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THE IRAQI NATIONALIZATION OF THE  
IRAQ PETROLEUM COMPANY:  
IMPLICATIONS FOR THE INTERNATIONAL  
LAW OF EXPROPRIATION

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On June 1, 1972, Iraq announced the nationalization<sup>1</sup> of the assets of the Iraq Petroleum Company (IPC). Syria simultaneously nationalized the pipeline company linking Iraq with the Mediterranean. In view of the prediction that the number of expropriations will drastically increase within the next ten years,<sup>2</sup> the challenge which this phenomenon presents to traditional international legal concepts is obvious.

A brief history of IPC's involvement in Iraq will serve to illustrate the difficulties encountered in applying traditional law. British and Russian interests in the Middle East conflicted throughout the nineteenth century, as they do now. Both used military, economic and political pressure in the attempt to obtain a dominant position there.<sup>3</sup> Following the discovery of commercial quantities of oil at the beginning of this century, British businessmen and government officials realized the true potential value of the area. When the company which held the Persian concession ran into financial difficulties, the British government bought a controlling interest in what became the Anglo-Persian Oil Company. While the immediate purpose was to secure a source of oil, the long term effect was a continuing British presence in the Middle East.

The British government's role in Iraq was substantially more difficult. In 1914 the Turkish Petroleum Company (TPC) was formed with the Anglo-Persian Company having a 50%

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<sup>1</sup> Attempts to distinguish the terms expropriation, nationalization and others have become intellectual and impractical exercises when discussing the taking of property. A more meaningful term may be "wealth deprivation." See Weston, *International Law and the Deprivation of Foreign Wealth: A Framework for Future Inquiry*, 54 VA. L. REV. (1968) [hereinafter cited as Weston].

<sup>2</sup> THE NATION, June 19, 1972, at 778; FORBES, March 15, 1970, at 28.

<sup>3</sup> See G. STOCKING, MIDDLE EAST OIL (1970) [hereinafter cited as STOCKING].

interest. In 1918 the British government gained an additional 25% control in TPC by expropriating a German partner's interest.<sup>4</sup> The Sykes-Picot arrangement of 1916, which was ostensibly a device to secure support for the Allied cause, also guaranteed French, British and Russian spheres of influence.<sup>5</sup> This agreement strengthened the conditions which enabled the British to obtain the concession agreement from Iraq for TPC. The British position was further strengthened by the San Remo Agreement of 1920 which gave the French a 25% interest in British oil lands in return for its building an oil transportation system through Syria. These arrangements were facilitated by the mandate system instituted at the end of the war by the League of Nations. TPC obtained its concession in 1925 prior to the autonomy the British were forced to grant the Iraqis.

The U.S. government had observed the partition of the Arab world. In 1920 it began to apply pressure on the British to allow American companies to participate in the exploitation of Arab oil. The State Department emphasized that the "Open Door Policy," which was one of the stipulations of the mandate system, required the power administering the mandate to preserve the resources until the area was granted freedom.<sup>6</sup> The American oil companies simultaneously negotiated the degree of participation they were to be granted. This resulted in two American companies obtaining a combined interest of 23.75% in TPC.<sup>7</sup>

Major economic developments following World War II led to the present Middle East oil situation. The first of these was an initial 50-50 profit sharing arrangement which represented the beginning of the attempt by the Arab nations to regain control of oil resources. The second development was a rising international competition for oil rights beginning in the 1950's. Until this occurred, the holders of the concessions had virtually complete control of the means of distribution of

<sup>4</sup> *Id.* at 44.

<sup>5</sup> G. CRAIG, *EUROPE SINCE 1815* 551 (1966).

<sup>6</sup> "The American State Department . . . insisted on the obligation of the British government to apply meticulously the principle of the open door and nondiscrimination in a mandate that it assumed." II FOR. REL. 83 (1921) in STOCKING, *supra* note 3, at 68.

