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## AMERICAN PROTECTION AGAINST FOREIGN EXPROPRIATION IN THE LIGHT OF THE SUEZ CANAL CRISIS

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Whatever the final outcome of the Suez Canal crisis, one feature will have a far-reaching effect on the practice—as well as the concept—of a basic tenet of international law; namely, that expropriation of foreign property will be recognized only when accompanied by “adequate, effective and prompt” compensation.<sup>1</sup>

It would seem that international recognition of foreign expropriation is no longer conditioned upon a promise, much less a guarantee of compensation. The tripartite statement of August 3, 1956 on the nationalization of the Suez Canal Company expressly mentioned that the governments of France, the United Kingdom and the United States “do not question the right of Egypt to enjoy and exercise all powers of a fully sovereign and independent nation, including the generally recognized right, under appropriate conditions, to nationalize assets not impressed with an international interest, which are subject to its political authority.”<sup>2</sup> Such “appropriate conditions” are obvious in the promise of compensation “in accordance with the Paris Bourse quotations” of July 25, the day preceding the nationalization decree,<sup>3</sup> and

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1. See U.S. Dep't of State aide-memoire, Aug. 28, 1953, 29 DEP'T STATE BULL. 357 (1953) (regarding the expropriation of Guatemalan properties of the United Fruit Co.)

2. U.S. DEP'T OF STATE, THE SUEZ CANAL PROBLEM 35 (1956).

3. Statement of President Nasser, rejecting the invitation to the London Conference, Aug. 12, 1956. *Id.* at 47.

the Egyptian Government's "readiness to pay full compensation to the shareholders of the Company."<sup>4</sup> However, the presidential decree of July 26, 1956 on the nationalization of the Suez Canal Company provided in article I that "payment of said indemnity shall be effected after the Nation has taken delivery of all the assets and properties of the nationalized company."<sup>5</sup>

The tripartite statement, though disputed in its wisdom despite the then prevailing circumstances of the sudden Suez crisis<sup>6</sup>—especially in view of the lack of any qualification of international recognition of foreign expropriations ("appropriate conditions")—is not a novum. It is obviously an expression of recent development of international law in the practice of governments.<sup>7</sup>

This development shows a new international "law" governing the taking of property of foreigners when in the national interest of a country in which such assets are located. Economic development, not only in underdeveloped countries, may require appropriation of public resources for public use. It has been labeled the sovereign right of countries to dispose of natural resources and wealth, without mentioning an express or implied obligation to compensate foreign investors. The resolution of the General Assembly of December 21, 1952 recognized such a right<sup>8</sup> and in spite of the criticism encountered,<sup>9</sup> it has been re-incorporated in article I(2) of the United Nations Draft Covenants

4. Egyptian proposal for a new Suez conference, Sept. 10, 1956. *Id.* at 328.

5. *Id.* at 31. The translation in an Egyptian government publication reads: "Payment of compensation shall take place immediately after the state receives all the assets and property of the nationalized company." *THE SUEZ CANAL, FACTS AND DOCUMENTS* 20 (1956). (Emphasis added.) The memorandum of President Nasser, March 28, 1957, on the operation of the Suez Canal provides: "The question of compensation and claims in connection with the nationalization of the Suez Canal Maritime Company shall, unless agreed between the parties concerned, be referred to arbitration in accordance with the established international practice." *N.Y. Times*, April 25, 1957, p. 8, col. 3. The New Zealand Ambassador, Sir Leslie Knox Monroe, in an address entitled "Hungary and Suez—Problems in World Order," said, "Has the requirement of international law been fulfilled? Indeed, it can be seriously questioned whether Egypt has had at any time the capacity to pay prompt and adequate compensation." 12 *N.Y. CITY BAR ASS'N RECORD* 12, 17 (1957).

6. *Cf.* Note, *Nationalization of the Suez Canal Company*, 70 *HARV. L. REV.* 480, 486 (1957); Olmstead, *International Law*, 32 *N.Y.U.L. REV.* 1, 8 (1957). For a bibliography of recent date, see RAUSCHNIGG, *DER STREIT UM DEN SUEZKANAL* 175 (1956); *The Suez Canal*, 5 *INT'L & COMP. L.Q.* 73 (Supp. 1956).

