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IN these times, when international economic operations are almost exclusively carried on by corporate entities[1] it may no longer be sufficient to bar the extraterritorial effect of measures against foreign corporations by the mere invocation of the time-honored concepts of "territoriality of foreign government measures" or "public policy of the forum."[2] The nationalization of corporate assets is often aimed not only at properties within the country where the corporation is registered, but at properties outside the jurisdiction. Recent nationalizations of domestic registered corporations with assets abroad, as they occurred in Egypt, Argentina, Eastern European countries and in Indonesia,[3] bring to the fore some new aspects of the ever-growing international "law" of foreign nationalization.[4]

It is worth keeping in mind that the chairman of the International Economic Institute of the Moscow Academy of Sciences said at the Asian-African Peoples Solidarity Conference in Cairo, Egypt, that the Soviet bloc had nationalized industry and trade as the "most rapid and effective policy for industrial expansion and the least painful to the population," expressly mentioning the Suez Canal nationalization and Indonesia's similar measures against Dutch enterprises.[5]

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[1] Kronstein, *The Nationality of an International Enterprise,* 53 COLUM. L. REV. 983, 999 (1935); GOSSET, *Corporate Citizenship,* in JOHN RANDOLF TUCKER LECTURES 1953-1956, vol. 2, p. 152, 163 (1957).

[2] For a critical appraisal, see de Belleville Katzenbach, *Conflicts on an Unruly Horse: Reciprocal Claims and Tolerance in Interstate and International Law,* 65 YALE L. J. 1087 (1956); Paulsen and Sovern, *Public Policy in the Conflict of Laws,* 56 COLUM. L. REV. 969 (1956).

[3] N. Y. TIMES, December 6, 1957, p. 1, col. 1.

[4] Delson, *Nationalization of the Suez Canal Company: Issues of Public and Private International Law,* 57 COLUM. L. REV. 755, 759, n. 31 (1957): "Nationalization includes the taking of property by 'expropriation' (against legal compensation) and 'confiscation' (without any compensation), serving either 'general takings' (by legislative or executive acts of a state, for a broad economic purpose) or 'individual takings.'"

[5] N. Y. TIMES, December 28, 1957, p. 1, col. 1.

The Egyptian decree on the nationalization of the Universal Company of the Suez Maritime Canal, of July 26, 1956[6] covers the company's assets abroad, for the first time in the express language of a nationalization statute. It states in art. 1(3) that payment of compensation to shareholders "shall be effected *after* the Nation has taken delivery of *all* the assets and properties of the nationalized company" (emphasis added).[7] The funds "abroad" are, under the express provision of art. 3,[8] "frozen" to prevent the old company from disposing of them, thereby indicating the legislative intent to appropriate the foreign funds of the nationalized company as well. Compensation of the shareholders on the basis of the quotations of the Paris Stock Exchange on the day preceding the nationalization decree[9] was challenged by the old company as of deflated value, and as wholly inadequate.[10] Moreover, a mere promise was considered insufficient by Lord Hailsham in the House of Lords[11] if not "based upon a genuine intention to compensate the expropriated owners."[12] But even if the promise were taken at its face value, the further arrangement to submit the question of compensation to international jurisdiction would not abandon the important qualification of the Egyptian decree,

[6] Law No. 285 of 1956, transl. in THE SUEZ CANAL PROBLEM, July 26-September 22, 1956 (U. S. Dept. of State Publications No. 6392, 1956) p. 30 and in THE SUEZ CANAL (Special Suppl. to INT'L & COMP. L. Q. 1956) p. 42.

[7] The translation in the Egyptian Government Publication "THE SUEZ CANAL FACTS & DOCUMENTS" p. 20 reads: "Payment of compensation shall take place immediately the state receives all the assets and property of the nationalized company."

[8] Further providing that "banks, organizations and individuals are prohibited from disposing of them." On the other hand, the Western Powers blocked those assets belonging to Egypt as well as to the Canal Company in the United States, Great Britain and France. For references see Domke, *American Protection against Foreign Expropriation in the Light of the Suez Canal Crisis,* 105 U. PA. L. REV. 1033, 1039 n.37, 38 (1957).

[9] See *supra,* note 6, Art. 1(2) of the Decree of July 26, 1956.

[10] States a publication of the Company of October 1957 (SUEZ: EGYPT'S DEBT): "Furthermore, under the terms of Egypt's offer no Compensation at all would be paid for the loss of the Company's concession, which, at the time of the nationalization of the Canal, had twelve years to run."

