distributorship system when the manufacturer retains some control over the distributor."[15]

In a case which is *sub judice* the Department of Justice is contending that personal jurisdiction over an alien company can be based solely on the grounds that the alien company holds a U.S. patent. The civil antitrust complaint alleged that Bristol Myers Co. and Beecham Inc.,

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13. United States v. Watchmakers of Switzerland Information Center, Inc., 133 F. Supp. 40, 48 (S.D.N.Y. 1955).

14. United States v. Aluminum Co. of America, 20 F. Supp. 13, 19 (S.D.N.Y. 1937).

15. Hoffmann Motors Corp. v. Alfa Romeo, S.p.A., 244 F. Supp. 70, 76 (S.D.N.Y. 1965).

both of which are American companies, and Beecham Group, Ltd. (Beecham U.K.) a British company that owns 90 percent of Beecham, Inc., conspired to restrain and monopolize trade by fraudulently procuring and enforcing Beecham U.K.'s U.S. patent covering ampicillin.[16] Essentially, the Department of Justice is contending that the use of a U.S. patent for purposes of restraint of trade permits a suit under the patent statute and gives the U.S. court jurisdiction over the alien patent holder because the patent statute provides in pertinent part that:

> The court shall have the same jurisdiction to take any action respecting the patent or rights thereunder that it would have if the [alien] patentee were personally within the jurisdiction of the court.[17]

B. Seized Property

The Sherman[18] and Wilson Tariff[19] Acts contain forfeiture provisions which have not been used since 1930[20] but which are sometimes used informally as a lever to compel alien companies to consent to a court's jurisdiction. In 1930 the Department of Justice issued a press release explaining the forfeiture provisions which stated in part that:

> . . . seizure of goods under the Wilson Tariff Act has been followed because the principal parties, in cases of violation of the antitrust laws by foreign monopolies, are beyond the jurisdiction of a court and cannot be reached by subpoena.[21]

C. Relation to Subsidiaries or Affiliates

Courts have frequently utilized the process of "lifting the veil" to treat a local subsidiary and a foreign parent as a single entity in order to achieve jurisdiction over the parent.

Two genres of lifting the veil have developed. In the first and most common genre the court converts two or more separate entities into a single entity in order to deal with the business realities or representations of the group. In the other genre of cases the court applies traditional principles of agency to the dealings between two distinct entities.

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16. United States v. Bristol Myers Co., Civil No. 822-70 (D.D.C., filed March 19, 1970). This case has been consolidated with several others. *In re* Ampicillin Antitrust Litigation, M.D.L. Docket No. 50 (D.D.C.).

17. 35 U.S.C. § 293 (1970). *See* United States v. Glaxo, 328 F. Supp. 709 (D.D.C. 1971); United States v. Bayer, 135 F. Supp. 65 (S.D.N.Y. 1955).

18. 15 U.S.C. § 6 (1970).

19. 15 U.S.C. § 11 (1970).

20. United States v. ABC Canning Co., CCH Fed. Antitrust Laws, with Summary of Cases (1890-1951), Case No. 374 (S.D.N.Y. 1930).

21. Dept. of Justice Press Release, June 12, 1930. *See* W. Fugate, Foreign Commerce and the Antitrust Laws § 3.9 (2d ed. 1973).

One of the most famous examples of the converting two-into-one genre is the *Swiss Watch*[22] case, which involved a civil suit by the United States Department of Justice against several Swiss and American defendants, alleging violations of the antitrust laws in that the defendants had unreasonably restrained trade in Swiss watches and the export of American watches. Two of the Swiss companies (Ebauches and FH) moved to dismiss the complaint for lack of personal jurisdiction. They jointly owned a small[23] New York corporation (Watchmakers) whose budget was submitted for approval to them each year. The General Manager of Watchmakers submitted monthly reports of expenditures and activities to the parents, and much of the correspondence was concerned with problems and transactions arising from repair parts manufactured by the parents. The court acknowledged the validity of a 1925 decision of the U.S. Supreme Court[24] that "a parent's complete commercial and financial domination of its subsidiary did not bring the parent within the jurisdiction as long as the formal separation was scrupulously maintained."[25] However, because Watchmakers was created to perform advertising, consumer liaison and promotional work for the parents and because of the close supervision by the parents, the court concluded that "realistically appraised Watchmakers has no business of its own . . . . It is a mere adjunct of its parents and its activities will be regarded as theirs."[26]