7. Compare the statement of Verdross, the leading Austrian writer on international law, that indemnification of expropriated foreigners may take "into consideration the financial capacity of the expropriating state," VERDROSS, *VOELKERRECHT* 291 (3d ed. 1955), with his earlier view that "appropriate" compensation is required, VERDROSS, *VOELKERRECHT* 275 (2d ed. 1950). For recent examples of state practice, see the authorization of the British Foreign Compensation Commission to settle claims for British property rights expropriated by Poland; the agreement between Sweden and Czechoslovakia, Dec. 22, 1956, on indemnification of Swedish claims for losses incurred as a consequence of the 1945 Czechoslovakian nationalization legislation, *Foreign Commerce Weekly*, Feb. 11, 1957, p. 9.

8. U.N. Doc. No. A/2332 (1952).

9. *Cf.* 8 *N.Y. CITY BAR ASS'N RECORD* 250 (1953) (hereinafter cited as *RECORD*).

on Human Rights of the Third Committee of the General Assembly, as follows:

"The peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit and international law. In no case may a people be deprived of its own means of subsistence."<sup>10</sup>

It is true that the United States delegate commented that a large number of delegations interpreted this draft provision as not permitting any nationalization without the payment of adequate compensation to the foreign investor. However, it may be somewhat characteristic that in a recent diplomatic document dated February 11, 1957, the Soviets, referring to the Middle East, stated that "the natural wealth of the underdeveloped countries is the inalienable national property of the peoples of these countries, which have the full right to dispose of and use it in the interests of their national economy and progress."<sup>11</sup>

Not a word of any compensation! We have to face the fact that competitive coexistence, in one form or the other, is here to stay, bringing about new challenges which the Western world has to meet by new approaches to international legal relations. It will certainly not be enough to merely deplore the situation. Creative thought will become necessary to cope with new challenges.

The task of devising new forms of protection for American investments is not easy. It is therefore fortunate that a constructive attempt is being made to create a commission which should, among other things, make recommendations for the security of American foreign investment.<sup>12</sup> A memorandum of explanation<sup>13</sup> sets forth that "something more than our usual treaties and agreements is essential, [namely] the need for the establishment of a uniform international code regulating and protecting investments of capital goods and services, private as well as governmental, coincident with and beyond the normal scope of treaties of friendship and navigation, is made evident from governmental policies and world conditions."<sup>14</sup>

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10. For the full text of article I and the history of this movement, see Hyde, *Permanent Sovereignty Over Natural Wealth and Resources*, 50 AM. J. INT'L L. 854, 856 (1956); cf. THOMAS & THOMAS, *NON-INTERVENTION, THE LAW AND ITS IMPORT IN AMERICA* 349 (1956).

11. N.Y. Times, Feb. 13, 1957, p. 4, col. 6.

12. See S.J. RES. 21, 85th Cong., 1st Sess. (1957), introduced Jan. 7, 1957 by Senator Olin D. Johnston. An identical bill, H.J. RES. 160, 85th Cong., 1st Sess. (1957), was introduced Jan. 14, 1957 by Representative Armistead I. Selden. Hearings on the bill opened on Feb. 28, 1957 before an *ad hoc* subcommittee of the House Committee on Foreign Affairs.

13. 103 CONG. REC. 357 (daily ed. Jan. 9, 1957).

14. The memorandum refers to studies "being made by national and international bar groups," having obviously in mind, *e.g.*, the following studies: 6 RECORD 127 (1951);

It is true that in treaties, traditional law offers a weapon of old standing. One must, however, be aware that even such advanced attempts as the recent commercial treaties of the United States are no longer sufficient. These new treaties<sup>15</sup> protect nationals and corporations against taking of their property in the country of the other treaty party by providing that it shall not be taken without due process of law and payment of effective compensation. In addition, property owners are given the right to withdraw the compensation by obtaining foreign exchange at a reasonable rate.<sup>16</sup> The most recent United States treaty, that with Korea of November 28, 1956, provides in article VI(4):

“Property of nationals and companies of either Party shall not be taken within the territories of the other Party except for a public purpose, nor shall it be taken without prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof.”<sup>17</sup>

The protocol to that treaty, of the same date, states: “The provisions of Article VI, paragraph 4, providing for the payment of compensation shall extend to interests held directly or indirectly by nationals and companies of either Party in property which is taken within the territories of the other Party.”<sup>18</sup>

Another protection of American foreign investments consists of economic cooperation agreements, concluded with many countries under the Economic Cooperation Act of 1948.<sup>19</sup> They provide for

