

# INTERNATIONAL PRACTICE

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## ESPOUSAL: ITS USE IN INTERNATIONAL LAW

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### *Resumen*

*El derecho de apoyo o "espousal," es la expresión utilizada en el derecho internacional público para referirse a la protección garantizada por un gobierno a sus ciudadanos, tendiente a patrocinar o apoyar sus reclamaciones por daños en los cuales haya incurrido un gobierno extranjero, bien por acción o por omisión. Esta discusión se refiere solo a los daños ocasionados a la propiedad o a derechos de propiedad de individuos nacionales de los Estados Unidos de Norteamérica. En los Estados Unidos de Norteamérica el "espousal" no es un derecho reconocido estatutariamente, sino un remedio especial y extraordinario, utilizado por el gobierno su entera discreción para proteger a sus nacionales y mejorar sus relaciones con otros estados. El autor refiere varias aplicaciones del "espousal" con el fin de ayudar al abogado practicante en aquellas situaciones en donde la recurrencia a la figura puede llegar a ser necesaria. Con el propósito de justificar el patrocinio de su reclamación por parte del gobierno, el ciudadano norteamericano debe establecer seis elementos, en una reclamación basada en el "espousal": (1) La nacionalidad norteamericana del accionante; (2) propiedad ininterrumpida de lo que se reclama; (3) un acto impropio por parte del estado a quien se acusa de haber producido el daño u ocasionado la pérdida o destrucción de la propiedad; (4) prueba razonable del valor de la pérdida o daños a la propiedad; (5) agotamiento de todas las posibles acciones y recursos disponibles en el país acusado; y (6) refutación de cualquier defensa susceptible de ser propuesta por el país acusado. A través del apoyo o patrocinio de una reclamación internacional, el país reclamante en realidad*

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*recibe una cesión o transferencia de la reclamación por parte de su súbdito o nacional.*

### Abstract

*Espousal is the public international law term for protection afforded by a government to its nationals in advocating their claims of an injury brought about by some action or inaction of a foreign government. This discussion only deals with injuries to the property or property rights of the United States national. In the United States, espousal is not a legal right, but an extraordinary remedy employed by the United States Government in its discretion to protect its nationals and enhance its foreign relations. The author notes various applications of espousal in order to help the practitioner who might encounter situations in which the use of espousal becomes necessary. In order to justify advocacy by the United States Government, the claimant must specifically assert six elements in the espousal claim: (1) United States nationality of the claimant, (2) the claimant's continuous ownership of the claim, (3) a wrongful act by the accused nation which caused damage, loss or destruction of property, (4) reasonable proof of the value of loss or damages to the property, (5) exhaustion of all local remedies available in the accused nation and (6) negation of anticipated defenses to be raised by the accused nation. By espousing an international claim, the claiming nation in effect receives an assignment of the claim from its national.*

International law is more than an academic exercise of interest only to scholars and diplomats. It also has application in the daily practice of law. Frequently, a client complains of an injury<sup>1</sup> brought about by some action or inaction of a foreign government. The underlying basis for most claims consists of three separate grounds; confiscatory breach of contract, nationalization of property or personal injury caused by a foreign government. The lawyer is then faced with the problem of obtaining recourse for the aggrieved client. Too often, the sole method is through the international law process known as "espousal."<sup>2</sup>

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1. This discussion will deal only with injuries to the property or property rights of the United States national. The treatment will attempt to be practical and therefore general in nature. In dealing with "espousal," only the individual or single claimant situation will be considered. Multiple claimants are usually dealt with by a treaty provision relegating the determination of the validity and amount of reparations to a commission, either a United States commission or a bilateral or third country arbitral commission.