<sup>7</sup> In 1929 TPC changed its name to Iraq Petroleum Company. The present owners and the amounts are:

23.75%	Compagnie Francaise des Petroles (36% government owned)
23.75%	British Petroleum (48% government owned)
23.75%	Royal Dutch Shell
23.75%	Standard of New Jersey and Mobil (50-50)
5.00%	C. S. Gulbankian Foundation

the oil. The third development, which is a current one, is the demand by the producing countries for a 51% ownership of the operations in their countries.<sup>8</sup>

The immediate cause of Iraq's recent expropriation was the threat of IPC to cut production by nearly 50% unless Iraq agreed to a 35% decrease in the price of petroleum from the Northern fields. IPC faced a higher cost in marketing the oil due to an increased cost of distributing it from ports in the Mediterranean.

For the past ten years the *Sabbatino* case has fascinated American international lawyers to such an extent that little has been done to develop a meaningful perspective by which to consider the increasing practice of capital importing countries to eliminate foreign investments. IPC and Iraq are engaged in negotiations in an attempt to settle their differences. IPC has indicated that in the event that these negotiations fail to solve the problem, it will resort to the use of legal remedies. The nationalization of IPC, therefore, provides a convenient vehicle with which to examine not only the traditional rules of international law with respect to expropriation, but also the effects of modern attitudes upon those rules.

Nationalism, resentment against past colonial injustices and unfulfilled economic aspirations have produced open hostility toward foreign investment in many developing countries. This situation has not only created bleak prospects for their own economies,<sup>9</sup> but has caused discontent with the previously accepted law of expropriation.

A rule of law has been defined as an enforceable "concrete particularization of an ideal."<sup>10</sup> It is the assumption of the authors that the international law of expropriation should particularize the ideal of order and predictability in international economic relations. The Iraqi nationalization indicates that the traditional rules have failed to perform this function.

In analyzing the approach to international law taken by post World War I lawyers, who formulated much of the traditional law of expropriation, Richard Falk has written that "they relied for a new system of world order upon agreed legal rules, but they failed to develop an adequate appreciation

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<sup>8</sup> Benedict, *New Oil Pacts Have Some Leeway*, Wall Street Journal, Aug. 31, 1972, at 6, col. 4.

<sup>9</sup> This fact was recognized by the International Court of Justice in the Anglo-Iranian Oil Company Case, [1952] I.C.J. 93, 162.

<sup>10</sup> H. CAIRNS, *LEGAL PHILOSOPHY FROM PLATO TO HEGEL* 19 (1967).

of the social and political difficulties of making these rules into effective behavioral norms."<sup>11</sup> The rules which they developed, however, were enforceable by the combined power of the developed nations.

The international law of expropriation was essentially the municipal law which Western nations used to govern the taking of property in their own countries. Thus, traditional legal concepts of expropriation reflected Western notions of individual rights and the sanctity of private property. International law conceded the right of a sovereign to exercise control of property within its boundaries,<sup>12</sup> and the rules surround expropriation were designed to protect the rights of the expropriated owner. Expropriating sovereigns had to take property for a public purpose and could not discriminate against foreigners. The expropriated owner had to be given compensation for his loss. Since the public purpose and discrimination requirements fit easily into traditional concepts of sovereignty, they were generally left in the province of the expropriator. The basic question in an international framework was the matter of compensation.<sup>13</sup>

Little was done to develop a system of rules which would govern investors entering foreign countries or provide a workable method by which countries could eliminate undesired foreign investments. More importantly, the law did nothing to account for future social and political changes. The unrealistic position which this placed a developing country ultimately created the present uncertain situation concerning the law of expropriation.

<sup>11</sup> Falk, *New Approaches to the Study of International Law*, 61 AM. J. INT'L L. 477, 478 (1967). Indicative of this are the views expressed in the legal periodicals. For an example dealing with expropriation—that social and economic issues “only confuse the issue for the lawyer,” see Drucker, *Edmund Burke's View on Expropriation*, 228 THE LAW TIMES 86, 87 (1959), cited with approval by Domke, *Foreign Nationalizations*, 55 AM. J. INT'L L. 585, 586 (1961) [hereinafter cited as Domke].