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7 RECORD 219 (1952); 8 RECORD 250 (1953); ECONOMIC WARFARE COMMITTEE, SUGGESTIONS AND RECOMMENDATIONS BY CERTAIN MEMBERS (1956); Schroeder, *The Expropriation of Property*, in INTER-AMERICAN BAR ASSOCIATION PROCEEDINGS OF THE NINTH CONFERENCE 59, 271 (1956); Trejos & Carrasco, *Reimbursement of Capital and Profits of Foreign Investments*, in *id.* at 111. On the viewpoints of an investment treaty program, see AMERICAN ENTERPRISE ASSOCIATION, AMERICAN PRIVATE ENTERPRISE, FOREIGN ECONOMIC DEVELOPMENT, AND THE AID PROGRAMS 56, 62 (1957); INTERNATIONAL DEVELOPMENT ADVISORY BOARD, REPORT TO THE PRESIDENT ON A NEW EMPHASIS ON ECONOMIC DEVELOPMENT ABROAD 12 (1957); CITIZEN ADVISORY COMMITTEE, REPORT ON THE MUTUAL SECURITY PROGRAM 8 (1957).

15. Cf. Walker, *Treaties for the Encouragement and Protection of Foreign Investment: Present United States Practice*, 5 AM. J. COMP. L. 229 (1956); Panuch, *A Businessman's Philosophy for Foreign Affairs*, Harv. Bus. Rev., March-April 1957, pp. 41, 52.

16. Protocol of the Treaty With Germany, Oct. 29, 1954, [1956] 7 U.S. TREATIES & OTHER INT'L AGREEMENTS 1839, T.I.A.S. No. 3593, provides for “an effective rate which, inclusive of any taxes or changes on exchange transfers, is just and reasonable.”

17. Printed in SEN. EXEC. DOC. D., 85th Cong., 1st Sess. (1957).

18. *Id.* at 15.

19. Act of April 3, 1948, c. 169, 62 STAT. 137. See Surrey, *The Economic Cooperation Act of 1948*, 36 CALIF. L. REV. 509, 551 (1948); Note, *Constitutional Protection Against Foreign Decrees Confiscating Assets in the United States*, 58 YALE L.J. 321, 327 (1949).

submission to arbitration of any dispute involving "compensation of a national of the United States for governmental measures affecting his property rights."<sup>20</sup> Similar provisions are included in the Guarantee Agreements, as authorized by the Mutual Securities Act of 1954.<sup>21</sup> There the claims arising out of expropriation of properties to which the United States Government may be subrogated by reason of any payment under such a guarantee, shall be finally settled through arbitration.<sup>22</sup> This is, to say the least, a rather novel feature of international economic cooperation: to shift to the taxpayer<sup>23</sup> the burden of guarantees against what may be categorized as political rather than commercial risks, not only in this country, but also abroad.<sup>24</sup> Guarantees of the United States against losses due to expropriation and against inconvertibility of foreign currency, available in some thirty countries through the International Cooperation Administration, have recently been extended to protect foreign American investments against war damage. Such a new program must be developed in agreements between the United States and the appropriate foreign governments,<sup>25</sup> in an era in which economic warfare, warlike acts, and other undeclared belligerency will make the exact definition of "war" indispensable.<sup>26</sup>

And yet, treaty protection may not always be possible, even on a bilateral basis, though the United States State Department effectively pursues this method in the program of negotiations of new commercial treaties. Even less probable will be the protection of private investment interests by a multilateral convention, somewhat like a Code of Fair Treatment for Foreign Investments, as drafted in 1949 by the International Chamber of Commerce<sup>27</sup> or in the recommendations of the Economic and Social Council of the United Nations for fair practice in the field of private foreign investment.<sup>28</sup> More recently, a Magna

20. *E.g.*, Agreement With France of June 20, 1948, art. 10, 43 AM. J. INT'L L. 111, 121 (Supp. 1949).

21. 68 STAT. 847 (1954), as amended, 22 U.S.C. § 1933 (Supp. III, 1955). See Agreement with Turkey of Jan. 15, 1957, T.I.A.S. No. 3761. It appears from a communication of Oct. 5, 1955 to this writer from the International Cooperation Administration, which administers the Investment Guarantee Program, that the United States is not required to exhaust its remedies in local courts.

