# Selected Readings of International Investment Arbitration Cases

# 国际投资仲裁案例选读

涉外法律人才培养系列教材

裁决原文 * 中英对照

焦洪宝 编著

南開大學出版社

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# 目　　录（Content）

# 编者的话

本书选取了国际投资仲裁领域16个重要案例，摘编了这些外国投资者与东道国政府间争端案件的仲裁裁决书，按照案例研读的体例进行中英文对照，汇编成本教材，供法学本科生和研究生开设国际投资法、国际投资案例仲裁等课程使用，也可供从事涉外法律业务的法律工作者研习使用。

该教材选读的案例，大部分是从投资争端解决国际中心（ICSID）的数百件案例中选取，还有一部分是由国际常设仲裁院、北美自由贸易区仲裁委会员、斯德哥尔摩商会仲裁院、联合国国际贸易法委员会仲裁庭审理的相关国际投资仲裁案例。案例争议的焦点问题不仅涉及最惠国待遇、最低标准待遇、公平公正待遇、国民待遇、征收补偿标准等国际投资领域的实体待遇问题，也涉及仲裁管辖、保护伞条款、岔路口条款、裁决撤销、仲裁反请求、裁决执行等国际投资仲裁的程序性法律问题，还尤其注意特别引入了与中国有关的一些案件。

由于这些案例较为典型，被国际投资法学习和研究者、投资领域实务专家所普遍重视和关注，其中大部分也曾被国际经济法或国际投资法的教材、著作甚至新闻媒体提及、援引或专门评析过。案例按照裁决作出的时间排序，有部分早期案例在国际投资法的经典教材中有过分析，读者可进一步结合本教材给出的材料做深入研读；有的案例因争议较大而受到国际投资仲裁法律实务界持续关注，乃至目前仍不断有新的进展，在本教材汇编过程中也注意收集同一案件在不同审理机构所获得的不同进展，从而有助于实务领域人士从整体上厘清案例的来龙去脉。通过此次对裁决原文的中英文对照选读，读者可更为直观、全面、准确地掌握案例相关的国际投资仲裁法律制度及其在实践中的发展，还可帮助提高法律英语水平，奠定从事涉外法律工作的基础。

作为涉外法律人才培养系列教材中的一册，希望本教材能够成为卓越涉外法律人才培养适用的特色专业训练教材，并在使用过程中获得广大师生、读者的批评与指正，以便编者予以修正和完善。

编　者

2020年12月

# 案例一　挪威诉美国案

# Norway v. United States of America（1922）（Permanent Court of Arbitration）

## 选读理由（Selected Reason）

1922 年挪威诉美国的“挪威船主求偿仲裁案”是国际判例上关于间接征收的第一个案例，内容涉及的是美国接收挪威船主们的船只的问题。第一次世界大战前，美国设立了一个公司，接收境内的各种船舶以及船舶的材料、机器和设备。由于美国这一措施也适用于美国私人公司基于契约为挪威船主们建造的船只，涉及接收了外国人的财产，由此引发起挪威王国要求美国政府赔偿，并通过海牙常设仲裁法院设立了临时仲裁庭进行仲裁。本案对理解间接征收的法律概念具有重要的指导意义。

## 仲裁申请情况（The Request for Arbitration）

Whereas the United States and the Kingdom of Norway are Parties to the Convention for the Pacific Settlement of International Disputes signed at the Hague, on October 18, 1907, which replaced by virtue of Article 91 there of as between the contracting powers the original Hague Convention of July 29, 1899;

Whereas the United States and Norway signed on April 4, 1908, a general Arbitration Convention in which it was agreed.