<sup>12</sup> D. P. O'CONNELL, INTERNATIONAL LAW 851 (1965). The current Soviet view is that the state has ultimate ownership of all property as an aspect of sovereignty. This view was also that of feudal England and of Austin, who wrote that “it may be said for the sake of brevity and because established language furnishes us with better expression, that the Sovereign or State has a right to all things within its territory, or is absolutely the proprietor or dominus thereof.” II J. AUSTIN, LECTURES ON JURISPRUDENCE 221 (1878). The Soviet view of paying no compensation, then, might be called “super traditional” when compared with contemporary Western legal thought.

<sup>13</sup> Traditional international law has steadfastly rejected the removal of the compensation issue from the jurisdiction of international tribunals and from the rules of international law. 8 M. WHITEMAN, DIGEST OF INTERNATIONAL LAW 916 (1967) [hereinafter cited as WHITEMAN].

The narrow conceptual basis of the law has only recently become totally apparent. Although the Soviet Bloc countries have traditionally denied the need to pay compensation, there are presently many capital importing countries which echo the same view, but for other reasons. As mentioned earlier, law is an enforceable particularization of an ideal. Through the 1950's, Western economic, diplomatic and military power was such that it was able to enforce traditional legal norms in expropriation cases.<sup>14</sup> Traditional law was designed to deal with situations which no longer are very important. Micro-economic situations, such as the recovery of a ship or its cargo, have been replaced with situations in which corporations often have greater wealth and power than the countries in which they invest. This creates varying degrees of pressure on the host country — something which may or may not be tolerated by its leaders. New markets for the products of developing countries, increased demand within old markets and the beginnings of cooperation between capital importing countries have eroded the ability of the developed countries to enforce the rules which they created. The dilemma of the oil companies in the Middle East illustrates this development. There, companies are confronted with the Organization of Petroleum Exporting Countries (OPEC)<sup>15</sup> and an ever increasing world wide demand for petroleum.

The "classical" international law of expropriation<sup>16</sup> may be analyzed by reference to specific current and historical instances in which it was evoked. It is important to notice that the official U.S. position has remained constant for a least a half century,<sup>17</sup> and to a great extent so has that of the ex-

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<sup>14</sup> Rubin, in *Nationalization and Compensation — A Comparative Law Approach*, 17 U. CHI. L. R. 458 (1950) [hereinafter cited as Rubin], notes this with the following examples of induced compensation from Eastern European countries (which do not accept the view that compensation is necessary): Russia paid no compensation as it was too powerful and there was no inducement; Yugoslavia paid the U.S. \$15 million following WWII because the U.S. held \$47 million of Yugoslav gold; Czechoslovakia paid Britain \$10 million following WWII because Britain agreed to allow a \$5 million annual trade deficit.

<sup>15</sup> Western companies have agreed to the equity participation by Persian Gulf countries, and are under pressure to grant such participation to all OPEC members. *Wall Street Journal*, Oct. 9, 1972, at 3, col. 2.

<sup>16</sup> B.A. WORTLEY, *EXPROPRIATION IN PUBLIC INTERNATIONAL LAW* 24 (1959) [hereinafter cited as WORTLEY].

<sup>17</sup> See generally, WHITEMAN, *supra* note 13, at 1020 *et seq.* For example, in reference to Mexico's expropriation of American property, Secretary of State Hull stated that ". . . it has been stated [by the U.S. government] that the right to expropriate property is coupled with . . . the obligation to make adequate, effective and prompt compensation." *Id.* at 1020. In explaining U.S. refusal to affirm the agrarian reform resolution adopted by the Tenth Inter-American Conference

propriating countries.<sup>18</sup> What is unique now are the increasingly vocal and hostile arguments of the expropriating countries in support of their actions, the frequency of expropriation incidents and the success expropriating governments have enjoyed in not compensating the owners.

Expropriation has always been accepted as a legal function of a sovereign entity.<sup>19</sup> However, the application of restrictions on this sovereign right has been the subject of continuing debate. Traditionally, expropriation was legal if the following conditions were met: 1) compensation was paid to the owner for the property taken, 2) the property was taken for a public purpose, and 3) there was no discrimination between foreign and local interests. The difficulty with applying any of these conditions is well illustrated by the current controversy between Iraq and IPC.