2. There are infrequent cases where recourse is available under United States law by attachment, or other *in rem* action, against property of the foreign nation found within

## FUNDAMENTAL ASPECTS OF ESPOUSAL

Espousal is the public international law term for protection afforded by a government to its nationals<sup>3</sup> in advocating their claims. This diplomatic protection and the privilege of enjoying advocacy by the United States Government is, however, not a matter of legal right. It is an extraordinary remedy employed by the United States Government in its discretion to protect its nationals and enhance its foreign relations.<sup>5</sup> The extension of the privilege of this protection is a political function within the province of the executive branch of government.<sup>5</sup>

When a United States national is injured in his person or property by the government of another nation, the national (either an individual, partnership or corporation) files a sworn claim for espousal. Within this claim is alleged nationality of the claimant, ownership of the claim, damages, facts of the denial of justice, exhaustion of local remedies and negation of defenses asserted by the accused government.<sup>6</sup>

Espousal is conducted through diplomatic services. United States nationals turn first to the United States Department of State's Office of Legal Adviser. If espousal relief of some form is granted, the United States becomes the "claiming nation" and the other government the "accused nation." Representation is then conducted by the desk officer of the accused nation and the embassy in that country.

The United States national in these instances is an "alien" within the jurisdiction of the accused nation. The espousal claim theory is thus based upon the responsibility of the accused nation under international law for injury done to the alien, caused by the wrongful conduct of that nation.<sup>7</sup> In this context an "injury" refers to damage

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the jurisdiction of United States' courts. A similar type of *in rem* action may also be used in third nation's courts. In both instances, the nation whose courts are used may affect the recovery depending upon the applicability of either of two international law doctrines, "act of state" or "sovereign immunity." These are discussed at length in Cheatham & Maier, *Private International Law and Its Sources*, 22 VAND. L. REV. 83-94 (1978).

3. The term "national" includes both United States citizens and persons owing permanent allegiance to the United States. See 8 U.S.C.S. § 1408 (1981) for a definition of nationals who are not citizens.

4. 8 M. WHITEMAN, *DIGEST OF INTERNATIONAL LAW* 1269 (1967).

5. For an excellent discussion of limitations on the executive power in espousal matters, see Note, *The Nature and Extent of Executive Power to Espouse the International Claims of United States Nationals*, 7 VAND. J. TRANSNAT'L L. 95 (1973).

6. See R. LILICH & G. CHRISTENSON, *INTERNATIONAL CLAIMS: THEIR PREPARATION AND PRESENTATION* (1962). This is an excellent and practical approach to espousal claim preparation and recommended for consultation during the preparation process.

7. 8M. WHITEMAN, *supra* note 3, at 697.

for which a legal remedy is usually afforded under the law of states having "reasonably developed legal systems."<sup>8</sup> The conduct causing the injury to the alien must be wrongful under international law. The *Restatement (Second) of Foreign Relations Law of the United States* undertakes to define this as conduct which: "(a) [d]eparts from the international standard of justice, or (b) constitutes a violation of an international agreement."<sup>9</sup>

It should be noted that the international standard of justice may very well differ from local or municipal concepts of justice.<sup>10</sup> Formerly, the international standard was referred to as the standard of justice in "civilized states." This is now merely declared broadly and comprehensively. It encompasses instances where there is denial, unwarranted delay or obstruction of access to courts; gross deficiency in the administration of judicial or remedial process; failure to provide those guaranties which are generally considered indispensable to the proper administration of justice or a manifestly unjust judgment. Naturally, the nation against which a denial of justice in the international definition is alleged often rebuts by an allegation of intervention in the administration of the civil affairs of that nation. This defense is often based on an assertion that the alien was extended the same rights as local nationals.<sup>11</sup> This rebuttal may not necessarily destroy the eligibility of the claim for espousal, since conforming to the local standard may nevertheless be a denial of the international standard of justice.

A complete definition of the international standard is not within the scope of this article. It may, however, be compared to the constitutional standard of "due process of law." In this sense, it is concerned with rights and component procedures for repression of those rights. Both standards are legal concepts which expand with the times.<sup>12</sup> Neither can be defined with complete precision, because what is definable today may not be tomorrow.<sup>13</sup> The determination of this factor is generally left to the Office of Legal Adviser.