Desiring to settle amicably certain claims of Norwegian subjects against the United States arising, according to contentions of the Government of Norway, out of certain requisitions by the United States Shipping Board Emergency Fleet Corporation;

Considering that these claims have been presented to the United States Shipping Board E-

mergency Fleet Corporation and that the said Corporation and the claimants have failed to reach an agreement for the settlement thereof;

Considering, therefore, that the claims should be submitted to arbitration conformable to the Convention of the 18th of October, 1907, for the pacific settlement of international disputes and the Arbitration Convention concluded by the two Governments April 4, 1908, and renewed by agreements dated June 16, 1913 and March 30, 1918 respectively;

鉴于美国和挪威王国是1907年10月18日在海牙签署的《和平解决国际争端公约》的缔约国，该公约根据其第91条取代了1899年7月29日原海牙公约；

鉴于美国和挪威于1908年4月4日达成一致意见签署了一项一般仲裁协定。

希望按照挪威王国的友好解决针对美国的索赔，这些索赔是由挪威国民对美国航运委员会应急船队公司提出的请求而引发的。

考虑到这些索赔已提交给美国航运委员会应急船队公司，并且上述公司和索赔人未能就解决这些索赔达成协议；

因此，考虑到这些索赔应按照1907年10月18日《和平国际争端解决公约》和1908年4月4日两国政府缔结并分别于1913年6月16日和1918年3月30日通过协议续签的仲裁协定提交仲裁；

It is common ground between the Parties to this arbitration that the fifteen claims against the United States are presented by the Government of the Kingdom of Norway, which Government, and not the individual claimants, "is the sole claimant before this Tribunal". The claims arise out of certain actions of the United States of America in relation to ships which were building in the United States for Norwegian subjects at a time, during the recent Great War, when the demand for ships was enormous, owing to the needs of the armies and to the losses of mercantile ships.

本仲裁的当事人之间有一个共同点，即对美国的15项索赔是由挪威王国政府提出的，挪威政府而非个别索赔人"是本法庭的唯一索赔人"。这些索赔是由美国的与船舶有关的诉讼引起的。这些船是在美国为挪威国民在最近的一次大战期间所建造的，由于军队的需要和商船的损失，在当时对船舶的需求量巨大。

For some time before the United States declared war, the shortage of shipping was serious both in European countries and in the United States. In these circumstances, Norwegian subjects, amongst others, directed their attention to the possibilities of shipbuilding in the United States. From July 1915 onwards, various contracts were placed by Norwegian subjects with shipyards in the United States. Meanwhile, from the Summer of 1916 onwards, the United States Government took a series of steps for the protection of its interests and these steps made possible the later "mobilisation for war purposes of the commercial and industrial resources of

the United States”.

在美国宣布参加第一次世界大战之前的一段时间里，欧洲国家和美国的航运严重短缺。在这种情况下，挪威王国的国民和其他国家的人把注意力集中在美国造船的可能性上。从1915年7月开始，挪威国民与美国造船厂签订了各种各样的合同。与此同时，从1916年夏天开始，美国政府采取了一系列保护其利益的措施，这些措施使得后来的“为战争目的调动美国的商业和工业资源”成为可能。

The United States declared war against Germany on April 6th, 1917. Already by the United States Shipping Act of September 1916 the United States Shipping Board had been established “for the purpose of encouraging, developing and creating a naval auxiliary and naval reserve and a merchant marine to meet the requirements of the commerce of the United States with its territories and possessions and with foreign countries”.

美国于1917年4月6日对德国宣战。而在此之前根据1916年9月的《美国航运法》，美国航运委员会成立，“以鼓励、发展和建立海军辅助船、海军预备役以及商业船队，满足美国领土和属地与外国之间的商要需求为目标”。

On the day of the declaration of war by the United States (April 6th 1917) the Shipping Board exercised this authority and formed the United States Shipping Board Emergency Fleet Corporation to carry out, in general, the purposes set forth in section 11 of the Act. All the stock of this corporation was owned by the United States. Though its certificate of Incorporation of April 16th 1917, provided “that the existence of this corporation shall be perpetual,” it had been laid down in section 11 of the Act that “at the expiration of five years from the conclusion of the present European War the operation of vessels on the part of any such corporation in which the United States is then a stockholder shall cease and the said corporation stand dissolved... The vessels and other property of any such corporation shall revert to the board”.

