

CASE ANALYSIS ON CHARZOW FACTORY CASE (GERMANY v. POLAND)

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INTRODUCTION

The Chorzow Factory case is a first of its kind dispute that arose between Germany and Poland before the erstwhile Permanent Court of International Justice that involved the issue of paying reparation by Poland to Germany for having breached an agreement entered between them. After the first world war, a bipartite agreement was entered wherein the control of Upper Silesia area was transferred by Germany to Poland on the condition that Poland would not forfeit any property of Germany. However, Poland in breach of the agreement sold two German factories located in that area.

FACTS

On March 5th, 1915, a contract was concluded between the Chancellor of the German Empire, on behalf of the Reich, and the Bayerische Stickstoffwerke A.-G. of Trostberg, Upper Bavaria, by which contract this Company undertook "to establish for the Reich and to begin forthwith the construction of", amongst other things, a nitrate factory at Chorzow in Upper Silesia. The necessary lands were to be acquired on behalf of the Reich and entered in its name in the land register. The machinery and equipment were to be in accordance with the patents and licences of the Company and the experience gained by it, and the Company undertook to manage the factory until March 31st, 1941, making use of all patents, licences, experience gained, innovations and improvements, as also of all supply and delivery contracts of which it had the benefit.

In pursuance of the same it was decided that another company would be created which was to a certain extent be subject to the supervision of the Reich which would have the right to the surplus profit that arose each financial year. The Reich had the power to terminate the contract for the management of the factory by Bayerische Stickstoffwerke A.-G by serving a fifteen months' notice if it the Reich's surplus did not reach a fix level.

Accordingly, on 24th December 1919, a series of legal instruments were signed and legalized at Berlin with a view to the formation of a new Company, the Oberschlesische Stickstoffwerke A.-G., and the sale by the Reich to that Company of the factory at Chorzow. The sale included the whole of the land, buildings and installations belonging thereto, with all accessories, reserves, raw material, equipment and stocks. The management and working were to remain in the hands of the Bayerische Stickstoffwerke Company, which, for this purpose, was to utilize its patents, licences, experience gained and contracts. These relations between the two Companies were confirmed by means of letters dated December 24th and 28th, 1919, exchanged between them. The Oberschlesische Stickstoffwerke Company was duly entered on 29th January 1920, at the Amtsgericht of Konigshütte, in the Chorzow land register, as owner of the landed property constituting the nitrate factory of Chorzow.

On 1st July 1922, by way of a decision way passed to the effect that the registration in question was null and void and was to be cancelled, the pre-existing position being restored, and that the property rights of the lands in question were to be registered in the name of the Polish Treasury. This decision, which cited Article 256 of the Treaty of Versailles and the Polish law and decree of July 14th, 1920, and June 16th, 1922, was put into effect the same day.

On July 3rd, 1922, Poland took possession of the factory and took over the management in accordance with the terms of the decree. The German Government contends and the Polish Government admits that the said delegate, in undertaking the control of the working of the factory, at the same time took possession of the movable property, patents, licences, etc.

In response, the German company, Oberschlesische Stickstoffwerke filed a suit before the Germano-Polis Arbitral Tribunal where it demanded that the claim be allowed and Polish Government be ordered to restore the factory and make any other reparation that the Court deems fit to fix and pay the costs of the action. In reply, the Polish Government asked the Court to declare that it had no jurisdiction to try the case. While the matter was pending before the Tribunal, Germany approached the PCIJ.

ISSUES

1. Whether the PCIJ had the jurisdiction to try the matter?
2. Whether or not there was any violation of the agreement between Germany and Poland?
3. Whether there was any international obligation on Poland due to breach of bipartite agreement between Germany and Poland?

LAWS APPLICABLE

1. Articles 2 and 5 of the Polish Law of 14th July 1920.
2. Articles 92 and 297 of the Peace Treaty of Versailles.
3. Articles 6 to 22 of the German-Polish Convention concluded at Geneva on 15th May, 1922.

DECISION

The PCIJ held that contrary to the claim made by Poland, the PCIJ's jurisdiction under Article 23 of the Geneva Convention was not affected by the fact that the rights claimed were the rights claimed were based on other provisions of other treaties as well as Article 6 to 22 of the Geneva Convention. It further went on to hold that the suits pending before the German-Polish Arbitral Tribunal did not prevent the Court from exercising jurisdiction under Article 23 and the case was decided on merits. Poland was also held to be in violation of the agreement entered with Germany and made liable to repair any loss suffered by Germany due to the forfeiture of the two companies as they violated the obligation that Poland had towards Germany in observance of International law.

PRINCIPLE OF LAW

It is a general conception of international law that every violation of an engagement between two independent states ensue an obligation to make reparation. The principle that there is an internationally wrongful act of a state when conduct consisting of an action or omission is attributable to the state under international law and constitutes a breach of an international obligation of the state has been affirmed in this case.¹ It is international law that determines what constitutes an internationally unlawful act, irrespective of any provisions of international law, irrespective of any provisions of municipal law.² The Court also looked into the concept of State Property and observed that in cases of succession, the relevant municipal law to be applicable would be that of the predecessor state. It is that law that will define the nature of the property in question and thus decide its destination in the event of a succession.³ Article 8 of the Vienna Convention reiterates what have been observed by the PCIJ that State Property means 'property,

¹ See Charzow Factory Case, PCIJ, Series A, No. 9, p.21

² Shaw, Malcolm. *International Law*, 7th Edition Cambridge: Cambridge University Press, 2014, 569.

³ See Charzow Factory Case, PCIJ, Series A, No. 7, p. 30.

rights and interests which at the date of succession of State's were, according to the internal law of the predecessor state owned by that state and can be taken as reflective of international law. Further, observing violation of Articles 6-22 of the Geneva Convention, the Court stated that "*it is a principle of international law that the reparation of a wrong may consist in an indemnity corresponding to the damage which the nationals of the injured State have suffered as a result of the act which is contrary to international law.*"⁴

ANALYSIS

The Charzow Factory case has strengthened the interpretation about the jurisdiction of international law. The case encourages the need for greater consistency between municipal law and international law, but most importantly this case prompted the international jurists to ponder upon the concept of state responsibility and its varied implications. This case finds its reflection in future legislations such as Draft Articles on Responsibility of States for Internationally Wrongful Acts by International Law Commission and Article 60 of Vienna Convention 1969 as well as the Rule 150 of Geneva Convention, 1949.

The PCIJ went on to make the following observation regarding State Responsibility:

*"The essential principle contained in the actual notion of an illegal act is that reparation, must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed."*⁵

This observation has been recently adopted by International Law Commission in its 53rd Session in 2001 and had become jurisprudential foundation for cases like the *Genocide Convention case*⁶, *Phosphates in Morocco case*⁷, *Corfu Channel case*⁸ etc. this case also lays foundation of the concept of State Succession and State Property.

⁴ See Charzow Factory Case, P.C.I.J., Series A, No. 17, pp 27-8

⁵ *Id.* at pp 47-8.

⁶ See Genocide Convention case, 2007, I.C.J. 191.

⁷ See Phosphates in Morocco Judgment, 1938, P.C.I.J., Series A/B, No. 74.

⁸ See Corfu Channel, Merits, Judgment, I.C.J. Reports 1949.