The petition or claim for espousal relief is required to be a complete and in-depth description of all the elements necessary to justify the

8. AMERICAN LAW INSTITUTE, *RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW OF THE UNITED STATES* § § 164, 165 (1965) [hereinafter cited as *RESTATEMENT (SECOND)*].

9. *Id.*, § 165, at 501; 8 M. WHITEMAN, *supra* note 3, at 697.

10. *RESTATEMENT (SECOND)*, *supra* note 7, at § 165, at 503-504.

11. Faculty of Harvard Law School, *Draft Convention on Extradition*, art. 9, 29 AM. J. INT'L L. 21, 23 (Supp. 1935).

12. The view that standards of justice applicable within the accused nation should suffice as international standards has recently been advocated by Dr. Garcia-Amador, Special Rapporteur of the International Law Commission of the United Nations. 8 M. WHITEMAN, *supra* note 3, at 701.

13. 8 M. WHITEMAN, *supra* note 3, at 701.

United States Government espousing the claim of one of its nationals. The petition consists not only of specific allegations, but also exhibits which in effect constitute the substantive evidence supporting the claim.<sup>14</sup> The petition should contain a substantial description of the evidence and express a readiness to have it displayed to the satisfaction of the State Department.

### SPECIFIC ELEMENTS OF ESPOUSAL

The lawyer representing the espousal claimant should analyze the elements of the case consistent with the preparation of a complaint to be filed in the local civil courts. There are six elements to be included in the espousal claim which are not ordinarily found in a local claim. These are:

- (1) nationality of the claimant,
- (2) ownership of the claim,
- (3) wrongful acts,
- (4) damages,
- (5) exhaustion of local remedies and
- (6) negation of anticipated defenses.

#### *Nationality*

Governments may espouse only claims of their own nationals. Ownership of that claim must be in the claimant on a continuous and uninterrupted basis or in a direct line of succession from inception to presentation.<sup>15</sup> Claims may be presented by various types of persons or organizations. For the individual, nationality is either by birth or naturalization. If nationality was acquired by birth and has continued without interruption to the present, there is usually no problem. However, if nationality has been acquired by naturalization, the State Department will look to dates of naturalization and assignments or inheritance to determine if the claim was owned by a United States national on the alleged date of the wrongful act. The State Department will then inquire as to whether the claim remained continuously in the hands of United States nationals until the time of filing of the claim.<sup>16</sup>

The State Department considers permanent residence in the United States or any declaration of an intention to become a United

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14. *The Department of State Suggestions For Preparing Claims* is updated frequently and the most current issue should be obtained from the Office of the Legal Adviser and followed in the preparation of the claim. Since the preparation differs as to type of injury, the request should state whether the claim is for personal injury or property damage.

15. 8 M. WHITEMAN, *supra* note 3, at 1236.

16. R. LILlich & G. CHRISTENSON, *supra* note 5, at 9 and 35.

States citizen insufficient to establish United States nationality which would entitle the person to espousal.<sup>17</sup> However, persons who are nationals of the United States, but who are not necessarily citizens, may be entitled to some diplomatic protection. In the discretion of the United States Department of State, the government may espouse an international claim on behalf of such persons as seamen under the United States flag, members of the military forces and residents of trust territories.<sup>18</sup>

In terms of partnerships, international law differs from the Uniform Partnership Act and generally treats such business units as legal entities, especially for espousal purposes.<sup>19</sup> In such instances, it is the nationality of the partners, however, which is at issue. The espousal claim will encompass only the proportionate interest of United States nationals in the partnership. It is, nevertheless, necessary that the partnership agreement or articles of association establish the status of the partnership at the time of the wrongful act and trace it to the date of presentation of the claim. The domestication of the principal place of business of the partnership in the United States, as well as the residences, ownership interest and nationality of each partner or other beneficiary must be indicated. Some partners may not be United States citizens, or a firm may do business in more than one jurisdiction. However, the extent to which the partnership itself needs to be domesticated has not been entirely clarified. The arbitrator in *P. W. Shufeldt (United States v. Guatemala)*, held that the personal interest of Shufeldt in the partnership was all that was in question and not the rights of the partnership itself, since Shufeldt was the sole claimant.<sup>20</sup> For this reason, the other aspects relating to partnership existence and nationality were immaterial.