[11] House of Lords Debates of May 23, 1957, vol. 303, col. 1251, reprinted in 6 INT'L & COMP. L. Q. 523 (1957).

[12] *Cp.* Olmstead, *Nationalization of Foreign Property Interests, Particularly those Subject to Agreements with the State,* 32 N. Y. U. L. REV. 1122, 1134 (1957): "Payment of compensation for the taking derived from the revenues over a period of years is certainly not prompt compensation." For a survey of further writings on the proposition that effective compensation is the condition of extra-territorial recognition of expropriation measures, see Seidl-Hohenveldern, *Confiscation and Expropriation Problems in International Law,* 83 JOURNAL DU DROIT INTERNATIONAL (CLUNET) 381, 389 notes 9 and 10 (1956); CHESHIRE, PRIVATE INTERNATIONAL LAW 145 (5 ed. 1957): "Is a mere promise by the foreign sovereign to retain the property only for a limited time or to pay sufficient to raise the seizure into the higher category [of requisition]?"

namely to take possession of the company's assets abroad first. Neither the promise in the Declaration of Egypt, dated April 24, 1957, to submit to arbitration,[13] nor to the settlement of disagreements "arising in respect to this Declaration in accordance with the Charter of the United Nations"[14] nor the acceptance by Egypt of compulsory jurisdiction of the International Court of Justice as of April 24, 1957,[15] changes this qualification as to compensation of the shareholders.

There will be lawsuits in countries like England, France, Switzerland, and the U. S. A., where assets of the old Suez Canal Company are located. Banks may refuse to turn these assets over to the nationalized company, solely for fear of double liability. This is not a political question, which can be settled by governmental negotiations alone,[16] but a matter of private law, of ownership of foreign assets of a private company. It is true that the company stated in a communication to its shareholders:[17] "The Company's dispute with the Egyptian Government could not be taken by us on the legal plane either to the local courts, for lack of sufficient guarantee of impartiality, or to the Hague Court to which Governments can alone have access. Apart from this, the British Government and the French Government had most urgently requested your Company not to take any initiative likely to impede the course of their own political action, thus themselves implicitly undertaking to substitute their action for the steps which the Company was induced to abandon. Your company could not think of trying to develop a line of action against the wishes of its natural protectors but was entitled to rely on the support of the British Government and French Government for the safeguard of its interests." Whatever future negotiations between the governments concerned may be, any arrangement of the United States with Egypt, e.g., on the rights under the Constantinople Convention[18]

[13] "No. 8: The question of compensation and claims in connection with the nationalization of the Suez Canal Company shall, unless agreed between the parties concerned, be referred to arbitration in accordance with the established international practice."; UNITED STATES POLICY IN THE MIDDLE EAST September 1956-June 1957 (Dept. of State Publ., No. 6505, 1957) p. 389; 57 AM. J. INT'L L. 675 (1957).

[14] *Id.* No. 9(a).

[15] 37 STATE DEPT. BULL. 445 (1957).

[16] As obviously suggested in a note, *Nationalization of the Suez Canal Company*, 70 HARV. L. REV. 480, 489 (1956): "Any final disposition of the assets might hamper the Department of State in future negotiations and would be, in effect, a determination of our foreign policy in a critical area."

[17] Report to the General Meeting of Shareholders, June 25, 1957, p. 1.

[18] See *supra* note 6, THE SUEZ CANAL PROBLEM at 16 for the applicable text.

as to free navigation and operation of the Suez Canal, would be "unrelated to the nationalization of the Suez Canal Company."[19] However, as experiences derived from the Litvinow Agreement of 1933 on the extraterritorial recognition of the Soviet Union's confiscation measures of 1918 have shown,[20] any agreement between Egypt and the United States may have, the effect of superseding the prevailing public policy of the States, such as New York, on the non-recognition of such foreign measures.[21]

These problems are germane not only to the Suez Canal Company nationalization. They concern all other expropriations of companies which have assets abroad. This is also true with regard to further Egyptian decrees issued more than half a year after the nationalization of the Suez Canal Company, the so-called Egyptianization laws.[22] They are designed to bring under the exclusive control of Egyptian citizens all banks, insurance companies and commercial agencies which have been operating in Egypt for many years. These enterprises have to be converted within a period not exceeding five years into Egyptian joint-stock companies with exclusively Egyptian stockholders, Egyptian members of the Board of Directors and those in charge of management. Nothing is said in these decrees, contrary to the Suez Canal Company nationalization decree as to any compensation of foreign shareholders of these numerous enterprises in Egypt. It may well be that the foreign assets of Egypt which are

[19] See *supra* note 12, Olmstead at 1135: "This would leave the way open for a finding that the nationalization was contrary to United States public policy and not entitled to the benefits of the 'acts of state' doctrine as to property in this country." On this point see Re, *Judicial Developments in Sovereign Immunity and Foreign Confiscations,* 1 N. Y. LAW FORUM 160 (1955).