22. Domke, *The Settlement of International Investment Disputes*, 12 BUS. LAW. 262 (1957).

23. *Cf.* U.N. GENERAL ASSEMBLY RES. 824, 9th Sess. (1954), recommending arrangements with underdeveloped countries providing "for the insurability of certain non-business risks." See Hyde, *supra* note 10, at 866, and U.N. Doc. No. A/C.2/L.310 (1957).

24. For a comparative study, *cf.* *Export Credit Insurance Systems*, 8 INT. MARKETS 22 (1954).

25. *Foreign Commerce Weekly*, March 11, 1957, p. 28.

26. As to the Egyptian legislation, see note 38 *infra*.

27. See INTERNATIONAL CHAMBER OF COMMERCE, BROCHURE No. 129 (1949).

28. See International Chamber of Commerce News, Jan. 1957, p. 2.

Carta to preserve the sanction of private property and investment has been suggested by the German Society for the Protection of Private Investment,<sup>29</sup> and in deliberations, the International Bar Association, at its conference in Oslo, Norway, in August 1956.<sup>30</sup>

Recently at the National Foreign Trade Convention it was correctly observed that:

“[O]ur own Government can and should aid in the creation abroad of climates conducive to private investment by the conclusion of Treaties of Friendship, Commerce and Navigation, tax conventions and other appropriate agreements with countries with which such agreements do not now exist, and by revision and modernization, where necessary, of existing agreements.”<sup>31</sup>

Indeed, on the occasions of the hearings on the Commercial Treaties with Iran, Nicaragua and the Netherlands, of July 3, 1956,<sup>32</sup> a revision had been suggested to the effect that the definition of “property” should cover all types of property, including tangibles, and that the definition “taking” should also include “measures which, though falling just short of seizure of the full title to the property, effectively deprive its owner of the use and enjoyment thereof, [as] for example the appointment of a custodian.”<sup>33</sup>

Treaty protection, however, will not always be available and at times will be less efficient than resort to court action when assets of the expropriated company are located outside of the expropriating country.<sup>34</sup> Moreover, executive action, though less frequently used, becomes for the time being at least, an efficient means of preserving rights of the expropriated company and its shareholders, as was demonstrated in the nationalization of the Suez Canal Company.<sup>35</sup> When the Egyptian Government appropriated the company's assets—even those located abroad—by its decree of July 26, 1956,<sup>36</sup> one of the first actions

29. See 102 CONG. REC. 2194A (daily ed. March 9, 1956) ; 103 *id.* 934A (daily ed. Feb. 11, 1957).

\*30. ECONOMIC WARFARE COMMITTEE, SUGGESTIONS AND RECOMMENDATIONS BY CERTAIN AMERICAN MEMBERS 5 (1956).

31. See 103 CONG. REC. 1297 (daily ed. Feb. 4, 1957).

32. *Hearings Before the Senate Committee on Foreign Relations on Executives E, G, and H*, 84th Cong., 2d Sess. 12 (1955).

33. *Id.* at 15. On the protection of foreign investment in this country and the protection of U.S. investment abroad within the framework of the foreign relations law project of the American Law Institute, see AMERICAN LAW INSTITUTE, PROCEEDINGS OF ANNUAL MEETING 91 (1956).

34. For a recent survey, see ADRIAANSE, CONFISCATION IN PRIVATE INTERNATIONAL LAW 150 (1956).

35. As to restrictions under the Constantinople Convention of Oct. 29, 1888 (translation in U.S. DEP'T OF STATE, THE SUEZ CANAL PROBLEM 16 (1956)), see Dinitz, *The Legal Aspects of the Egyptian Blockade of the Suez Canal*, 45 GEO. L.J. 169, 176 (1957) ; Andrews, *Suez Canal Controversy*, 21 ALBANY L. REV. 14, 21 (1957).

36. U.S. DEP'T OF STATE, THE SUEZ CANAL PROBLEM 35 (1956).

of the Western powers was to block those assets belonging to Egypt as well as the Canal which had their situs in Great Britain and France.<sup>37</sup> Also blocked were transactions involving property in which Egypt, or the Suez Canal Company, had "any interest of any nature whatsoever, direct or indirect," under the foreign assets control of the United States, through the Department of the Treasury, as early as July 31, 1956, to which some license provisions authorizing current transactions were added on August 1, 1956.<sup>38</sup> The regulations were still in effect as of March 1957.