Traditional law required that compensation be given before the taking occurred, unless there were special emergency circumstances. The current view is that compensation may be given post facto, and that it must comply with the three requirements of being prompt, adequate and effective. The fact that Western capital exporting countries still assert this view in the face of opposition from the Soviet Bloc and capital importing countries is seen in the British government's reaction to the nationalization by Iraq on June 1. A government spokesman complained that Great Britain found the nationalization unacceptable because "no provision [had] been made for prompt, adequate and effective compensation."<sup>20</sup>

Problems arise in the application of this phrase to specific incidents. The promptness of compensation demanded by this view is a rare occurrence.<sup>21</sup> The difficulty in being prompt may be occasioned not only by insufficient resources but by other problems including the basic problem of determining the value of property. For example, the claim of IPC for compensation equal to the market value of the property taken is

at Caracas (1954), the State Department explained that "it could not support the resolution because it was based largely on the narrow concept of land distribution and implied confiscation . . . [t]here are few human desires stronger than that to possess a little spot of earth which they can call their own." *Id.* at 1061.

<sup>18</sup> See Nusbaum, *The Arbitration between the Lena Goldfields, Ltd. and the Soviet Government*, 36 CORNELL L.Q. 31 (1950); comments concerning IPC expropriation by Dr. Pachachi, President of OPEC, N.Y. Times, June 6, 1972, at 55, col. 4.

<sup>19</sup> WORTLEY, *supra* note 16, at 12.

<sup>20</sup> Wall Street Journal, June 5, 1972, at 6, col. 3, referring to Iraqi Law 69 of 1972, Art. 3.

<sup>21</sup> Domke, *supra* note 11, at 604.

greater than Iraq's annual budget for 1972.<sup>22</sup> This situation is further complicated by the insistence of IPC that future profits be considered part of the loss it sustained.<sup>23</sup> Payment of compensation in a case such as this is so complicated that it would be extremely difficult to comply with the prompt, adequate and effective requirements of the law.

The requirement that the taking be for a public purpose is so vague that it eludes any accurate definition. This requirement originated in municipal law, and it

. . . may have had a reasonably definite meaning in international law when the municipal systems of the states that led in the development of international law were based on private ownership of the means of production. However, in view of the increasingly broad area of activity in nearly all states, the concept of public purpose or public use seems increasingly vague and of doubtful usefulness in the future.<sup>24</sup>

Public purpose includes some notion of special occasion. A taking for national defense is perhaps the most obvious special occasion, but another instance is pure economic necessity.<sup>25</sup> It must be something beyond a mere desire to deprive the foreign owners of property. It has been termed "an exceptional procedure for special need,"<sup>26</sup> and "the very pith of the so-called rule of public utility."<sup>27</sup> The statement of the Iraqi delegation to the U.N. contained an appeal to this rule, stating that "the grave economic implications of such a drastic reduction in revenues are too obvious to require any elaboration."<sup>28</sup> The dependence of Iraq on oil revenue seems to cause the expropriation to fall within the special occasion category,<sup>29</sup> as IPC contributed 80% of Iraq's foreign exchange.<sup>30</sup>

Expropriation for the purpose of punishment of political acts is not recognized as being for a public purpose. While a state may take the property of aliens without compensation for a criminal act, the offense must be one "generally recognized as such in public international law, or a crime accepted

<sup>22</sup> See *infra* notes 51, 52.

<sup>23</sup> N.Y. Times, June 6, 1972, at 55, col. 4.

<sup>24</sup> RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW OF THE UNITED STATES, "Responsibilities of States for Injuries to Aliens" §185(a), comment *a* at 554 (1965).

<sup>25</sup> D.P. O'CONNELL, INTERNATIONAL LAW 853-54 (1965).

<sup>26</sup> WORTLEY, *supra* note 16, at 25.

<sup>27</sup> Weston, *supra* note 1, at 1088.

<sup>28</sup> Statement, Permanent Mission of Iraq to the United Nations, June, 1972, at 1.

<sup>29</sup> For example, Iraq's total income from oil in 1968 was £ 203 million, or almost 80% of its total foreign exchange income. STOCKING, *supra* note 3, at 463, and *infra* note 30.