[20] See Jessup, *The Litvinow Assignment and the Pink Case,* 36 AM. J. INT'L L. 282 (1942); Note, *U. S. v. Pink—A Reappraisal,* 48 COLUM. L. REV. 890 (1948), and letter of (the late) Louis H. Pink, *"Pink Case Recalled,"* N. Y. TIMES, February 13, 1954, p. 12, col. 6. For an adjudication of (not less than 4130) American claims arising out of the Soviet confiscatory decrees, by the Foreign Claims Settlement Commission of the United States under Public Law 285, of August 9, 1956, 69 Stat. 570, see the Commission's SIXTH SEMIANNUAL REPORT for the period ending June 30, 1957, p. 8.

[21] See note 4 *supra* at 778. A similar viewpoint was expressed by Domke, *Some Aspects of the Protection of American Property Interests Abroad,* 4 RECORD OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 268, 270 (1949), with respect to the obligation of the countries participating in the European Recovery Program to use the foreign assets of their citizens. The question of recognition did not, however, arise since the countries concerned did not nationalize the foreign assets of their citizens for the recovery. *Cp.,* however, on the application of the (English) Exchange Control Act, 1947 (10 & 11 Geo. 6, ch. 14) Solicitor for the Affairs of His Majesty's Treasury v. Bankers Trust Company, 304 N. Y. 282, 107 N. E. 2d 448 (1952).

[22] Transl. in 57 FOREIGN COMMERCE WEEKLY No. 9 (March 4, 1957) p. 5.

frozen in Western countries will be used at least partially for such compensation.[23]

Similar problems will also arise out of the most recent nationalization of foreign-owned companies in Argentina. In March 1957 the Argentine State Government of Cordoba took over control of a plant of the Central Argentine Electric Company which is part of the Argentine subsidiary of American and Foreign Power, a U. S. holding company for Latin-American utility properties.[24] As recently as October 1957, the Argentine Federal Government took over complete management and control of the Argentine Electric Company, Compania Argentina de Electrididad (CADE), the nation's largest private power plant, which is a subsidiary of the Luxembourg holding concern, Societé d'Electricité the share-capital of which is held mostly by Swiss and Belgian small investors.[25] Another Argentine company, Compania Italo-Argentina de Electricidad (CIADE) of which about 70 per cent of the share-capital are owned by Swiss interests, is likewise threatened by expropriation measures against their concessions.[26] It is interesting to note that these measures were obviously dictated by the refusal of governmental agencies and private banks in Western countries to grant further loans to Argentina. Past Argentine expropriation measures against foreign enterprises were not accompanied or even followed by sufficient compensation.[27]

Because of its wide scope, the effects abroad of the nationalization of enterprises in Eastern European countries are especially felt. Nationalization of companies have been the order of the day for the last twelve years in Yugoslavia, Czechoslovakia, Poland, Hungary, Rumania, Bulgaria and Eastern Germany.[28] The basic questions with which the courts of Western countries had been faced and will have to deal in further years is the attempt of the nationalized enterprises to assert their rights to assets abroad of the old companies: bank accounts, claims arising out of previous contractual arrangements,

23 On the British-Egyptian negotiations held in Rome, Italy, on the financial claims of the two countries, see N. Y. TIMES, Nov. 13, 1957, p. 1, col. 1.

24 N. Y. TIMES, March 26, 1957, p. 19, col. 1.

25 *Id.* October 20, 1957, p. 42, col. 1.

26 SWISS BANK CORPORATION BULLETIN No. 59, October 1957, Suppl. p. 1.

27 *Cp.* Newman, *Argentina's failure to obtain loan laid to action against Swiss utility,* N. Y. HERALD-TRIBUNE, November 12, 1957, Sect. 3, p. 11, col. 1.