Operation of the genre of cases based on agency theory can be seen in *Frummer v. Hilton Hotels International, Inc.*[27] Frummer, an American citizen, fell and injured himself in an allegedly unsafe bathtub while vacationing at the London Hilton Hotel. Upon returning to his New York residence he filed suit for personal injury in the New York state courts. Named as defendants were Hilton Hotels (U.K.), Ltd. (U.K. Hilton), a British corporation which is the lessee and operator of the London Hilton; Hilton Hotels International, Inc. (Hilton Int'l), a Delaware corporation which owns part of the stock of Hilton Int'l and which was described as the "American parent of the widespread Hilton Hotel enterprises."[28]

U.K. Hilton moved for an order dismissing the complaint against it on the ground that the New York court lacked adjudicatory jurisdic-

22. United States v. Watchmakers of Switzerland Information Center, Inc., 133 F. Supp. 40 (S.D.N.Y. 1955), *reargument denied*, 134 F. Supp. 710 (S.D.N.Y. 1955).

23. Watchmakers had nine employees and an annual budget of $70,000. 133 F. Supp. at 44.

24. Cannon Mfg. Co. v. Cudahy Packing Co., 267 U.S. 333, 337 (1925).

25. United States v. Watchmakers of Switzerland Information Center, 133 F. Supp. 40, 45 (S.D.N.Y. 1945).

26. *Id.*

27. 19 N.Y.2d 533, 227 N.E.2d 851, 281 N.Y.S.2d 41, *cert. denied*, 389 U.S. 923 (1967).

28. *Id.* at 540, 227 N.E.2d at 856, 281 N.Y.S.2d at 47 (dissenting opinion).

tion because U.K. Hilton was not present in New York. The Court of Appeals of New York rejected U.K. Hilton's contention by a four to three vote. The court reasoned that the due process standard of "fair play and substantial justice" is a simple pragmatic one which is met whenever an alien corporation "is engaged in such a continuous and systematic course of 'doing business' here as to warrant a finding of its 'presence' in this jurisdiction."[29] It then noted that defendants Hilton Int'l and Hilton Corp. jointly owned Hilton Credit Corporation, one branch of which was the Hilton Reservation Service (Service). Service has a New York office and bank account and accepted and confirmed room reservations at the London Hilton. Service also did public relations and publicity work for U.K. Hilton and was established to generate business for the London Hilton. Although Service was not an employee of U.K. Hilton, the fact that both are owned in common by Hilton Int'l and Hilton Corp. "gives rise to a valid inference as to the broad scope of the agency in the absence of an express agency agreement . . . ."[30] The "significant and pivotal factor" according to the court was that Service "does all the business which U.K. Hilton could do were it here by its own officials."[31] Thus the presence of U.K. Hilton was established by the New York activities conducted on its behalf by its agent, Service. The court added that it was not unmindful of the burdensome inconvenience of litigation in a foreign country.

> . . . However, it is part of the price which may properly be demanded by those who extensively engage in international trade. When their activities abroad, either directly or through an agent, become as widespread and energetic as the activities in New York conducted by U.K. Hilton, they receive considerable benefits from such foreign business and may not be heard to complain about the burdens.[32]

One of the best statements of the law in this area comes from Mr. Justice Frankfurter, who noted that the crucial issues are questions of fact turning on the unique circumstances of each case and that ". . . a corporation can be 'found' anywhere, whenever the needs of law make it appropriate to attribute location to a corporation, provided that activities on its behalf that are more than episodic are carried on by its agents in a particular place."[33] More than 20 years earlier Mr. Justice Cardozo wrote,