在美国宣战的当天（1917年4月6日），航运委员会行使了这一权力，成立了美国航运委员会应急船队公司，以实现美国航运法第11条所述的目标。这家公司的所有股份都归美国政府所有。虽然它在1917年4月16日的公司注册证中规定“公司永久存续”，但在航运法第11条中已经规定了“在当前欧洲战争结束后五年内，在美国仍作为该公司股东的情况下该公司的任何船舶均将停止营运，该公司将解散……该等公司的船舶及其他财产应归还航运委员会”。

For some time before the declaration of war the question of requisitioning ships by the United States had been considered and the fact that early in 1917 a large proportion of the shipyards in the United States was engaged with contracts for foreign shipowners led to various proposals and negotiations into which it is unnecessary to enter here. On the 4th of March 1917 (after the severance of diplomatic relations between the United States and Germany on

February 3rd 1917), a Naval Emergency Fund Act was passed. This Act authorized and empowered the President, "in addition to all other existing provisions of law" within the limits of the appropriation available, "to place an order with any person for such ships or war material as the necessities of the Government, to be determined by the President, may require and which are of the nature, kind, and quantity usually produced or capable of being produced by such person." Such orders were given precedence over all other orders and compliance was made obligatory. In the case of noncompliance, the President was authorized to "take immediate possession of any factory or of any part thereof." The President was furthermore empowered, under the same penalty, "to modify or cancel any existing contract for the building, production, or purchase of ships or war material", to place an order for the whole or any part of the output of a factory in which ships or war material were being built or produced, and to "requisition and take over for use or operation by the Government any factory or any part thereof." In all cases where these powers were exercised, provision wasmade for "just compensation" to be determined by the President, with the customary provision for an appeal to the courts. Then on June 15th 1917, two months after the declaration of War, further important powers were given to the President by the Emergency Shipping Fund Provision of the Urgent Deficiencies Act.

在宣战前的一段时间里，美国一直在考虑征用船只的问题，这一事实1917年初美国的大部分船厂与外国船主签订合同时所进行的各种各样的要约建议和谈判都成为不必要的。1917年3月4日（在美国与德国断绝外交关系的1917年2月3日之后），《海军紧急资助法》通过。该法案授权总统"除所有其他现有法律规定外"在现有拨款范围内可以"根据总统所确定的政府的需求，向任何人发出订单，要求其提供通常生产或能够生产的相应性能、类型和数量的船只或其他战争物资""此类订单优先于所有其他订单，必须遵守"。在不服从的情况下，总统被授权"立即拥有接管任何工厂或其任何部分"。在这一处罚措施中，总统还被授权"修改或取消任何现有的建造、生产或购买船舶或战争物资的合同"，订购建造或生产船舶或战争物资的工厂所生产的全部或部分产品，以及"由政府征用和接管任何工厂或其任何部分以供使用或运营"的规定。在行使这些权力的所有情况下，都规定了总统可决定给予"公平补偿"，还一般性地规定了可向法院起诉的条款。1917年6月15日，即宣战两个月后，《紧急匮乏法》的紧急航运资助条款赋予总统更多的重要权力。

The details of the claims, both as originally presented in the Case of the Kingdom of Norway and as finally presented in the course of the oral argument, are as follows:

挪威王国最初在案件中提出的和在口头辩论过程中最终提出的索赔详情如下：

| Number of claim. | Name of Claimant. | Amounts originally claimed. $ | Amounts including interest. $ | Amounts finally claimed. (Without addinginterest claimed.) $ |
|---|---|---|---|---|
| 1 | The Manitowoc Shipping Corporation | 731,500.00 | 1,028,220.24 | 766,500.00 |
| 2 | The Manitowoc Shipping Corporation | 731,500.00 | 1,028,220.24 | 766,500.00 |
| 3 | The Baltimore Steamship Company | 1,507,860.28 | 2,120,679.93 | 1,542,187.50 |
| 4 | The Vard Ⅱ Steamship Company | 1,944,877.26 | 2,731,749.47 | 1,957,200.00 |
| 5 | The Sörlandske Lloyd Company | 1,617,000.00 | 2,273,753.21 | 1,837,000.00 |
| 6 | The Östlandet Steamship Company | 2,390,960.00 | 3,363,311.07 | 2,478,960.00 |
| 7 | Jacob Prebensen Jr | 148,987.50 | 209,850.03 | 396,937.50 |
| 8 | The Tromp Steamship Company | 257,737.50 | 361,745.30 | 396,937.50 |
| 9 | The Maritim Corporation | 278,400.00 | 392,492.40 | 417,600.00 |
| 10 | The Haug Steamship Company | 413,460.94 | 580,093.48 | 417,600.00 |
| 11 | The Mercator Corporation | 434,123.44 | 609,083.36 | 438,262.50 |
| 12 | The Sörlandske Lloyd Corporation | 196,875.00 | 277,871.43 | 451,875.00 |
| 13 | H. Kjerschow | 447,250.00 | 627,500.16 | 415,875.00 |
| 14 | Harry Borthen | 146,875.00 | 207,300.90 | 451,875.00 |
| 15 | E. & N. Chr. Evensen, Incorporated | 421,875.00 | 591,788.29 | 451,875.00 |
| | Totals | 11,669,281.92 | 16,403,659.51 | 13,223,185.00 |