<sup>30</sup> N.Y. Times, June 10, 1972, at 37, col. 3.



as such by the confiscating state and the state of the person punished . . . ."<sup>31</sup> There is a tone of righteous indignation in the scant Iraqi material available concerning their taking of IPC, and it seems that some notion of criminality, or at least wrongdoing, was present in the decision to expropriate. The press release of the Iraqi delegation refers to the concession agreement as being "unjust" and proclaims that "Iraq . . . shall not be deterred or intimidated by the pressures and the maneuvers of the companies."<sup>32</sup> A telegram sent to the Iraqi Revolutionary Command Council (the governing body of the country) by the Iraq National Oil Company (INOC) supported that attitude, stating that the "imperialist oil companies . . . backed by imperialist forces attempt to subjugate our victorious revolution and its gigantic profits."<sup>33</sup> However, even if one characterized the 1925 concession as imposed under colonial conditions, as the Iraqis do,<sup>34</sup> it seems impossible to rationally press criminal accusations against IPC on a legal basis. IPC's actions were not criminal within Iraq, nor were they in relation to international law.

Discrimination against foreigners defeats the argument of public purpose, and even those authorities which advocate that any public purpose is sufficient to justify expropriation require that it be non-discriminatory.<sup>35</sup> In *Anglo-Iranian Oil Co. Ltd. v S.U.P.O.R. Co.*, an Italian court noted the non-discrimination requirement. It found that Iran's taking of the company was non-discriminatory, since its primary purpose was the economic welfare of the country rather than a mere confiscatory action.<sup>36</sup> The production cutback by IPC and the resulting loss of revenue by Iraq is similar to Iran's case in that Iraq is completely dependent on oil for its governmental revenue.<sup>37</sup> In addition,

<sup>31</sup> WORTLEY, *supra* note 16, at 40. The U.S. Supreme Court recognized this even though it did not address itself to substantive issues of international law. "There is authority . . . for the view that a taking is improper . . . if it is not for a public purpose." *Banco Nacional de Cuba v. S. S. Sabatino*, 376 U.S. 398. "The Cuban expropriations provide a classic example of taking, the purposes of which were admittedly punitive." *Id.* at 429.

<sup>32</sup> Statement: Permanent Mission of Iraq to the United Nations, June, 1972, at 3.

<sup>33</sup> INOC Weekly News, May 29, 1972, at 2.

<sup>34</sup> Iraq and OPEC position stated in N.Y. Times, June 6, 1972, at 67, col. 2.

<sup>35</sup> WORTLEY, *supra* note 16, at 120.

<sup>36</sup> [1955] I.L.R. 23, 39, 40; cited in WHITEMAN, *supra* note 13, at 1056-57.

<sup>37</sup> Production was cut by IPC in the northern fields by 50% in an apparent attempt to force Iraq to reduce the prices by 35%, N.Y. Times, June 6, 1972, at 55, cols. 5, 6; normal production was 1.1 million barrels per day, N.Y. Times, June 3, 1972, at 37, col. 2.

there were no local oil producing interests other than the government operated INOC, so the expropriation could not be called discriminatory in the sense of favoring local interests at the expense of foreign interests.

Discrimination against one group of foreigners in favor of another group also defeats the argument of public purpose. While the expropriation decree simply stated that "the operation of the Iraq Petroleum Company, Ltd. . . . shall be nationalized,"<sup>38</sup> the French partner was simultaneously given an option to negotiate separately with the government. This option was given by the Iraqi government because of the French support of the Arab position in the Middle East conflict.<sup>39</sup> It must be concluded that with respect to discrimination, the action taken by Iraq is in violation of traditional law.

It has been recognized that a party which has been granted a concession has not only property rights, which may be expropriated as a function of sovereignty, but also rights arising under a contract.<sup>40</sup> A concession places a higher duty upon countries which grant it, because the premature termination of a concession allows the party holding it to receive damages equal to the "benefit of the bargain," as well as compensation for the property value. Arbitrariness is the primary consideration in determining whether a concession was wrongfully terminated.<sup>41</sup> If Iraq's action is determined to be arbitrary, the fact that Iraq terminated the concession decades before it was due to expire indicates that Iraq may have to pay an astronomical sum as compensation.