28 For an early survey, see Doman, *Postwar Nationalization of Foreign Property in Europe,* 48 COLUM. L. REV. 1125 (1948), and more recently Katzarov (Professor at University of Sofia, Bulgaria), *Die Nationalisierung in Osteuropa [Nationalization in Eastern Europe]*, 3 OSTEUROPA-RECHT 8 (1957), with bibliography p. 17.

and of industrial property rights.[29] One of the most important problems is the protection of rights of foreign shareholders in the old company's assets located outside of the nationalizing country.[30] Foreign shareholders who have little hope to be sufficiently compensated, if at all, try to appropriate those assets abroad in partial compensation of their losses in the old company of which they remain shareholders.[31] The very first question arising here is that of the legal identity of the nationalized company with the old one. The allegation has been made[32] that the concept and operation of state-owned or state-controlled companies discontinues any organic link which could be construed between the two entities.[33] Foreign shareholders claim that the assets abroad of the old company cannot be claimed by the nationalized company, in view of the radical change which that company underwent by the very fact of its nationalization. That nationalization is not based on a development of status of companies, such as merger and liquidation, but on administrative and even constitutional law, is recognized by European legal authorities, even of the Eastern World, though arriving at a different conclusion, namely that the old concept of non-recognition of foreign expropriation does not prevail since there is no expropriation in the usual sense.

[29] See, e.g. on the trademark "Zeiss" of the East-German nationalized enterprise, Ercona Camera Corporation v. Brownell, 246 F. 2d 675 (D. C. Cir. 1957), and as to various legal proceedings arising out of that nationalization, NIPPERDEY, DIE RECHTSLAGE DER CARL-ZEISS STIFTUNG UND DER FIRMA CARL ZEISS SEIT 1945 [THE LEGAL SITUATION OF THE CARL ZEISS FOUNDATION AND OF THE FIRM CARL-ZEISS SINCE 1945]. *Cp.* also Exacta Camera Company v. Camera Specialty Company, 154 F. Supp. 158 (S. D. N. Y. 1957), regarding trademarks of a partnership in Dresden, Germany, which company was subsequently nationalized by the East German Government.

[30] It should be noted that the by-laws of the Suez Canal Company, as approved by Egypt, contain in its art. 18 an interesting provision (transl): "Each share gives right to a proportional part of the assets of the company."

[31] The problem of "piercing the corporate veil" will become of special interest in proceedings before claims commissions; see Wortley, *Observations on the Public and Private International Law Relating to Expropriation,* 5 AM. J. COMP. L. 577, 587 (1957); Clay, *Recent Development in the Protection of American Shareholders' Interests in Foreign Corporations,* 45 GEO. L. J. 1 (1956), and the decision of the Foreign Claims Settlement Commission of the United States in Matter of Eugene L. Garbaty, Rum—30, 250, concerning minority stock interest in the nationalized Rumanian corporation Steaua Romana, SIXTH ANNUAL REPORT 13 (1957).

[32] Katzarov, *Les Entreprises d'Etat continuent-elles la Personne Juridique des Anciennes Entreprises? [Do the State Enterprises continue the Juridical Personality of the Old Enterprises?],* 10 REVUE TRIMESTRIELLE DE DROIT COMMERCIAL 313 (Paris 1957).

[33] We leave here aside the interesting question of immunity of those nationalized companies from foreign jurisdiction. For a recent discussion of pertinent case law, see Wedderburn, *Sovereign Immunity of Foreign Public Corporations,* 6 INT'L & COMP. L. Q. 290 (1957); and Baccus S. R. L. v. Servicio Nacional del Trijo 1 Q. B. 438 (1957); note, 73 L. Q. REV. 286 (1957). *Cp.* also Comment, *Immunity of Foreign Governmental Instrumentalities,* 25 U. CHI. L. REV. 176 (1957).

Thus, it was recently stated (transl):[34] "Nationalization is everywhere, indeed, considered a political action, an Act of State, which puts it outside of judicial control. In matters of nationalization, the State does not become owner by reason of transfer (*acte translatif*) as, e.g., in expropriation by the decision which terminates the expropriation procedure, but on the contrary, by law. The State is thereby original owner (*proprietaire originaire*)". This may appear a rather empty legal argumentation. Past experiences in the United States, however, show that the rights of the peoples to their "natural wealth and resources" have been repeatedly affirmed[35] and voiced, not without success, as recently as September 1957 at the Economic Conference of the Organization of American States, held at Buenos Aires, Argentina.[36] It will not be easy to assert that only the non-identity of operation and purpose of the nationalized company with the original owner, the old company, makes the assets abroad unavailable to that nationalized company. On the contrary, the countries of the Western World affirm that the legal status of a company is considered governed by the law of the country of its incorporation or the law of the place of central control.[37]

As far as the nationalization of the Suez Canal Company is concerned, there is no need to discuss the question whether such dissolution,[38] though valid under the domestic law of the corporation, might not be recognized abroad. This question arose in the numerous cases of nationalization in Eastern European countries where the respective decrees provided for dissolution of the old company.[39] Here too, the mere statement[40] such as "the recognition of

[34] See note 32 *supra*, at 319.