The claim made by the United States in reference to Page Brothers amounted to $22,800. The validity of this claim was totally denied by the Kingdom of Norway.

美国就佩奇兄弟公司提出的索赔金额为22800美元。挪威王国完全不认可这一主张。

## 仲裁结果（Award）

**For these reasons the Tribunal of Arbitration decides and awards that:**

I. The United States of America shall pay to the Kingdom of Norway the following sums:

In claim No. 1 by the Skibsaktieselskapet "Manitowoc" the sum of $845,000.

In claim No. 2 by the Skibsaktieselskapet "Manitowoc" the sum of $845,000.

In claim No. 3 by the Dampskibsaktieselskapet "Baltimore" the sum of $1,625,000.

In claim No. 4 by the Dampskibsaktieselskapet "Vard Ⅱ" the sum of $2,065,000.

Out of this amount of $2,065,000 the United States are entitled to retain a sum of $22,800 in order that this sum be paid to Page Brothers;

In claim No. 5 by the Aktieselskapet Stirlandske Lloyd the sum of $2,045,000.

In claim No. 6 by the Dampskibsaktieselskapet Östlandet the sum of $2,890,000.

In claim No. 7 by Jacob Prebensen jun. the sum of $160,000.

In claim No. 8 by the Dampskibsaktieselskapet "Tromp" the sum of $160,000.

In claim No. 9 by the Aktieselskapet "Maritim" the sum of $175,000.

In claim No. 10 by the Aktieselskapet "Haug" the sum of $175,000.

In claim No. 11 by the Aktieselskapet "Mercator" the sum of $190,000.

In claim No. 12 by the Aktieselskapet Sörlandske Lloyd the sum of $205,000.

In claim No. 13 by H. Kjerschow the sum of $205,000.

In claim No. 14 by Harry Borthen the sum of $205,000.

In claim No. 15 by E. & N. Evensen the sum of $205,000.

II. The claim made by the United States of America on behalf of Page Brothers is disallowed as against the Kingdom of Norway, but a sum of $22,800 may be retained by the United States as stated under claim No. 4 above.

Done at The Hague, in the Permanent Court of Arbitration, October 13th, 1922.

The President: James Vallotton

The Secretary-General: Michiels Van Verduynen

**基于这些原因仲裁庭决定并裁决如下:**

一、美国应向挪威王国支付下列款项:

1. 第1号索赔案件赔偿 Skibsaktieselskapet "Manitowoc" 金额为84.5万美元。

2. 第2号索赔案件赔偿 Skibsaktieselskapet "Manitowoc" 金额为84.5万美元。

3. 第3号索赔案件赔偿 Dampskibsaktieselskapet "Baltimore" 金额为162.5万美元。

4. 第4号索赔案件赔偿 Dampskibsaktieselskapet "Vard Ⅱ" 金额为206.5万美元。

在这206.5万美元中,美国有权保留一笔2.28万美元的款项,以便支付给佩奇兄弟。

5. 第5号索赔案件赔偿 Aktieselskapet Stirlandske Lloyd 金额为204.5万美元。

6. 第6号索赔案件赔偿 Dampskibsaktieselskapet Ostlandet 金额为289万美元。

7. 第7号索赔案件赔偿 Jacob Prebensen jun 总额16万美元。

8. 第8号索赔案件赔偿 Dampskibsaktieselskapet "Tromp" 金额为16万美元。

9. 第9号索赔案件赔偿 Maritim 股份公司的金额为17.5万美元。

10. 第10号索赔案件赔偿 Haug 股份公司的金额为17.5万美元。

11. 第 11 号索赔案件赔偿 Mercator 股份公司的金额为 19 万美元。

12. 第 12 号索赔案件赔偿 Sörlandske Lloyd 股份公司的金额为 20.5 万美元。

13. 第 13 号索赔案件赔偿由 H. Kjerschow 的金额为 20.5 万美元。

14. 第 14 号索赔案件赔偿在 Harry Borthen 的金额为 20.5 万美元。

15. 第 15 号索赔案件赔偿 E. & N. Evensen 金额为 20.5 万美元。

二、美国为佩奇兄弟公司向挪威主张的索赔被驳回，但是上述第 4 项赔偿内容中的 2.28 万美元款项可由美国保留。

1922 年 10 月 13 日，常设仲裁法院，裁决于海牙

总统：詹姆斯·瓦洛顿

秘书长：米歇尔斯·范·维尔杜伦

## 裁决原因（Reasons for the Award）

**Was the Claimants' Property taken**?

The Fleet Corporation sent a general order of requisition by telegram to almost all the shipyards of the United States on August 3rd and 4th, 1917, but it did not send any detailed order of requisition, giving the particular ships or contracts to which the requisition was intended to apply. Nor did the Corporation state precisely to what extent each of the yards was requisitioned. The Tribunal cannot regard this notice as sufficient as regards foreign owners of shipbuilding contracts, except for the purpose of preventing any transfer to a foreign flag or to foreign ownership or any other change to the status quo which could have been detrimental from the point of view of national defence.

This telegraphic order of August 3rd, sent to the shipyards only, ordered the completion of all vessels "with all practicable despatch", and referred to a letter which was to follow. The order contained in the letter of August 3rd expressly requisitioned not only the ships and the material, but also the contracts, the plans, detailed specifications and payments made, and it even commandeered the yards (depriving them of their right to accept any further contracts). In spite of this the United States have contended that there was no requisition, except of "physical property" and have strongly maintained that the word "contract" in the letter of 3rd August only referred to commitments for material. It is common ground that the United States ordered the shipyards not to accept after August 3rd 1917, any further progress payments under the contracts from the private owners, but that subsequent progress payments were made by some of the former owners to the shipbuilders.

**索赔人的财产被征用了吗?**

美国航运委员会应急船队公司于1917年8月3日和4日通过电报向美国几乎所有的船厂发送了一份普通的征用命令,但没有发送任何详细的征用命令,给出所拟征用的具体船舶或合同。该公司也没有准确说明每一个船厂被征用的程度。仲裁庭不能将本通知视为对订立船舶建造合同的外国船主的充分通知,这个通知的目的只是从国防的角度阻止向外国船旗国或外国船主交付船只,或防止出现可能有害于现状的其他变动。

这张8月3日只发给船厂的电报命令,要求结束所有船舶的实际发货,并提及随后的信件。8月3日信件中的命令不仅明确地征用了船只和材料,还征用了合同、计划、详细的规格和付款,甚至征用了船厂(剥夺了他们接受任何其他合同的权利)。尽管如此,美国仍声称,除了“有形财产”外,没有任何征用,并强烈主张8月3日信函中的“合同”一词仅指材料的投入。各方的共识是美国命令造船厂在1917年8月3日之后不接受任何私人船主根据合同支付的进度款,但随后仍有一些前船主支付进度款给造船者。

The Corporation seemed to have forgotten that it had assumed certain contractual obligations, and in particular to have ignored the fact that the retention of the money of the claimants without restoring the ships was obviously unlawful. Such action was not only contrary to international law, but also to the municipal law of the United States. The amounts of the progress payments should have been refunded at the time of the requisitioning of the ships. There can be no excuse for waiting until 1919 to make an assessment of these amounts.