The area of contractual rights and obligations has many ramifications which will be very briefly covered here. One issue is that a contract must be freely negotiated. The concession granted to IPC is notable in that Iraq was under a "Treaty of Friendship" with Great Britain. This treaty was a substitute for and had the same effect as the mandate situation. One may thus question whether the concession grant was truly a sovereign act.<sup>42</sup> It is further to be noted that concession agreements

<sup>38</sup> Iraq. Law No. 69 (1972), Art. 1. 11 INT'L LEGAL MATERIALS 846 (1972).

<sup>39</sup> N.Y. Times, June 2, 1972, at 1, col. 3.

<sup>40</sup> Sohn & Baxter, *Responsibility of States for Injuries to the Economic Interests of Aliens*, 55 AM. J. INT'L L. 555, (1961).

<sup>41</sup> *Id.* at 570.

<sup>42</sup> "The King and his cabinet ratified the new concession on March 14, 1925, one week before King Faisal promulgated Iraq's organic law and approximately seven months before the Iraqi Parliament ratified the treaty defining Iraq's obligations under the mandate principle; in short before an autonomous Iraq government had anything to say about it." STOCKING, *supra* note 3, at 52.

must be honored by successor governments if "every act necessary for vesting them in the holder has been performed."<sup>43</sup> It has been said that one of the necessary acts is that the granting be "discretionary" on the part of the party granting it.<sup>44</sup> It is obvious, then, that the existence of contractual obligations is an issue which will be raised by both parties: Iraq on the basis of unfairness, IPC on the basis of contract obligations.

Two options appear possible from this application of traditional law to Iraq's actions. The first is to simply apply international law with the resulting determination that Iraq has broken the law by discriminating between groups of foreigners. The companies which suffered the expropriation have the right to recover the loss, much as in the case of Iran's taking of the Anglo-Iranian Oil Company's property. The difficulty with this option is that both sides are able to present rational arguments in support of their position. As was seen in the case of Iran, courts of other countries are forced to accept one or the other position. The resulting solution will be unpredictable and will possibly be unsatisfactory to both parties.<sup>45</sup> This approach has resulted in uncertainty and distrust between the companies and host countries.

The alternative option is an admission that the traditional rules of international law are no longer viable and that a reshaping of the law is imperative to provide a meaningful framework to stabilize world economic relationships. Richard Falk has made a similar proposal for dealing with the general problem of the relation of law to world affairs: [T]he objective is to develop attitudes and habits that encourage international

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<sup>43</sup> I. L. OPPENHEIM, INTERNATIONAL LAW 162 (8th ed. H. LAUTERPACHT) (1956).

<sup>44</sup> Huang, *Legal Aspects of the Suez Canal Question*, 51 AM. J. INT'L L. 277 (1957). See also Carlston, *International Role of Concession Agreements*, 52 NW. U.L. REV. 618 (1959).

<sup>45</sup> Iran's Nationalization Law provided for 25% of receipts to be set aside for the purpose of paying the company for the taking. WHITEMAN, *supra* note 8, at 1170. This "intent" to pay defeated the company's subsequent claim that the taking was confiscatory. *Anglo-Iranian Oil Co. v. Idemitsu Kosan Kabushiki Kaisha*, [1953] I.L.R. 305, 310-11 (Tokyo D.C., 9th C.D., Japan). Exactly the opposite result was reached by a less partial court in Aden which held the expressed intent too vague by itself. *Anglo-Iranian Oil Co. Ltd. v. Jaffrate and Others (The Rose Mary)*, [1953] I.L.R. 316, 321-22 (Supreme Court, Aden). An Italian court held that any intent expressed by an expropriating country was sufficient to meet international rules: *Anglo-Iranian Oil Co. Ltd. v. S.U.O.R. Co. (The Miriella)*, [1955] I.L.R. 19, 22-3 (Court of Venice, Italy).

law to become increasingly a *system of world order* rather than to serve as a *style of argument in international relations*.<sup>46</sup>

As an illustration of factors influencing current international economic relationships, two socio-legal issues will be raised. These are the nationalistic movements within the host countries, and the lack of political accountability on the part of the companies. These two issues will serve as indications of the direction in which the law will move if it is to regain a meaningful validity.