[35] Hyde, *Permanent Sovereignty over National Wealth and Resources*, 50 AM. J. INT'L L. 854 (1956).

[36] On the Economic Declaration of Buenos Aires and the Draft General Agreement prepared by the Inter-American Economic and Social Council, see 58 FOREIGN COMMERCE WEEKLY 13, p. 7 (September 23, 1957).

[37] For a comparative survey, see Rabel, 2 THE CONFLICT OF LAWS 31 (1947), and ADRIAANSE, CONFISCATION IN PRIVATE INTERNATIONAL LAW 96 (The Hague 1956).

[38] The statement of Delson, see *supra*, note 4, 781, n. 146, that: "the Company could not continue to exist in the person of the Egyptian Government. It exists either as a company or not at all" appears unwarranted. Management by the Government does not eliminate the company status as such, though, pursuant to art. 1(1) of the Decree: "all its assets, rights and obligations are transferred to the Nation." *Cp.* Cassoni, *La Nazionalizzione della Compagnia Universale del Canale Marittimo de Suez*, 55 RIVISTA DEL DIRITTO COMMERCIALE (MILANO) 250, 259 n. 39 (1957).

[39] See *supra* note 28, at 17, Katzarov.

[40] Beitzke, *Nochmals zur Konfiskation von Mitgliedschaftsrechten* [*More on the Confiscation of Shareholder Rights*], 11 JURISTEN ZEITUNG 673, 676 (1956).

the foreign legal person or the changes in its structure ends when there is the question of a confiscation to be refuted" hardly solves the problem, for it relies only on the public policy-concept of the forum. Nor does a statement by the leading German authority, the late Martin Wolff present any clear solution (transl.):[41] "If the legal person is effectively dissolved in the country of its seat pursuant to the domestic law, the legal person has to be considered dissolved everywhere, unless the act of dissolution should violate public policy". This alone is insufficient in view of the two qualifications, "effective" dissolution and "public policy" of the forum.

On the other hand, the non-recognition of the corporate extinction may lead to the existence of two separate legal entities, namely the old company outside of the expropriating country. Thus, it was recently stated:[42] "The majority of opinions (of legal writers and courts) is to the effect that a legal person expropriated in the East retains full legal capacity and authority to act in the Western zone, whenever it owns property there. It continues to exist as an active corporation, irrespective as to whether it is cancelled or not in the commercial register of the court of its previous seat". The still existing separate entity of the old company has been recognized by the Federal Supreme Court of Western Germany as recently as July 11, 1957.[43] In that case, a legal personality, a registered association with limited liability, in Aussig, Czechoslovakia, had been nationalized by reason of the decree of October 24, 1945,[44] as a Sudeten-German controlled entity. The former members and representatives who had fled to Western Germany, resolved the transfer of the old association to Munich, where it was registered in the commercial register. German courts adjudicated that the old association alone was entitled to claim money from a Western German bank out of deposits previously made by the Czechoslovakian association. Said the highest German court (transl.): "By reason of the territoriality concept, governmental compulsory measures against a legal personality have an effect only within the power

[41] DAS INTERNATIONALE PRIVATRECHT DEUTSCHLANDS [THE INTERNATIONAL PRIVATE LAW OF GERMANY] p. 119 (1954).

[42] Serick, *Zur Enteignung Juristischer Personen in der Sowjetischen Besatzungszone Deutschlands [On the Expropriation of Legal Persons in the Soviet Occupation Zone of Germany]*, 20 RABEL'S ZEITSCHRIFT 86, 93 (1955).

[43] II Z R 318-155, 10 NEUE JURISTISCHE WOCHENSCHRIFT 1433 (1958), 11 WERTPAPIER-MIT-TEILUNGEN 995 (1957).

[44] Text (transl.) in SHARP, NATIONALIZATION OF KEY INDUSTRIES IN EASTERN EUROPE 57 (1946).

boundaries of the sovereign decreeing them. This is the case, irrespective of whether the measure leads to the destruction of the legal personality or to its liquidation. A Sudeten-German legal personality remains alive with its assets located in the Federal Republic which were not affected by the Czechoslovakian compulsory measure and which therefor remained free from expropriation." Similarly, the courts in England,[45] Belgium,[46] France,[47] Holland,[48] Austria,[49] and Brazil[50] relied on the concept of territoriality in denying any effect of nationalization of corporations on assets located abroad.