The State Department is also faced with the nationality of the claimant issue with respect to corporations. Mere incorporation in the United States does not *per se* render the corporation an eligible claimant. The petition seeking espousal should carefully detail the organization, operational and financial history of the company and certify the outstanding capital stock or proprietary interest owned by United States nationals. In recent years, the Foreign Claims Settlement Commission has required at least fifty percent beneficial ownership to be in the hands of United States nationals. This specification applies from the time of the corporation's loss continuously to the filing of the claim.<sup>21</sup>

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17. *Id.* at 1959 Foreign Claims Settlement Commission [FCSC] REP. 34-35.

18. 1959 FCSC REP. 36.

19. 8 M. WHITEMAN, *supra* note 3, at 1283, 1284.

20. *Id.* at 1284.

21. R. LILICH & G. CHRISTENSON, *supra* note 5, at 38, 39.

Incorporation under United States law or organization elsewhere really has very little bearing on the entire question of nationality. The United States Government has officially announced that it has the right under international law principles to espouse a claim on behalf of United States nationals who own a substantial interest in a corporation or other business entity which has been organized under the laws of a foreign country.<sup>22</sup>

### *Ownership*

Normally, the proof of ownership in property claims follows the form used in domestic courts. Ownership with respect to espousal claims, however, is affected by two additional elements, *viz.*, nationality and the wrongful act. The petition and proof should carefully show ownership of the claim in a United States national at the time of the wrongful act and continuously to the time of the making of the claim. Furthermore, a claim for damages to property may be separated from the property itself and therefore the continuity of the claim ownership, as well as the property ownership, must be traced in the presentation of the claim.

Direct ownership does not present as many difficulties as indirect ownership of a claim. When one individual has owned a house, factory or other specific property both at the time of the wrongful act and at the time of making the claim, and has possessed United States nationality at both of those times and continuously throughout, the documentary proof of those facts suffices.

With indirect ownership, a very careful review of the nationality of the owner and the ownership of the claim and the original property which gave rise to the claim are essential. The burden of proof of ownership, as well as all the facts necessary to support the claim, is upon the claimant.<sup>23</sup> In a claim arising out of World War II against Czechoslovakia before the Foreign Claims Settlement Commission of the United States,<sup>24</sup> this ownership was very meticulously enumerated where an estate was the claimant. Here the values of the companies were reduced by the value of the "good will" of the

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22. 8 M. WHITEMAN, *supra* note 3, at 1272.

23. Claim of Julio Koppl, Decision No. CZ-133, 17 FCSC SEMIANN. REP. [JULY-DEC. 1962] at 189.

24. This was one of many claims against the Government of Czechoslovakia for compensation to United States nationals for measures taken against their property in Czechoslovakia. On April 5, 1945, the Czechoslovakian Government instituted a broad nationalization and confiscation program which resulted in the elimination of all private enterprise of any consequence in the Czechoslovakian economy. After several unsuccessful attempts to settle the claims through an intergovernmental lump sum agreement, the United States Secretary of the Treasury, on March 25, 1954, ordered the sale of certain property in the United States, which awaited delivery to Czecho-

businesses.<sup>25</sup> Substantial portions of the claim were also disallowed for the reason that only 34 percent of the beneficiaries under the will of the decedent were United States nationals as of the date of the taking of various properties.<sup>26</sup> The Commission noted that the nationality of the beneficiaries entitled to the claim, any part thereof, or to the proceeds derived therefrom is controlling, and not the nationality of an executor, administrator or trustee.<sup>27</sup> In another case, the facts ultimately showed that the claimant did not have an indirect interest in the partnership through stock in a corporation because the corporation was an unsecured creditor of the partnership and not the owner of a proprietary interest.<sup>28</sup>

### *Wrongful Act*

At the very basis of property claims is the allegation and proof of a wrongful act on the part of the accused nation which caused the damages, loss or destruction of the property in question. These claims usually allege: (a) confiscatory breach of contract by a foreign government and (b) nationalization or taking of property, or damage or destruction to the property, by intentional or negligent actions on the part of the accused government or its agent.