> The logical consistency of a juridical conception will indeed be sacrificed at times, when the sacrifice is essential to the end that some

29. *Id.* at 536, 227 N.E.2d at 853, 281 N.Y.S.2d at 43.
30. *Id.* at 538, 227 N.E.2d at 854, 281 N.Y.S.2d at 45.
31. *Id.* at 537, 227 N.E.2d at 854, 281 N.Y.S.2d at 44.
32. *Id.* at 538, 227 N.E.2d at 854, 281 N.Y.S.2d at 45.
33. United States v. Scophony Corp. of America, 333 U.S. 795, 819 (1948).

accepted public policy may be defended or upheld. This is so . . . though agency in any proper sense is lacking, where the attempted separation between parent and subsidiary will work a fraud upon the law. [citations omitted] At such times unity is ascribed to parts which, at least for many purposes, retain an independent life, for the reason that only thus can we overcome a perversion of the privilege to do business in a corporate form.[34]

Nearly all of the pertinent cases lift the corporate veil because of the existence of a relationship amounting to agency or identity rather than for reasons of public policy. However, this distinction is rarely articulated and is often blurred because the forum court knows that if it does not lift the veil the alien will not be subject to adjudicatory jurisdiction anywhere in the Common Market or in the United States.

The following facts are usually deemed relevant to the conclusion of presence: the amount of ownership of the subsidiary; the existence of common officers and/or directors; intermingling the affairs of the two entities as opposed to meticulous maintenance of separate accounts; tax returns, etc.; undercapitalization of the subsidiary; representation by either entity blurring the separation of the two units; an independent business by the subsidiary rather than the subsidiary advertising, promoting or selling the parent's products; culpability because of bad faith, fraud, or illegality; degree of supervision of the day-to-day affairs of the subsidiary; and ultimate responsibility for operation of the subsidiary. No one of these facts is decisive and they are often cumulated to support the decision. Essentially the test is how distinct the two entities are rather than the volume of business. In the words of a Department of Justice memorandum to the Japanese government, "When a U.S. subsidiary acts on behalf of a foreign parent, and there is such an identity of interest between the two or such control by one over the other that the one is in reality the alter ego of the other, or its mere agent, instrumentality or adjunct, then the parent comes within the U.S. jurisdiction."[35] Most commentators[36] agree that, given careful analysis of the

34. Berkey v. Third Avenue Ry. Co., 244 N.Y. 84, 155 N.E. 58, 61 (1926).

35. Memorandum by Department of Justice transmitted to the Embassy of Japan, Washington, D.C., with note of July 3, 1958, printed in 6 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 118 (1968).

It should be noted that the United States Supreme Court has held that a stipulation by a subsidiary that it is the same entity as its parent is insufficient to give a court personal jurisdiction over the alien parent in the absence of service on the parent and an appearance by the parent. Zenith Radio Corp. v. Hazeltine Research Inc., 395 U.S. 100 (1969).

36. *See, e.g., Report of the Committee on the Extraterritorial Application of Restrictive Trade Legislation*, REPORT OF THE 55TH CONFERENCE OF THE INT'L L. ASS'N 19, 31 (New York 1972); *Statement of Prof. McDougal*, REPORT OF THE 51ST CONFERENCE OF THE INT'L L. ASS'N 329 (Tokyo 1964); Mann, *The Doctrine of Jurisdiction in International Law*, 111

particular circumstances, assertion of adjudicatory jurisdiction by lifting the veil does not violate existing principles of international law.[37]

II. DEFENSES

Unfortunately these various methods of obtaining jurisdiction may prove to be insufficient in dealing with multinational oil companies and the OAPEC countries. This is because we must be careful to distinguish variations in the factual situations. For example, we must distinguish actions of privately owned companies acting under governmental compulsion, actions not resulting from such compulsion, and actions taken by sovereign states or instrumentalities of such states.