Another technique in foreign nationalizations is the transfer of various enterprises, like banks in Eastern European countries, to one central, state-controlled body.[51] Generally, merger of entities, under the prevailing domestic law, must be recognized abroad, as happened recently in England (though not in a nationalization case) with respect to the Greek Government's amalgamation of banks into an "universal successor."[52]

Techniques of foreign nationalizations of corporate entities change, thus showing a "refined" development of the "law" of nationalization. Previous measures in decrees of Eastern European countries[53] are no longer in practice, such as registration of shares within time limits in the country of incorporation or with its foreign consulates, followed by subsequent cancellation of unregistered shares. There, the question has been widely discussed whether the physical location of shareholder certificates or bearer shares abroad deter-

[45] *Cp.* Michael Mann, *The Dissolved Foreign Corporation,* 18 MODERN L. REV. 8 (1955), and Cassoni, *La Nazionalizzazione dezze Societa ed il Diritto Internazionale Privato,* 7 JUS. 253 (1956).

[46] Tribunal de Commerce de Bruxelles, March 24, 1951, 34 [BELGIAN] REVUE DE DROIT INTERNATIONAL ET DE DROIT COMPARÉ 27 (1957).

[47] For references, see Mezger, note to Tribunal de Commerce de la Seine, February 9, 1956, 45 REVUE CRITIQUE DE DROIT INTERNATIONAL PRIVÉ 647 (1956).

[48] Rechtbank Hague, December 11, 1956, Podnik v. Julius Keilwerth Musikinstrumentenfabrik, English Digest in 4 NETHERLANDS INTERN'TL L. REV. 428, 430 (1957).

[49] Seidl-Hohenveldern, *Austria: Nationalization of Foreign Joint Stock Corporations in Country of Registry; No Effect on Assets Located Abroad,* 4 AM. J. COMP L. 242 (1955).

[50] Federal Court of Appeal, Soc. Bata, May 26, 1953, Diario da Justiza, October 26, 1954, p. 3789, 44 REVUE CRITIQUE DE DROIT INTERNATIONAL PRIVÉ 517 (1955).

[51] *Cp.* e.g. Stephen v. Zivnostenska Banka, National Corporation, 3 N. Y. 2d 862, 931, — N. E. 2d — (1957).

[52] Metliss v. National Bank of Greece and Athens S. A., (1957) 2 W. L. R. 570 (C. A.) notes by Michael Mann in 6 INT'L & COMP. L. Q. 584 (1957) and 73 L. Q. REV. 289 (1957).

[53] *Cp.* Fawcett, *Some Foreign Effects of Nationalization of Property,* 27 BRIT. Y. B. INT'L L. 355, 371 (1950).

mines the "location of rights." As in the case of dissolution the discussion generally leads to consider the rights of shareholders as located outside the expropriating state, in order to apply the principle of territoriality[54] or the public policy of the forum which is directed against recognition of nationalization measures without compensation.[55] This concept of location of shareholder rights abroad in order to evade foreign confiscatory measures, is rightly characterized by the German Federal Court[56] as "an auxiliary construction in order to make manifest the localization of a legal relation or of a mere legal contact." The further existence of shareholder rights abroad as, e.g., in many companies to be "Egyptianized" may indeed play an important part in questions of protection of such rights, either by diplomatic negotiations, in court procedures or before claims commissions, domestic and international.[57] The well-established concept of nationality of claims, here the shareholder's right, may deserve a new approach, under the changed circumstances of recent developments of international investment law. Indeed, such measures of protection will not depend on the pure legal construction on whether the shareholder rights were expressly confiscated, as in various decrees of Eastern European countries. In the Suez Canal Company nationalization, the decree of July 26, 1956 does not state anything about the nationalization of the stockholders' shares.[58] Transfer of the foreign assets of the old company to Egypt, being a pre-condition for any compensation of the shareholders might be obtained by a successful court action of the nationalized company or by a diplomatic agreement between the countries concerned. However, the position of the shareholders in need of being protected against "confiscation" of their rights will not depend on a formal nationalization of the shares, which became valueless by

[54] 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, 265 (1956).

[55] Says, on the other hand, RAAPE, INTERNATIONALES PRIVATRECHT [INTERNATIONAL PRIVATE LAW] 4th ed. (1955) p. 641 (transl.): "Participations in corporations are located where the corporation has its seat. Therefor the government of the personal status of the corporation has alone the power to expropriate them. He has given, he and only he can also take."

[56] Judgment of February 1, 1952, B. G. H. Z. V, 36, at 38.