Nationalism is one of the most important causes of the controversy between the companies which support the traditional law and the developing countries. Perhaps the most striking aspect of the expropriations by these countries is the hostile attitude of their leaders toward the presence of foreign capital.<sup>47</sup> A professional observer of the industry described his reaction to the 1960 Second Arab Petroleum Congress by stating that "I was unprepared for the hostility, bitterness and suspicions manifested by Congress spokesmen for the host countries. . . ."<sup>48</sup> Indeed, in matters of such financial importance one would expect a more economically oriented position. It is interesting to note that the result of expropriation is often financial disaster to the country. Mexico's expropriation of the oil industry led to tax revenues being replaced by government subsidies; Iran's expropriation put the country in a state of financial chaos; and Chile's recent taking of its copper industry has had a result similar to Iran's.

Nationalism has led to social and cultural changes of such major proportions that challenges to the economic status quo are inevitable. The concept of state sovereignty, the original basis for the ideal of a state being permitted to take property for a public purpose, is now being invoked by Iraq to support its expropriation.<sup>49</sup> OPEC described Iraq's action as "a lawful act of sovereignty by Iraq to safeguard its legitimate interests."<sup>50</sup> Thus, we find the state of the law to be a mere style of argu-

<sup>46</sup> Falk, *The Adequacy of Contemporary Theories of International Law-Gaps in Legal Thinking*, 50 VA. L. REV. 231, 242 (1964).

<sup>47</sup> See Rubin, *supra* note 14, at 458; Iraq's President Bakr, in his expropriation decree stated that "We have decided to go on the offensive against the oil monopolies," N.Y. Times, June 2, 1972, at 7, col. 1; Syria's President Assad described the pipeline seizure as "in conformity with our policy for economic liberation," N.Y. Times, June 3 1972, at 37, col. 2.

<sup>48</sup> STOCKING, *supra* note 3, at vii.

<sup>49</sup> Statement, Permanent Mission of Iraq to the United Nations, June, 1972, at 3.

<sup>50</sup> Wall Street Journal, June 12, 1972, at 11, col. 2.

ment rather than a system which provides investors and host countries alike with order and stability in their international economic affairs.

The weakness of traditional international law with respect to nationalism is paralleled by its lack of legal provisions dealing with the political accountability of international companies. It must be emphasized that in many cases a company possesses greater wealth and power than the host country. For example, the total government revenue of Iraq in 1969, \$291 million,<sup>51</sup> can be compared with the gross incomes of the two American partners of IPC, \$4 billion.<sup>52</sup> The loss of revenue from IPC has forced Iraq to cut its 1972 budget by 40% and potentially much more.<sup>53</sup> Also, Iraq's prospect of disposing of a sizeable quantity of the expropriated oil seems unlikely.<sup>54</sup>

Not only do the companies possess great wealth, but also they are supported by the economic and political power of the developed nations. The power which this combination produces may be seen in the rivalry between Russia and Great Britain over the control of Iran. The Russians were principally interested in territorial gains, while Britain desired economic supremacy of the whole Middle East for its commercial interests.<sup>55</sup> The effect of this was that "only the commercial and political rivalry of Great Britain seemed then, as does now that of the United States, to bar the way to the complete absorption of Iran into the Russian orbit."<sup>56</sup> This government-industry partnership remains in effect although supplemented by a U.S. presence. It has been stated that "the C.I.A. generally receives credit for the coup that restored the Shah to power."<sup>57</sup> Clearly

<sup>51</sup> EUROPA PUBLICATIONS LIMITED, *THE MIDDLE EAST AND NORTH AFRICA* 286 (18th ed. 1971).

<sup>52</sup> MOODY'S INVESTOR SERVICE, *MOODY'S INDUSTRIAL MANUAL*, 3119, 2700 (1972).

<sup>53</sup> *Wall Street Journal*, June 21, 1972, at 2, col. 3.