A. *Sovereign Compulsion*

One district court has held that American oil companies which engaged in a concerted refusal to supply crude oil to an American refining company because they were ordered not to do so by the Venezuelan government, had a complete defense to an antitrust action brought by the refining company.[38] Plaintiff Interamerican was an American corporation engaged in the business of processing Venezuelan crude oil at its bonded refinery in New Jersey. Defendants Texaco Maracaibo, Inc. and Monsanto Venezuela, Inc. held concessions from the Venezuelan government for the production of crude oil. They supplied crude oil to defendant Amoco Trading Company, an American company which had contracted to supply crude oil to Interamerican. Texaco and Monsanto were instructed not to ship crude oil to Interamerican by the Venezuelan Ministry of Mines and Hydrocarbons, which regulates oil concessionaires. The reasons behind this order were apparently, first, hostility between high Venezuelan government officials and the two principal stockholders of Interamerican who were Venezuelan nationals and were *personae non gratae* to the Venezuelan government. Secondly, the Venezuelan government wanted to keep its crude oil from going to "unnatural" markets such as Canada and Europe. The court held that "when a nation compels a trade practice, firms there have no choice but to obey. Acts of business become effectively acts of the sovereign."[39]

Consent decrees against American-controlled oil companies and

HAGUE RECUEIL 1, 77 (1964); Jennings, *Extraterritorial Jurisdiction and the United States Antitrust Laws*, 33 BRIT. Y.B. INT'L L. 146, 157 (1957).

37. For a more detailed review of this area, *see* Griffin, *The Power of Host Countries Over the Multinational: Lifting the Veil in the European Economic Community and the United States*, 6 LAW & POL. INT'L BUS. 375 (1974).

38. Interamerican Refining Corp. v. Texaco Maracaibo, Inc., 307 F. Supp. 1291 (D. Del. 1970), *appeal withdrawn*, (3d Cir., Aug. 25, 1970). *See* Note, *Development of the Defense of Sovereign Compulsion*, 69 MICH. L. REV. 888 (1971).

39. 307 F. Supp. at 1298.

against the United Fruit Company contain an express provision that whenever parties to the consent decrees can show that restrictive practices agreed to and employed by them, are required by foreign law and are undertaken as the result of compulsion by foreign governments, the companies are not subject to attacks by American antitrust authorities.[40] The importance of these precedents to the Arab oil embargo is self-evident.

B. Sovereign Immunity

Sovereign immunity is essentially a procedural concept protecting foreign states from suit in U.S. courts. In the *Oil Cartel* grand jury investigation of 1952-53, a British oil company moved to quash a subpoena duces tecum served upon it on the ground that it was an instrumentality of the British government and therefore immune from suit. The district court agreed because the British government owned 35 percent of the total capital of the company and because the object and purpose of the corporation made it "indistinguishable" from the Government of Great Britain.[41] Here again the relevance of this decision to the topic under discussion is obvious.

III. CONCLUSION

There are several other pertinent issues which I hope we will review during the course of this symposium. Two of the most interesting are the relevance of the "act of state" doctrine[42] and the point made by George Ball and others that it is at least a minor paradox that the American Government has reacted strongly to the Arab's "oil blackmail" while simultaneously continuing its own embargoes against countries such as Cuba and Rhodesia.[43]

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40. United States v. Standard Oil Co. (New Jersey), 1969 Trade Cas. ¶ 72,743, at 86,656 (S.D.N.Y. 1968). United States v. United Fruit Co., 410 F.2d 553 (5th Cir. 1969), *cert. denied*, 396 U.S. 820 (1970). *See* H. KRONSTEIN, THE LAW OF INTERNATIONAL CARTELS 455-58 (1973).

41. *In re* Investigation of World Arrangements, 13 F.R.D. 280, 288-91 (D.D.C. 1952). *See* FUGATE, *supra* note 21, at § 3.10.

42. *See* Victor, *Multinational Corporations: Antitrust Extraterritoriality and the Prospect of Immunity*, 8 J. INT'L L. & ECO. 11 (1973).

43. Ball, *Your Evil Embargo; Our Purity of Purpose*, N.Y. Times, March 21, 1974, at 41, cols. 5-6.