In the case of the wrongful act arising from a breach of contract, the claimant must allege and establish formation of the contract, the type of reciprocal promises within the contract and the manner in which the terms and provisions of the contract have been aborted or breached by the accused government. Contracts are not always contained in one document. Very frequently, those contracts with foreign governments start with the submission of bids in response to solicitations which have been announced by a foreign nation. Copies of the solicitations, the bids submitted and especially the specifications which demonstrate compliance with "calls for bid" are helpful. Modifications made in the course of the performance of the contracts by correspondence between the parties are not uncommon, thereby modifying or amending the contract. These should also be presented and proof of

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slovakia, to liquidate liens attached to the goods. By Public Law 85-604 (Title IV of the International Claims Settlement Act of 1949, *as amended*, 72 Stat. 527), the net proceeds of the sale were placed in a fund designated the Czechoslovakian Claims Fund. The Foreign Claims Settlement Commission of the United States was responsible for the adjudication of claims filed under this Act between September 15, 1960, the statutory commencement date, and September 15, 1962, the statutory termination date. 17 FCSC SEMIANN. REP. [JULY - DEC. 1962] at 140-143.

25. Claim of National Bank of Westchester, White Plains, Estate of Meta Blum, Decision No. CZ-3312, 17 FCSC SEMIANN. REP. [JULY - DEC. 1962] at 251, 253.

26. *Id.* at 254.

27. *Id.*

28. Claim of Marietta J. Poras, Decision No. CZ-3528, 17 FCSC SEMIANN. REP. [JULY - DEC. 1962] at 256.

compliance supplied. Usually, a contract breach consists in the claimant remaining unpaid for goods delivered or services performed in accordance with an agreement with the accused nation.

Normal breach of contract cases for which a local remedy is provided by the accused nation will not form the basis of espousal. It is only when the breach of contract is confiscatory or discriminatory that a violation of international law has resulted. This breach has been described as the point where the accused nation stepped out of its role as a contracting party and sought to escape contractual obligations by use of its superior governmental power.<sup>29</sup> To justify espousal, the State Department must be clearly convinced that the claim is valid, fair and owing, and that it results from confiscatory action.

When the wrongful act to be proven consists of nationalization or expropriation, condemnation or other taking of the property by act of the accused government, the claiming nation will first determine whether it was truly a confiscatory act before undertaking espousal. However, the taking need not have been wholly without compensation. Additionally, most governments in the world recognize the right of a sovereign state to expropriate property for public purposes. That recognition is conditioned, however, on a corresponding obligation to make adequate, effective and prompt compensation.<sup>30</sup>

Even when the taking is direct, the act must be unequivocally imputable to the accused nation. There are several instances where justification and defense may be asserted by the accused nation, thereby defeating the espousal claim, but these will be discussed within the topic "negation of anticipated defenses."

Sometimes the taking is not direct, but comes about from an unreasonable interference with the use, enjoyment or disposition of property. If the indirect taking is not complete, but merely deprives the claimant of something less than the entire legal interest in the property, compensation is measured by the value of that which had been taken and not by the total value of the property. There must, nevertheless, be a "taking" and not a mere diminution of value arising from a currency reform law or other exercise of a valid internal right of national sovereignty.<sup>31</sup> Conversely, the right to payment of sums deposited in a bank account is deemed to be property and a confiscation of the bank account by the government constitutes a "taking."<sup>32</sup>

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29. 8 M. WHITEMAN, *supra* note 3, at 909.

30. *Id.* at 1020.