These measures of the Western countries followed the pattern of economic warfare as experienced through blocking of property in World War II. The Egyptian Government, under the impact of the military action of Great Britain and France, countered with a military proclamation, November 1, 1956, on trade relations with British and French nationals and measures applying to their properties,<sup>39</sup> after the latter's withdrawal from Egyptian territory. These measures of sequestration of assets affect individuals and corporate entities of British and French nationality regardless of residence, and of Egyptian or other nationalities which "are under British or French control or involve important British or French interests."<sup>40</sup> The detailed regulations (of thirty-five articles) are patterned after the trading-with-the-enemy legislation of Western European countries during World War II.<sup>41</sup> Though the word "enemy" is nowhere used, they go somewhat further in not allowing any resident British or national access to Egyptian courts.<sup>42</sup> Consideration of this Egyptian legislation and its implementation by various decrees<sup>43</sup> is outside the scope of this article.

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37. Exchange Control (Payments) (Egyptian Monetary Area) Order, 1956, and Control of Gold and Securities (Suez Canal Company) Direction, 1956, STAT. INSTR. 1956, Nos. 1163, 1164. The blocked assets in Britain are estimated at 150,000,000 pound sterling (\$420,800,000). N.Y. Times, March 2, 1957, p. 1, col. 5.

38. 31 C.F.R. § 510.201 (Supp. 1956). The frozen Egyptian funds are estimated at \$50,000,000. N.Y. Times, March 2, 1957, p. 13, col. 2. Pursuant to 31 C.F.R. § 510.502 (Supp. 1956), transactions are licensed "provided that any payment by or on behalf of any ship owner or ship operator subject to the jurisdiction of the United States made in Egypt or to the Government of Egypt or any instrumentality thereof with respect to charges in connection with the transit of the Suez Canal is licensed only if accompanied by a statement that the payment is made 'under protest and without prejudice to all rights of recovery or otherwise.'"

39. Official Journal, No. 88, bis A, Nov. 1, 1956.

40. Art. 1(2)(2). Military Proclamation No. 4 of the same day provided for sequestration of the assets of interned persons other than British and French nationals residing in Egypt who are suspected of activities unfriendly to Egypt in the present emergency.

41. For a comparative survey of that legislation, see DOMKE, TRADING WITH THE ENEMY IN WORLD WAR II (1943); DOMKE, THE CONTROL OF ALIEN PROPERTY (1947).

42. Contrary to the American concept, see *Ex parte* Kumezo Kawato, 317 U.S. 69 (1942).

43. Among them is the program of "Egyptianization" of all British and French businesses in Egypt, requiring that all banks, insurance companies and foreign commercial enterprises be placed under the control of Egyptians. Foreign firms other than

These measures present somewhat novel features for a future settlement since claims and counterclaims by the government concerned and the reciprocal blocking of foreign assets will certainly have an effect on the concept of protection of private property and long term investments. It has been wisely noted:

"The privileges [contracts] that go with sovereignty and the rights inherent in private property still are uneasy partners in the international community, despite their dependence on each other. Some more workable solution to these conflicts of interest must be found if there is to be any significant future for the international play of private contracts."<sup>44</sup>

We are, of course, aware of the fact that the Suez Canal crisis is not solely—or even principally—concerned with the nationalization of the Suez Canal Company. More is involved, namely the unilateral abrogation by a foreign government of contracts voluntarily entered into which it decides no longer to respect. The Foreign National Trade Convention was correct in stating:

"The Convention holds that maintenance of the principle of sanctity of contract is fundamental to the whole process of international trade and investment. Without sanctity of contract there can be no respect for private property rights, and no reliance upon agreements made between nation and nation, or between nations and private parties, or between private parties themselves."<sup>45</sup>

Similarly, the Chamber of Commerce of the United States, in its Policy Declaration on World Affairs in 1956 stated:

"There is need for world-wide recognition of the sanctity of contract. Agreements made within the general legal framework or in the form of specific contracts should be honored fully in letter and spirit. Modifications should be by mutual consent. This is of special importance when governments are parties to agreements or partners in enterprises."<sup>46</sup>

Here we are only concerned with the legal aspects of investment protection and not with unilateral cancellation of concession rights. In

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British and French were given five years in which to convert to Egyptian stock companies with exclusively Egyptian stockholders and directors. *N.Y. Times*, Feb. 6, 1957, p. 6, col. 3. Translations of the so-called Egyptianization Laws No. 22, 23 and 24 of Jan. 15, 1957, and of the Ministry of Commerce Order No. 42, implementing Law No. 24 of Feb. 3, 1957 are to be found in *Foreign Commerce Weekly*, March 4, 1957, p. 5.