<sup>54</sup> Italy has agreed to buy 40,000 barrels per day. *Wall Street Journal*, June 20, 1972, at 12, col. 1. However, Japan announced that it would not buy any pending a settlement of the claims. *Wall Street Journal*, June 22, 1972, at 29, col. 3. Compagnie Francaise des Petroles, the French partner of IPC, has stated a similar position. *Wall Street Journal*, June 20, 1972, at 12, col. 2. Nor is Russia, which is a self-sufficient oil producer and already a recipient of significant quantities of foreign oil, likely to absorb any of the surplus. Industry spokesmen stated that Iraq's chances of disposing of the oil are almost none. *Wall Street Journal*, June 21, 1972, at 2, col. 3.

<sup>55</sup> XII *CAMBRIDGE MODERN HISTORY* 491 (1910), cited in H. MORGENTHAU, *POLITICS AMONG NATIONS* 57 (4th ed. 1967) [hereinafter cited as MORGENTHAU].

<sup>56</sup> MORGENTHAU, *supra* note 55.

<sup>57</sup> D. WISE & T. ROSS, *THE INVISIBLE GOVERNMENT* 110-14 (1964), in *STOCKING*, *supra* note 3, at 156.

the resulting restoration of the Shah led to a continuing U.S. economic presence in Iran. There is little to indicate that this situation is changing, and it may be unrealistic to suppose that any law is capable of dealing with it.

Considering the foregoing discussion of the nationalism of capital importing countries and the great power of the international companies, one is impressed with the difficulty of achieving order in economic affairs. An examination of recent expropriations, beginning with the case of Iran and culminating in Iraq's action, illustrates the increasing difficulty of applying traditional international law. International law was invoked in the 1951 Iranian expropriation. Iran's expropriation decree made a specific provision that 25% of future oil revenues would be set aside to pay compensation.<sup>58</sup> This was held by some courts to be sufficient to meet legal requirements.<sup>59</sup> International law was enforceable as evidenced by the numerous legal actions instituted by the company. The threat of legal action as well as the availability of alternative sources of petroleum prevented Iranian sale of sizeable quantities of the oil. The international petroleum cartel, in order to protect its interests and to discourage future expropriations, was able to dissuade potential purchasers of Iranian oil from buying it. The resulting loss of revenue caused the fall of the government and an acknowledgement of Iran's obligation to the company.<sup>60</sup>

The Chilean expropriation of 1970 may be viewed as an interim step between the takings of Iran and Iraq. Chile went through the motions of complying with international law, and acknowledged an obligation to pay compensation. It then made a mockery of the law by first changing its Constitution to permit the expropriation,<sup>61</sup> and then demanding that the companies compensate Chile for "excess profits" earned during the period of agreement.<sup>62</sup>

When reviewing the Iraqi situation the initial positions of both parties seem based more on notions of fairness and equity than law. Although Iraq has stated that it will pay compensation, no procedure for doing so has been provided, as it was in

<sup>58</sup> See *supra* note 45.

<sup>59</sup> *Id.*

<sup>60</sup> Iran's oil income dropped from £7 million in 1951 to zero in 1952. STOCKING, *supra* note 3, at 463.

<sup>61</sup> Proposed Constitutional Amendment Concerning National Resources and Their Nationalization, 10 INT'L LEGAL MATERIALS 1067 (1971).

<sup>62</sup> The Comptroller General's Resolution on Compensation (1971), 10 INT'L LEGAL MATERIALS 1240 (1971).

Iran's decree. Also, the Iraqi decree never mentioned the word "law." The position of IPC has been to vigorously assert the traditional rules of law, but the realities of the situation suggest that this is only a bargaining tool. It appears, in conclusion, that both sides plan to settle the matter at the negotiating table with few other considerations than the realities of power.

While it is not the purpose of this article to predict what the law of expropriation will be in the future, it seems safe to predict that traditional international law must be adjusted to allow it to become an enforceable particularization of the ideal of economic order. The Iraqi situation shows that there has been a significant change in the bases of political and economic power. The application of traditional international law and a concurrent failure to recognize these political and economic changes will only serve to frustrate the realization of this ideal.