

NATIONALIZATION AND COMPENSATION. By Isi Foighel. [Copenhagen: Nyt Nordisk Forlag; London: Stevens & Sons. 1964. 343 pp.].

Since the first edition of Dr. Foighel's monograph on *Nationalization and Compensation* was published in 1957 much has happened in this field of international law and practice. In the first place, nationalization has become common, with the zenith being reached with perhaps the Suez Canal and Cuba, while international learned bodies like the International Law Association have devoted much time and energy in seeking to find a compromise between the rights of the nationalising states and the owners of the property nationalised.

Any discussion of nationalization, or for that matter relations between the 'old' and the 'new' States must recognise that the legal and political ideas of the members of international society are now, whatever they may have been in the nineteenth century, far from uniform, and that "the leading States now represent economic-political systems which are not only different, but to a certain degree directly incompatible, and the concept of fundamental justice in the different countries is far from uniform. The disagreement on legal concepts acts as a brake on the development which should follow from the demand for progressively greater economic integration" (p. 12). In view of the economic needs of the under-developed nations some adjustment must be made in their demands for unrestricted sovereign power if foreign investment is to continue, for "the problem is now whether the classical rules of international law (which . . . came into being in the age of liberalism) can become common ground for a number of nations who long ago abandoned liberalism as an appropriate economic basis and who, in their municipal law, have abandoned the principle of the protection of private property against attack and regulation by the State acting from motives of overriding public interest" (pp. 12-3).

Dr. Foighel points out that nationalization as a term first arose from the internal practice of States to describe certain actions taken against private property (p. 21), and it gradually came to be extended to have a specific meaning in municipal law and subsequently an international legal significance became attached to it. The author defines it as "the compulsory transfer to the State of private property dictated by economic-political motives and having as its purpose the continued and essentially unaltered exploitation of the particular property" (p. 30) — a definition which looks to the motive and the purpose, rather than to the nature of the property and the reality of the compensation. In so far as the motives are concerned these are often national-political in character, with "nationalistic tendencies, which are specially marked in smaller States, most frequently find [ing] expression in the wish to practise independent policies in the widest possible measure without interference from other States. In the economic field the consequence of this view is that States seek to free themselves by the action of nationalization from the dependence which arises from foreign capital invested in the country" (p. 39). When this occurred in the past States tended to recognise that the owner of the property affected enjoyed a right to compensation, regardless of the terms of the nationalising legislation, and this view is still subscribed to by the majority of writers (p. 58). Others, however, believe that the alien has no rights in this connection beyond those embodied in municipal law, at least when the nationalization has been based on such reasons as health, security, traffic or aesthetic considerations (p. 59), while others point out that a demand for compensation arising from nationalization of foreign-held property is not in accord with political reality (p. 60). Dr. Foighel suggests that to some extent discussion as to the requirement of compensation is somewhat artificial, using as his example the nationalization of the Anglo-Iranian Oil Co., when the assets involved were calculated at \$1,400 million, while the gold holdings of Iran were a mere \$239 million: "a claim for compensation in such a situation will be meaningless, unless the conclusion can be drawn from it that a State, such as Iran, which has no economic resources to carry through such payments of compensation, must abstain from nationalization" (pp. 60-1) — a view which is completely contrary to the opinion of the majority of those members of the United Nations which have given their views on sovereignty over natural resources.

As the learned author points out, the reaction of States whose nationals have had their property nationalized leaves one in doubt whether the protest is directed at the act of nationalization, or merely at the inadequacy of the compensation (p. 142). He contends that since international practice confirms the existence of nationalization and States will not concede that their conduct amounts to persistent breach of the law, "the principle that lack of compensation will be nationalizing action seems untenable" (p. 145), and "irrespective of the importance the question might have in individual cases for enforcing the payment of claims for compensation, it must be accepted that the rule that nationalization as such is legal, and that the transfer to the State of nationalized property takes place at the moment of the act of nationalization, contributes best to the interests of the international community" (pp. 147-8).

Regardless of international legal theory as to the necessity of compensation, the problem is frequently settled on a bilateral basis, in the form of an agreement in general terms, for direct or indirect individual compensation, or, increasingly, for global lump-sum compensation (p. 194). Such agreements tend to be fairly comprehensive in their wording as to the type of property in respect of which compensation is to be paid (p. 214). Further, these treaties tend to confirm that the compensation should be full and effective although there is something in the nature of a retreat in so far as promptness in payment is concerned (pp. 262-3).

Dr. Foighel's book constitutes a useful and instructive analysis of the problems connected with *Nationalization and Compensation*, tending to show that current practice is more in keeping with the traditional approach than has often been assumed. It is perhaps still too early to say what the impact of Afro-Asian approaches to the problem are likely to be.