

A critical question is that of the nationality of claimants. In pressing these claims Canada has observed the generally accepted principles of international law with respect to nationality of claimants.⁹ A condition precedent to espousal of a claim by the Government of Canada is that the claimant must at the time that the claims arose have been a Canadian national, and that he must have remained so continuously up to the time of award. (To say that the Government of Canada has recognized the generally accepted rules as to nationality is not also to say that it is satisfied with them. Great injustice may be done someone who through inadvertence or accident of time does not fit within the rule. At the root of the Government's dissatisfaction is a fundamental dissent from the Marxist doctrine that it is fair or just to deprive any person of his property without fair and reasonable compensation. But while the Government of Canada remains most sympathetic to the plight of Canadian citizens deprived of property in their lands of origin, the generally accepted rules of international law have become too well established in this area to avoid. Canada has had to make a realistic appraisal that the best interests of a majority of claimants would be served by accepting the more limited class of claimant as defined by international law.)

Even then our difficulties with respect to the nationality of claimants are not over. The Hungarian authorities, basing their position on their nationality laws which declare to be Hungarian even native-born Canadians of Hungarian descent, have denied a substantial number of our Canadian claims on the basis that the claimants are dual nationals. To this the Canadian representatives have replied by asserting the doctrine of dominant or effective nationality, based on the following dictum of the International Court of Justice in the *Nottebohm* case:

International arbitrators have decided in the same way numerous cases of dual nationality, where the question arose with regard to the exercise of protection. They have given their preference to the *real and effective* nationality, that which accorded with the facts, that based on stronger factual ties between the person concerned and one of the States whose nationality is involved....¹⁰

As a measure of the determined nature of the opposition to our claims it may be observed that this argument on the basis of dual nationality was not operative against any of the half-dozen other Western nations with whom Hungary has already concluded settlements.

⁹L.F.L. Oppenheim, *International Law* (8th ed., 1955), Vol. I, p. 347; Marjorie M. Whiteman, *Damages in International Law* (1937), Vol. I, p. 96; Green Haywood Hackworth, *Digest of International Law* (1943), Vol. I, p. 803; Jean-Gabriel Castel, *International Law* (1965), p. 1023.

¹⁰*I.C.J. Reports 1955*, p. 22.