31. See Claim of Wyman, *et seq.*, Decision Nos. CZ-2771-2774, 17 FCSC SEMINANN. REP. [JULY-DEC. 1962] at 277, for a discussion of similar diminution of value issues.

32. Claim of John Stipkala, Decision CZ-135, 17 FCSC SEMINANN. REP. [JULY-DEC. 1962] at 191.

### *Damages*

When applying for espousal, reasonable proof of the value of the property that has been lost or the damages sustained by virtue of the wrongful act should be submitted with the claim. The law and proof of damages does not differ greatly between domestic law and that utilized in international law. In international situations the term "full value" is used but it has the same meaning as "fair market value." If the fair market value is not ascertainable, then fair value as reasonably determined in the light of the international standard of justice and based upon practicality is used.<sup>33</sup>

The value of property or injury is determined as of the time of the taking, unaffected by the taking or other acts of the accused nation having the effect of depressing the value of the property. If the property is merely damaged and not taken or destroyed, then the difference in the value of the property before and after the damage occurred is the basis for determining the recovery.

One problem often exists in proving the value of property in a foreign market in that many times the market is not readily definable. In this situation, evaluations by brokers, appraisers and even bona fide offers are useable if available. Another complication often arises from the need to establish the value at the time of loss. The passage of time may well have restricted the availability of some evaluation methods. Friends, neighbors or acquaintances of the claimant may provide helpful leads and even affidavits in some instances.

In the case of businesses and companies, great use can be made of the financial statements of the firm. In most civil law countries these are filed annually in the commercial register. In the case of corporate stock, the time of taking in a confiscation case may substantially affect the value. In communist countries, the formal decree of nationalization is often preceded by restrictive acts of the government which diminish the value so extensively that the taking may be said to have preceded the formal decree.<sup>34</sup>

In establishing the value of property, one must consider variations in the relative values of currencies of the claiming and the accused nation at the time of the loss. These factors are important not only in establishing the amount of damages as expressed in current exchange rates, but also in determining whether "just compensation" has been made or tendered by the accused nation. Comparable currency values

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33. RESTATEMENT (SECOND), *supra* note 7, § 188 comment b; *United States v. Miller*, 317 U.S. 369, 374-75, 63 S. Ct. 276, 87 L. Ed. 336, 342-44 (1943).

34. *Claim of Irene Fedorchak*, Decision No. CZ-1154, 17 FCSC SEMIANN. REP. [JULY - DEC. 1962] at 249.

should also be considered in expressing deductions to be made in the evaluation process. Many times currency adjustments have been made internally by the legal structure of the accused nations. A mortgage, judgment lien or other encumbrance often needs to be expressed in a deduction from present day value based upon present day evaluation and payment requirements altered by intervening currency reforms which are applicable to those encumbrances. One should note that interest is generally allowable in computing the total value of damages sustained. Even though the costs of preparing the claim itself are not permissible, the cost of exhausting the local remedies is also an allowable item.<sup>35</sup>

### *Exhaustion of Local Remedies*

Since the very basis of responsibility on the part of the accused nation is its "denial of justice," it is both a long-standing principle and practice of the United States Government to decline to intervene in cases where local remedies are available and have not been exhausted. Often in espousal cases the accused nation has asserted the defense of sovereign immunity. This fact should be shown. Additionally, the local legal structure may not provide for the commencement of any action in the local courts against the sovereign government. In such a claim, brought by Estonia against the Lithuanian Government, it was held that there is no need to utilize municipal courts if those tribunals have no jurisdiction to afford relief, nor is it necessary to resort to those courts if the result would be a repetition of a decision already given.<sup>36</sup>

The United States Department of State generally takes a practical approach and does not require court action if the claimant can show that it would be a futile exercise. The burden of establishing this futility, however, is upon the claimant. Usually, the State Department officers reviewing an espousal petition are well aware of the practical aspects in the country at issue.<sup>37</sup> If the allegation of futility is made by the claimant, the Department of State has held that "[a]ny allegation of misconduct on the part of the judicial authorities should, of course, be supported by convincing documentary evidence."<sup>38</sup>

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35. R. LILLICH & G. CHRISTENSON, *supra* note 5, at 85.