[57] As to the national character of claims arising out of foreign expropriations, see sec. 303(3) and 311(b) of the International Claims Settlement Act, as amended, 69 Stat. 570, and SIXTH SEMI-ANNUAL REPORT, *supra* note 20, p. 20 (1957).

[58] Rightly states Cassoni, *supra*, note 38: "Sono i *beni* e non le azioni della Compania che vengono trasferiti allo Stato Egiziano" [It is the assets and not the shares of the company which are going to be transferred to the Egyptian State].

depriving the old company of all its foreign assets. In this regard, the survival of the old company will be of decisive importance, when rights of that company are being pursued abroad in the interest of the foreign shareholders of the now nationalized company.

To cope with these problems of separate entities, reference to war-time measures of governments-in-exile, especially those on transfer of places of corporations, are of little help. These protective measures were recognized during World War II,[59] primarily for political reasons in order to be of assistance to allied governments in the furthering of the common war effort. The extraterritorial effects of measures of governments-in-exile are not undisputed as to their permanent value, as critical comments of British writers[60] make evident. However, this legislative experiment of transfer of corporations to evade confiscatory measures directed by an invader or hostile power against domestic corporations has recently been repeated by Switzerland. Two decrees of April 12, 1957 provide for the protection of the country's commercial interests in property rights in the event that Switzerland should be involved in an "international conflict." Whereas the first decree[61] concerns the protection of companies with assets abroad chiefly by temporary transfer of their registered offices, the second decree[62] proposes to give the holders of Swiss securities some

[59] For a comparative survey, see DOMKE, TRADING WITH THE ENEMY IN WORLD WAR II (1943) Chp. XIII: Transfer of Business Places of Corporations (p. 172), and Supplement THE CONTROL OF ALIEN PROPERTY 123 (1947).

[60] E.g. CHESHIRE, PRIVATE INTERNATIONAL LAW p. 184 (3rd ed. 1947), who characterized the British decision in Lorentzen v. Lyddon & Co., Ltd., (1942) 2 K. B. 202 as based on "the abnormal circumstances and the unprecedented exigencies of the period." For further references, see Domke, *Dutch War-Time Legislation before American Courts 1953,* 1 NETHERLANDS INTERNATIONAL LAW REVIEW 365, 367 (1954). The statement by Delson, *supra* note 4, p. 780 that extraterritorial effect might not be given on the basis of those principles by U. S. or English Courts "since Egypt is not an ally of such states," appears not to be decisive. *Cp.* also CHESHIRE, PRIVATE INTERNATIONAL LAW 146 (5th ed. 1957), who considers the controversy as settled by Bank voor Handel en Scheepvart N. V. v. Slatford, (1953) 1 Q. B. 248, referring to Judge Devlin's statement on p. 260: "Generally property in England is subject to English law and to none other." See also State of the Netherlands v. Federal Reserve Bank of New York and Archimedes, 201 F. 2d 455 (2d Cir. 1953), both cases decided long after the end of war-time conditions.

[61] Bundesratsbeschluss betreffend vorsorgliche Schutzmasshahmen fuer juristische Personen, Personengesellschaften und Einzelfirmen [Decree of the Federal Council concerning preventive measures of protection for juridical bodies, companies and firms], and Vollziehungsverordnung [Executory Decree] of April 12, 1957; AMTLICHE SAMMLUNG DER BUNDESGESETZE UND VERORDNUNGEN DER SCHWEIZERISCHEN EIDGENOSSENSCHAFT [OFFICIAL COLLECTION OF FEDERAL LAWS AND DECREES OF THE SWISS FEDERATION] 1957 p. 265 and 266.

[62] Bundesratsbeschluss ueber den Schutz von Wertpapieren und aehnlichen Urkun-

protection against confiscatory acts and aims further at guaranteeing the rights of shareholders who have been deprived of their interests, especially by forced transfer "at a place under enemy influence." Cancellation of securities is also provided for, in order to prevent the sale outside of Switzerland of securities illegally appropriated. The owner is authorized to exercise his rights by the creation of inscribed substitute certificates and of a register of invalid securities. These decrees well deserve further investigation as a novel and important weapon to cope with unforeseeable "international conflicts" in a period of economic warfare.

The viewpoint to preserve a separate legal entity abroad, which is not exposed to the nationalization measures of the state of the original incorporation of the company, also led to a new development in the Suez Canal Company situation. Based on some provisions relating to French law in the by-laws of that "international" company,[63] France tried to evade the effect of the nationalization by enacting a law on June 1, 1957[64] which declares that the company (trans.): "cannot be affected by the provisions of a foreign law." It declares furthermore as "null and un-written" the articles of the by-laws which provide for approval by the Egyptian Government of any changes or additions to the by-laws,[65] re-affirming the company's status. Some problems mentioned here have arisen in similar circumstances and will, we may regrettably expect, recur in the years to come. Thus,

den durch vorsorgliche Massnahmen [Decree of the Federal Council on the protection of securities and similar documents by preventive measures], *ibid.* 264.