The Corporation could not have entertained any doubt after October 6th, 1917, that an immediate settlement of the claims was imperative. The Corporation may have intended, up to October 6th, 1917, to settle accounts with regard to these claims, namely so long as it was expected that the property of the claimants would be restored at the end of the war. More especially the Corporation should not have had any doubt with regard to Claims 13 to 15 as to the legality of its action according to municipal law as well as under international law, after it had informed the ship builders not to go on with these contracts. The Tribunal is therefore of opinion:

1. That, whatever the intentions may have been, the United States took, both in fact and in law, the contracts under which the ships in question were being or were to be constructed.

2. That in fact the claimants were fully and for ever deprived of their property and that this amounts to a requisitioning by the exercise of the power of eminent domain within the meaning of American municipal law.

应急舰队公司似乎忘记了它承担了某些合同义务,特别是忽略了这样一个事实,

即在不归还船舶的情况下保留索赔人的钱显然是非法的。这种行为不仅违背了国际法，而且违背了美国的《市政法》。进度款应在船舶征用时即予以退还，而没有理由直到1919年才对这些数额进行估算。

在1917年10月6日之后，公司不应再有任何怀疑，即立即解决索赔是必要的。截至1917年10月6日，公司就应该做好准备确定这些索赔的数额，并计划在战争结束时对索赔人的财产予以赔付。更重要的是，在公司通知造船商不要继续履行这些合同之后，公司不应对第13号至第15号索赔中对其根据市政法和国际法采取的行动的合法性产生任何怀疑。因此，法庭认为：

1. 不管意图是什么，美国实际上和在法律上都接收了正在建造或将要建造相关船舶所依据的合同。

2. 事实上，索赔人被完全地、永久地剥夺了财产。这相当于美国《市政法》意义上的征用权的行使。

**The Date on which Claimant's property was effectively requisitioned.**

It appears from the minutes of October 4th, 1917, that at that date the Members of the United States Shipping Board, held strongly divergent views with regard to the requisitioning of foreign vessels. While the majority proposed "that the Board conform its action with reference to foreign tonnage to the action already taken by the Board with reference to the British and French ships", Vice-Chairman Stevens presented the following resolution: that vessels building for Norwegian account, commandeered by the Emergency Fleet Corporation, be transferred to American Corporations to be formed by their owners, on condition that they voluntarily charter the vessels to the Board, bare boat or time charter, at Board's option, for the period of the war and six months thereafter, at the general requisition rate established by the Board, and reimburse the Corporation for all expenditure incurred in the completion of thevessels. The motion not being seconded, the Vice-Chairman moved "that the question is of such international importance that it be referred to the President."

This motion also not being seconded, the Chairman of the Shipping Board, after having stated to the Board that the decision arrived at was to "retain the title to the tonnage for the present", wrote to Dr. Fridtjof Nansen, at Washington D. C., on October 6th 1917, as follows:

"After careful inquiry into the present and prospective war needs of the United States and of the Allies... . the Board has concluded that it is its duty to retain for urgent military purposes, all vessels building in this country for foreign account, title to which was commandeered by the United States on August 3rd. The decision includes necessarily the vessels building for Norwegian account... . I need not add that it is our intention to compensate the owners of com-

mandeered vessels, be they American, Allied or Neutral, to the full measure required by the generous principles of American Public Law".

**索赔人的财产被有效征用的日期**

从1917年10月4日的会议记录来看，当时美国航运委员会的委员对征用外国船只持有强烈的不同意见。尽管多数人提议“委员会将其对外国船舶采取的行动与委员会已经针对英国和法国船舶采取的行动相一致”，但副主席史蒂文斯提出了以下解决方案：由应急船队公司征用的为挪威账户下的船舶，应由其船主交付给美国公司，他们可以自愿按照委员会的意见选择以光船租赁或定期租船的形式将船只租给委员会，期限为战争期间和战争结束后的六个月内，具体提供船只的比例按照委员会确定的征用比例执行，船主要向公司偿还所有船舶建造完成之前的所有开支。这项动议没有得到附议，副主席表示：“这个问题具有国际重要性，必须提交总统处理。”

提交总统处理的动议也没有得到附议。1917年10月6日，航运委员会主席在向委员会说明所作出的决定是“保留目前吨位船舶的所有权”后，写信给华盛顿特区的Fridtjof Nansen博士，内容如下：

“在对美国和盟国目前和未来的战争需求进行仔细调查之后……委员会得出结论，正在美国国内为外国账户建造的所有船舶，均有义务保留下来以满足紧急军事目的，其所有权于8月3日被美国征用。该决定必然包括为挪威账户建造的船舶。……我不需要补充，我们会补偿被征用船只的所有人，无论他们是美国的、盟国的还是中立的，以达到美国公法慷慨原则所要求的全部程度。”

**The law governing the Arbitration.**

The Fifth Amendment to the Constitution of the United States provides: "No person... shall be... deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."