36. 8 M. WHITEMAN, *supra* note 3, at 773.

37. *Id.* at 775.

38. *Id.* at 772, *as quoting*, Secretary of State Dulles to the American Embassy, Beirut, instruction No. A-111, Jan. 25, 1957 M.S. Department of State, file 283A, 113 Bistany, Khalil A./1-257.

*Negation of Anticipated Defenses*

If prior negotiations with the accused nation have brought forth defenses which could reasonably be anticipated within the espousal claim, these should be presented to the State Department in the petition. Often such a defense takes the form of an assertion that the standard of justice applied to the claimant did not differ from local or municipal concepts of justice. It has already been pointed out that this is not acceptable.<sup>39</sup> The remaining defenses usually fall into one of two categories: (1) responsibility is not attributable to the government or (2) there is a justification in defense of the government's acts.

The first category of defenses ascribes the responsibility for the wrongful act to sources other than the government. This is sometimes true even though the wrongful act was that of governmental officers. The determination of responsibility then revolves around the nature of the office held, the scope of the duties of that officer and the authorization accorded to the officer. Essentially, a *respondeat superior* test is applied.

In the case of private individuals causing injury or damage to property, the accused nation is not responsible unless there has been a failure to exercise due diligence to protect the life and property of foreigners.<sup>40</sup> The nation is not responsible for losses suffered by aliens resulting from acts of mobs out of control, riots and other internal disturbances, if the nation has employed all reasonable means at its disposal to prevent these unlawful acts and has taken proper steps to apprehend and punish the wrongdoers. Where the claimant can show a lack of the employment of reasonable means, protection, punishment and apprehension, then responsibility will be attributed to the accused nation.

By the same token, the accused nation may well assert a justification in defense of the claim based upon acts which were reasonably necessary to maintain public order, safety or health or in the course of the enforcement of any law of the nation, as long as it did not depart from the international standard. This justification also includes the nation's right to control its own currency, acts in the conservation of life or property in instances of disaster, insurrection or some other emergency.<sup>41</sup>

When determining whether or not to espouse, the State Department will consider in all instances the present state of the United

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39. See *supra* note 10 and accompanying text.

40. 8 M. WHITEMAN, *supra* note 3, at 817.

41. *Id.* at 840-41.

States' relations with the accused nation. This may result in the rejection of espousal without reference to the merits or may affect the way the claim is presented or settled.

By espousing an international claim on behalf of one of its nationals, the claiming nation has in effect received an assignment of the claim from its national. The claiming nation is placing a stamp of good faith on the claim. The accused nation is aware that the claiming nation has reviewed the claim carefully and has convinced itself of the soundness of the claim both as to merit and lack of exaggeration. To press unsound or exaggerated claims would unquestionably jeopardize the claims of future claimants and the claiming nation's reputation for good faith. The resolution of the claim is approached by both nations out of a desire to continue their good international relations, and this mutual good faith often resolves previously disputed cases. The claiming nation, through ownership of the claim, is able to determine how the claim will be presented, what amount will be sought and whether any settlement, compromise or release will be accepted. Theoretically, the claiming nation has the power to ignore the individual claimant, but, in practice in the United States, continued consultation goes on and the individual claimant ultimately receives whatever settlement, compromise or payment results from the espousal negotiations with the accused nation.

This discussion of the essential elements for presenting a claim for espousal should not be considered as comprehensive in any respect. It is intended to alert the claimant to the various elements to be considered in preparing his claim, both as to allegations and the assembly of evidence. The materials cited will be of great help in pursuing in-depth research where questionable areas arise in any individual claim. Finally, within the State Department, the Office of Legal Adviser and the desk officers of the various nations are very helpful to lawyers in the preparation of these claims.