44. *N.Y. Times*, Feb. 1, 1957, p. 39, col. 4.

45. See 103 CONG. REC. 1297 (daily ed. Feb. 4, 1957).

46. International Chamber of Commerce Resolution of Oct. 22, 1956, Doc. No. 100/72, likewise declared that "the seizure of the Suez properties without notice or negotiation is certain to weaken the confidence of businessmen in the guarantees of the Egyptian Government and all governments which condone this action. Unless this confidence is restored, the development of all countries where investment capital is needed may be postponed for many years."



this respect, a specific issue arises in that the Egyptian nationalization decree of July 26, 1956 expressly extends to those assets of the Suez Canal Company<sup>47</sup> located abroad. Thus, on February 12, 1957<sup>48</sup> the French Government introduced a bill declaring the Compagnie Universelle de Suez to be a purely French Company not subject to the laws of a foreign state. This was intended to safeguard the assets and activities of that company in France and elsewhere against any interference by the Egyptian Government. How far such "national" (French) law will be able to attain its purpose post factum and receive international recognition remains to be seen.<sup>49</sup>

Similar problems of expropriation of assets abroad have recently arisen again in connection with nationalization measures of Eastern European countries under communist control. Unlike Russian companies in 1918, business enterprises in Eastern Europe, especially in the Eastern part of Germany, are still in manifold commercial contact with the Western world: claims arise for payment of goods delivered before the nationalization of the enterprise; others arise out of agency arrangements, industrial property rights, etc. State-owned entities to which the property of nationalized corporations was allocated, tried to reach assets located outside of the territory of the expropriating State. Such appropriation of foreign assets in nationalized corporations is often sought through expropriation of the rights of shareholders. The expropriating authorities are able to leave the corporation in its existing status, thus preserving its identity as a domestic commercial entity as distinguished from its shareholders who live abroad. Problems arising from the division of once unified countries (Germany) are also far from being solved.<sup>50</sup>

Among the intricate legal questions are those of the dissolution of corporations which are governed by the law of the country of their incorporation. Many legal articles have been published<sup>51</sup> and numerous

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47. U.S. DEP'T OF STATE, THE SUEZ CANAL PROBLEM 35 (1956).

48. N.Y. Times, Feb. 13, 1957, p. 7, col. 1.

49. The *exposé des motifs* states that the proposed bill will affirm that the company remains governed by French law "especially with regard to everything that has relation to its existence, its organs and its property, without being affected by the provisions of a foreign law." Le Monde (Paris), Feb. 14, 1957, p. 3. (Translation ours.)

50. For an official compilation of texts of expropriation measures, see DIE ETEIGNUNGEN IN DER SOWJETISCHEN BESATZUNGSZONE UND DIE VERWALTUNG DES VERMOEGENS VON NICHT IN DER SOWJETZONE ANSAESSIGEN PERSONEN (The Expropriations in the Soviet Occupation Zone and the Administration of Property of Persons Not Resident in the Soviet Zone) (1956).

51. For foreign writings which appeared since 1956, see *The Case of the Singapore Oil Stocks*, 5 INT. & COMP. L.Q. 84 (1956); Lewald, *Das Internationale Enteignungsrecht im Licht Neuen Schrifttums* (The International Law of Expropriation in the Light of Recent Literature), 21 ZEITSCHRIFT FUER AUSLAENDISCHES UND INTERNATIONALES PRIVATRECHT 119 (Germany 1956); Niederer, *Einige Grenzfragen des Ordre*

court decisions rendered in France,<sup>52</sup> West Germany,<sup>53</sup> Switzerland,<sup>54</sup> Austria<sup>55</sup> and in this country,<sup>56</sup> on the various aspects of expropriation of foreign corporations. The concept of "piercing the corporate veil," originally used to determine the enemy character of corporations under wartime regulations,<sup>57</sup> may be used here as a device to make property located abroad available to shareholders outside of the expropriating country, as the real owners in interest of a proportionate portion. Problems of location of claims, especially those presented by bearer shares,<sup>58</sup> play a decisive role in preventing foreign nationalization measures, at least partly, from having an effect abroad.