It is common ground that in this respect the public law of the Parties is in complete accord with the international public law of all civilised countries.

The inviolability of the private property of a foreign citizen is a question of public policy, and it is for the courts in the United States, as well as in other countries, to settle conflicts thatmay arise between the respect for private property, and the "power of eminent domain", as is called in the United States the power of a sovereign state to expropriate, take or authorize the taking of any property within its jurisdiction which may be required "public good" or for the "general welfare".

**仲裁适用的法律**

《美国宪法》（第五修正案）规定：“未经正当法律程序，不得剥夺任何人的生命、自由或财产；未经正当赔偿，不得将私人财产用于公共用途。”

在这方面达成的共识是，双方的公法完全符合所有文明国家的国际公法。

外国公民私有财产的不可侵犯性是一个公共政策问题，美国和其他国家的法院应解决尊重私有财产和“征用权”之间可能产生的冲突，美国将征用权称为主权国的权力，由国家基于“公共利益”或“公共福利”的需要而对其管辖范围内的任何财产进行征收、取得或授权取得。

It has been proved that the claimants lost the use and possession of their property through an exercise by the United States of their power of eminent domain. When, for instance, on October 6, 1917, the Shipping Board informed Dr. Nansen that the United States had taken the “title”, the Board implicitly admitted that the ownership of all the liens, rights and equities set forth in the fifteen shipbuilding contracts had been transferred to the United States by operation of law. As the United States have taken up the position and have acted in such a way that such transfer of the property implied cancellation or “destruction” of the Jura in personam or in rem, it must be adjudged and awarded, in conformity with the American doctrine and jurisprudence itself, that this action of the United States is equivalent to the taking of private property as defined in the fifth Amendment of their Constitution.

Whether the action of the United States was lawful or not, just compensation is due to the claimants under the municipal law of the United States, as well as under the international law, based upon the respect for private property.

事实证明，通过美国行使其征用权，索赔人失去了对其财产的使用和占有。例如，1917 年 10 月 6 日，当航运委员会通知南森博士美国已取得“所有权”时，航运委员会含蓄地承认，15 份造船合同中规定的所有的留置权、合同权利和权益的权利已依法转让给美国。由于美国已经采取了立场，并采取了这样的行动，即财产的转让意味着取消或“破坏”了对人权或对物权，根据美国本身的学说和法理，必须判决和裁决美国的这一行动等同于根据宪法第五修正案的规定征用取得私有财产。

无论美国的行为是否合法，根据美国的《市政法》和国际法，基于对私有财产的尊重，应对索赔人给予公正的赔偿。

**The amount of compensation**

The Tribunal cannot agree, nevertheless, with the contention of the United States that no compensation should be given to the claimants over and above the sums offered by the United States, namely $2,679,220. The United States say that there can be no liability, and that therefore there should be no compensation, when the contract has been destroyed or rendered-void, or delayed, in consequence of “force majeure” or “restraint of princes and rulers” and a fortiori when the contract has been a “purchase of chances”, after the requisition.

This last contention was accepted by Norwegian Courts. These Norwegian judgment sare

not to be disregarded, as they support the Tribunal's opinion adverse to the view that the compensation should be based upon the mere reimbursement of expenses. Such judgments are conclusive evidence that some of the assignees were imprudent.

