Content:

The rule supported by all leading 'Western' governments and many jurists in Europe and North America is as follows: the expropriation of alien property is lawful if adequate, effective, and prompt compensation is provided for. In principle, therefore, expropriation, as an exercise of territorial competence, is lawful, but the compensation rule (in this version) makes the legality conditional. The justifications for the rule are based on the assumptions prevalent in a liberal regime of private property and in the principle that foreign owners are to be given the protection accorded to private rights of nationals, provided that this protection involves the provision of compensation for any taking.

[Subsequently set out in detail]

An example of a fundamental change would be the case where a party to a military and political alliance, involving exchange of military and intelligence information, has a change of government incompatible with the basis of alliance. The majority of modern writers accept the doctrine of rebus sic stantibus [...] The doctrine involves the implication of a term that the obligations of an agreement would end if there has been a change of circumstances. As in municipal systems, so in international law it is recognized that changes frustrating the object of an agreement and apart from actual impossibility may justify its termination. Some jurists dislike the doctrine, regarding it as a primary source of insecurity of obligations, more especially in the absence of a system of compulsory jurisdiction.

[Set out in detail.]

70 The formula appears in a Note from the US Secretary of State, Cordell Hulk to the Mexican Government dated 21 July 1938: Hackworth, iii. 655. The formula also appears in various modern commercial treaties: e.g. the Anglo-Japanese Commercial Treaty of 1963, Art. 14; see Ahnond, 13 ICLQ (1964), 925 at 949. See also Whiteman, viii. 1085-9. It is also commonly stipulated that the taking should be 'in the public interest', but see infra, p. 545. On the criteria of adequacy, effectiveness, and promptness, see García Amador, Yrbk. ILC (1959), ii. 16-24; White, Nationalisation, pp. 235-43; Domke, 55 AJ (1967), 603-10; Sohn and Baxter, ibid. 553 (Art. 10/4), 559-60; ICJ Pleadings, Anglo-Iranian Oil Co. case (United Kingdom v. Iran), 100 ff.; Jiménez de Aréchaga, Yrbk. ILC (1963), ii. 237-44; Cole, 41 BY (1965-6), 374-9; Whiteman, viii. 1143-85; Metzger, 50 Virginia LR (1964), 603-7.

Referring Principles:

- VIII.1 - Definition
- XI.1 - Compensation for expropriation