The Suez Canal crisis demonstrates that international law failed to offer new solutions adequate to meet new problems. The fact will have to be faced that economic necessity may require nationalization of properties in many countries. Legal protection of the investor, in judicial determination of his rights in the foreign country as well as on the international level, requires a new approach to time-old remedial aspect

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*Public in Faellen Entschaedigungsloser Konfiskation* (Some Boundary Questions of Public Policy in Cases of Confiscation Without Compensation), 11 SCHWEIZERISCHES JAHRBUCH FUER INTERNATIONALES RECHT 91, 102 (Germany 1956); RASCHHOFER, DIE VERMOEGENSKONFISKATION DER OSTBLOCKSTAATEN (Property Confiscation by States of the East Block) (1956); ROOS, ZUR KONFISKATION PRIVATER DEUTSCHER AUSLANDSVERMOEGEN. BEITRAG ZUR VOLKERRECHTLICHEN STELLUNG DES PRIVATEIGENTUMS (On the Confiscation of German Private Assets Abroad. Contribution to the International Law Viewpoint of Private Property) (1956); Seidl-Hohenveldern, *Die Spaltungstheorie im Falle der Konfiskation von Aktionaerrechten* (The Separability Theory in Case of Confiscation of Shareholder Rights), 6 JAHRBUCH FUER INTERNATIONALES RECHT 263 (Germany 1956); Seidl-Hohenveldern, *Problems des Internationalen Konfiskations und Enteignungsrechts* (Confiscation and Expropriation Problems in International Law), 83 JOURNAL DU DROIT INTERNATIONAL 380 (France 1956). See also Yokota, *The International Effects of Nationalization*, 2 HIKAKUHO-ZASSHI 184 (Japan 1954); Egawa, *The International Effects of Nationalization—Laws From the Points of View of Conflict of Laws*, *id.* at 247 (for summary of both in English, see THE JAPAN ANNUAL OF LAW AND POLITICS 66, 125 (Science Council of Japan Pub. No. 4 (1956)); Cassoni, *La Nazionalizzazione delle Società e il Diritto Internazionale Privato*, 7 JUS 253 (Italy 1956); Foighel, *Nationalization—A Study in the Protection of Alien Property in International Law*, 26 NORDISK TIDSSKRIFT FOR INT'L RET. 89 (1956).

52. Cf. *Ilitch v. Banque Franco-Serbe*, Tribunal de commerce de la Seine, Feb. 9, 1956, 45 REVUE CRITIQUE DE DROIT INTERNATIONAL PRIVE 647 (France 1956).

53. 3 AM. J. COMP. L. 93 (1954).

54. *Id.* at 87.

55. Sommerich, *Austria: German Trademarks and the 1883 Paris Convention*, 46 TRADEMARK REP. 1333 (1956).

56. *Zwack v. Kraus Bros. & Co.*, 237 F.2d 255 (2d Cir. 1956) (Hungarian nationalization); *Stephen v. Zivnostenska Banka*, 155 N.Y.S.2d 340 (Sup. Ct.), *aff'd*, 2 App. Div. 2d 958, 157 N.Y.S.2d 903 (1st Dep't 1956), *motion for leave to appeal to Court of Appeals granted*, 158 N.Y.S.2d 762 (Sup. Ct. 1957).

57. Berger, "Disregarding the Corporate Entity" for Stockholders' Benefit, 55 COLUM. L. REV. 808 (1955); Domke, "Piercing the Corporate Veil" in the Law of Economic Warfare, 1955 WIS. L. REV. 77; Clay, *Protection of American Shareholders' Interests in Foreign Corporations*, 45 GEO. L.J. 1 (1956).

58. Cf. Wengler, *Die Belegenheit von Rechten* (The Location of Rights), in Festschrift der Juristischen Fakultät der Freien Universität Berlin 285 (1955); Battifol, *Conflict Avoidance in European Law*, 21 LAW & CONTEMP. PROB. 571 (1956).

features of international law: the necessity of exhaustion of domestic remedies, the espousal of claims by the State Department as a matter of "grace,"<sup>59</sup> and the access of individual and internationally operating corporations<sup>60</sup> to international machinery.

Here again, as in many fields of the newly evolving international economic law, imaginative thinking will afford the lawyer the opportunity of effectively participating in a great venture: the development of a sound and long term United States foreign economic policy.

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59. See JESSUP, *TRANSNATIONAL LAW* 33 (1956).

60. Cf. Friedmann, *Corporate Power, Government by Private Groups, and the Law*, 57 *COLUM. L. REV.* 155, 169 (1957).