**赔偿数额**

不过，仲裁庭不能同意美国的论点，即不应向索赔人支付超过美国可提供的金额（即2679220美元）的赔偿。美国表示，在合同因“不可抗力”或“君主禁令”而被破坏或被宣布无效或延迟时，以在合同被征用后被“购买机会”这一更为有力的事由下，不应承担任何责任，因此不应进行赔偿。

挪威法院接受了最后一个有关“购买机会”的论点。挪威的这些判决不容忽视，因为它们支持仲裁庭的意见，反对认为赔偿应仅以报销费用为基础的观点。这些判决是确凿的证据，表明了有些合同受让人是不谨慎的。

Just compensation should have been paid to the Claimants or arranged with them on the basis of the net value of the property taken:

1. On the 6th October, 1917, for use, during the war (whenever such use was possible without destroying the property, according to the contract, state of completion of ship, etc.), and

2. At the latest on the 1st July 1919, as damages for the unlawful retaining of the title and use of the ships after all emergency ceased;

Or

On the 6th October, 1917, as full compensation for the destruction of the Norwegian property.

After careful comparative examination of the results of the two systems above described, the Tribunal is of opinion that the compensation hereinafter awarded is the fair market value of the claimants' property.

公正的赔偿应当已经根据以下被征用财产的净值向索赔人完成支付或与索赔人达成协议：

1. 在1917年10月6日，在战争期间被使用的财产（在此期间只要可能被使用，且不会破产财产，并根据合同、船舶完工状态等情况确定）。

2. 最迟在1919年7月1日，所有紧急情况停止后仍被非法保留船舶所有权和使用船舶的损害赔偿；或者在1917年10月6日，对挪威财产破坏的全部赔偿。

经仔细比较上述两种制度的结果后，仲裁庭认为，下文判给的赔偿金是申请人财产的公平市场价值。

The Tribunal is competent to allow interest as part of the compensation ex aequo et bono, if the circumstances are considered to justify it. So far as interest after the date of this award is

concerned, the Parties decided in the Agreement of 30th June 1921, that "any amount granted by the award rendered shall bear interest at the rate of six per centum per annum from the date of the rendition of the decision until the date of payment".

如果情况被认为是合理的，法庭有权允许利息作为公平合理补偿的一部分。就本裁决日期后的利息而言，双方在1921年6月30日的协议中决定，"裁决所授予的任何金额应以年息百分之六计息，从裁决提交之日起至付款之日止"。

In coming to the conclusion that interest should be awarded, the Tribunal has taken into consideration the facts that the United States have had the use and profits of the claimants' property since the requisition of five years ago, and especially that the sums awarded as compensation to the claimants by the American Requisition Claim Committee have not been paid; finally that the United States have had the benefit of the progress payments made by Norwegians with reference to these ships. The Tribunal is of opinion that the claimants are entitled to special compensation in respect of interest and that some of the claimants are, in view of the circumstances of their cases, entitled to higher rates of interest than others. The claimants have asked for compound interest with half-yearly adjustments, but compound interest has not been granted in previous arbitration cases, and the Tribunal is of opinion that the claimants have not advanced sufficient reasons why an award of compound interest, in this case, should be made.

在得出应给予利息的结论时，仲裁庭考虑了自5年前被征用以来，美国已经有了对索赔人财产的使用和收益的事实，特别是美国征用索赔委员会授予索赔人的赔偿金。尚未支付；最后，美国受益于挪威人就这些船舶支付的进度款。仲裁庭认为，索赔人有权就利息获得特别补偿，而就其案件的情况而言，有些索赔人有权获得较其他人更高的利率。索赔人要求每半年调整一次计取复利，但在以前的仲裁案件中没有给予复利，仲裁庭认为索赔人没有提出充分的理由以表明应当做出支持复利的裁决。

The Tribunal is of opinion that it is just to allow a lump sum to each claimant in respect of interest for a period of five years from 6th October, 1917. Such lump sums have been included in the total amounts of compensation awarded in respect of each claim. As the Tribunal is of the opinion that full compensation should have been paid, including loss of progress payments etc., at the latest on the day of the effective taking, and as the Tribunal has assessed the net value of the property and has decided to award damages as on that date, interest should, contrary to the claim of Norway, not run before that date as previous interest is included in the estimate of the net value.

仲裁庭认为，向每名申请人一次性支付一笔从1917年10月6日起计算的5年期的利息是公正的。这笔一次性付款已经包含在给每项索赔的赔偿总额中。仲裁庭认为，