[63] For an interesting discussion of the much-disputed question of the status of that "international" company, as not subject solely to Egyptian law, see Cassoni, *supra* note 38, p. 253; *Cp.* also Sayegh, NOTES ON THE SUEZ CANAL CONTROVERSY (Arab Information Center, New York 1956) p. 5; Scelle, *La Nationalisation du Canal de Suez et le Droit international,* 2 ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL 1956, p. 3, and Pinto, *l'Affaire de Suez, ibid.* 20. Badawi, *Le Statut International de Suez, Apercu Historique,* in: FUNDAMENTAL PROBLEMS OF INTERNATIONAL LAW (Festschrift Fuer Jean Spiropoulos, Bonn, 1957), p. 13.

[64] Loi n. 57, 658, Journal Officiel, 3 et 4 juin 1957, n. 128; English transl. of the Law and of the (official) Explanatory Statement, in: THE SUEZ CANAL COMPANY AND THE DECISION TAKEN BY THE EGYPTIAN GOVERNMENT, SECOND PART p. 90 (1957).

[65] The amendments were passed at the General Meeting of the Shareholders, on June 25, 1957. The Report submitted by the Board of Directors explains the proposed amendments with a view that the company should not go into liquidation, p. 9: "The representatives of a Company in liquidation would obviously lack the authority required to enforce your rights; and finally, the tax liabilities on liquidation must be regarded as prohibitive, since the distribution would be subject both to Company tax on distributed profits and to personal income tax when received by the shareholders. These considerations induced your Board to adopt a course of action designed to insure the survival of your Company."

revolutionary movements, as they prevailed in the Chinese situation, brought the problem of separate legal entities and their representation before American courts.[66] Extraterritorial effect of nationalization of corporations in Soviet-controlled Baltic countries can probably not always be denied, solely on the basis of the non-recognition of the governments of those countries.[67] More will have to be done in approaching old problems under the fast-changing conditions of international relations. The lessons to be derived from foreign nationalizations of recent date should not be learned in vain. Only then will an essential of the increased flow of private investment abroad materialize which the National Foreign Trade Convention on November 20, 1957[68] characterized as "safeguards against expropriating nationalization, or other taking of private property owned by nationals of other countries." The Convention further specifically recommended[69] that, "as basic elements of our commercial treaties, provisions be incorporated affirming the principle of sanctity of contract and respect for private property rights."

[66] Bank of China v. Wells Fargo Bank & Union Trust, 92 F. Supp. 920 (N. D. Calif. 1950), note 51 COL. L. REV. 5310 (1951) and comment, 19 CHI. L. REV. 73 (1951), and same 104 F. Supp. 59 (N. D. Calif. 1952); Republic of China v. American Express Co., 95 F. Supp. 740-50 (S. D. N. Y. 1957), *aff'd*, 195 F. 2d 230 (2d Cir. 1952); China Sugar Refining Company v. Andersen, Meyer & Company, — Misc. —, 152 N. Y. S. 2d 507 (Sup. Ct. N. Y. Co. 1956); Republic of China v. National Union Fire Insurance Company of Pittsburgh, 151 F. Supp. 211 (D. Md. 1957).

[67] Latvian State Cargo & Passenger S. S. Line v. McGrath, 188 F. 2d 1000, 1003 (D. C. Cir. 1951), note 37 VA. L. REV. 759 (1951); Estonian State Cargo & Passenger S. S. Line v. United States, 116 F. Supp. 447, 451 (U. S. Ct. Cl. 1953). A. S. Krediit Pank, Tallinn, Estonia v. Chase Manhattan Bank, 155 F. Supp. 30 (S. D. N. Y. 1957). *Cp.* Lyons, *The Case of Feivel Pikelny* [Lithuania], 32 BRIT. Y. B. INT'L L. 288 (1957) and Lador-Lederer, *Recognition—A Historical Stocktaking*, 21 NORDISK TIDSSKRIFT FOR INTERNATIONAL RET. 64 (1957).

[68] FINAL DECLARATION OF THE FORTY-FOURTH NATIONAL FOREIGN TRADE CONVENTION II(4) p. 9.

[69] *Ibid.* XV(3) p. 20.