both World Wars. In 1937 (new edition with W. P. Lage in 1940) he published an incisive analysis of legal and political aspects of the problem under the title, *Neutrality for the United States.* So imbued did he become with the idea that the United States had taken the wrong path in the two World Wars and their aftermath that he tended to become polemical against the participation of the United States in efforts at collective security, and profoundly skeptical of general international organizations.

Professor Borchard's professional interests were not confined to international law. With a zealous humanitarian interest in legal reform, he published *Declaratory Judgments* in 1918 and his influential book, *Convicting the Innocent* in 1932. As a result he was instrumental in drafting the Declaratory Judgments Act, the Tort Liability Act, and the State Indemnity for Innocents Act in United States law.

For more than a quarter of a century, Professor Borchard was an active and stimulating participant in the affairs of the American Society of International Law. His recognized erudition, his willingness to tilt a lance for causes he held dear, and his kindly interest in younger scholars won him the affectionate regards of a host of friends. A great legal scholar and a warmly humane man has passed from our midst.

HERBERT W. BRIGGS

NATIONALIZATION OF FOREIGN-OWNED PROPERTY IN ITS IMPACT ON INTERNATIONAL LAW

The nationalization of foreign-owned property presents problems which put a severe strain upon some of the accepted principles of international law. Chandler Anderson, one of the founding members of the American Society of International Law, pointed out nearly a quarter of a century ago that the principle which safeguards foreign-owned property from confiscation in time of peace "has become a part of the law of nations not merely because it represents a universally recognized standard of justice, but also because it is absolutely essential for the welfare of every nation, for without its protection no commercial, or financial international intercourse could safely be carried on."[1] Since that time, the practice of expropriating foreign property by "nationalization" has spread from Soviet Russia to other countries constituting important parts of the free world strongly opposed to Communism.

The most recent case of nationalization has brought about the tension between Great Britain and Iran because of the nationalization of the property of the Anglo-Iranian Oil Company. This has introduced some new phases of the problem, because the property seized was not owned by private interests alone but by a corporation, the majority of the stock of which

[1] C. P. Anderson, "Bases of the Law against Confiscating Foreign-owned Property," this JOURNAL, Vol. 21 (1927) p. 526.

is owned by the British Government, a government which itself had already entered upon the nationalization of certain of its own industries. Furthermore, the immense quantities of oil which are recovered, refined and transshipped by the Anglo-Iranian Oil Company constitute an appreciable percentage of the world's production of an essential commodity on which many countries besides those directly interested are dependent.[2]

The principle of the extent of protection to be accorded to foreign-owned property has never had any precise definition on which all nations are agreed. What is called the international standard of justice is at best a variable measure. Even though a constant formula were forthcoming, the realities of the modern industrial world would make it impossible in many cases to carry out the principle of full compensation. Prosperous nations do not ordinarily find it either wise or expedient to enter upon a policy of nationalization. The principle of just compensation gives way to considerations of the debtor's political instability or its capacity to pay. This was recognized by the United States in the negotiation of the settlement of the claims of United State citizens against the Federal People's Republic of Yugoslavia by the agreement of July 19, 1948, under which the sum of seventeen million dollars was accepted as a lump sum for property nationalized, although the market value was much greater. The International Claims Settlement Act of March 10, 1950, set up an International Claims Commission with power to examine, adjudicate and render final decision with respect to claims of the Government of the United States or of its nationals, not only under the terms of the agreement with Yugoslavia, but also under the terms of any agreement thereafter concluded with other governments (excepting those at war with the United States in World War II) arising out of the nationalization or other taking of property, where the Government of the United States has agreed to accept from that government a sum in *en bloc* settlement thereof.[3]

The language of this statute seems to envisage a notable change in diplomatic protection from one accorded to separate individual claims to that of a single governmental claim made on behalf of all nationals whose property has been nationalized. Where there has been an *en bloc* settlement, proceedings must be taken by each claimant before a commission authorized to hear and determine the claims. Under such a proceeding, no settlement can be made with any until all the claims have been determined; otherwise the amount of ademption cannot be ascertained to which each claimant must submit in a settlement less than the full amount.[4]

Foreign investors are now faced with an added risk, and if the resources

[2] For I.C.J. proceedings in this case, see below, p. 789.

[3] Laws of 81st Cong., 2nd Sess., Ch. 54, Public Law 455, Sec. 4 (a); this JOURNAL, Supp., Vol. 45 (1951), p. 58.

[4] R. L. Bindschedler, *Verstaatlichungs Massnahmen und Entschädigungspflicht nach Völkerrecht* (Zürich, 1950), p. 89.

of the world are to be developed by foreign risk-capital under a Point-Four Program or otherwise, a better basis than that now provided against the danger of nationalization must be established. Some supplementary principles of a political and economic nature must be developed to bring the undisputed rules of international law within the realities of international life. At the annual meeting of the Standard Oil Company (New Jersey) on June 8, 1951, President Eugene Holman gave an outline of what he conceived to be such a basis for the oil industry. He said that the oil companies producing oil in foreign lands recognize that the oil underground belongs to the people of those lands and that a foreign government which lets oil concessions may rightfully expect: (1) that an adequate participation in the proceeds should accrue to the government; (2) that operations shall be so conducted as to contribute to the domestic economy of the nation; (3) that domestic demands for oil be fully satisfied before any oil is exported; (4) that there be no avoidable waste of the natural resources; (5) that the enterprise give training and employment to local citizens at fair rates of compensation; and (6) that oil and oil products available for export move to markets in fair volume at fair prices. On the other side, the foreign government should assure continuously for the period of the concession (1) security of title to the property or rights conceded; (2) managerial control of the company's operations; and (3) the opportunity to make a reasonable profit from the enterprise.[5]

At the meeting of the *Institut de Droit International* at Bath, England, in August, 1950, Professor A. de La Pradelle presented the report of a committee dealing with "International Effects of Nationalizations." Unfortunately, time did not permit even a preliminary discussion of the report, and accordingly it is mentioned here only to indicate that jurists are beginning to take account of the problems involved with a view to some definition of the impact which nationalizations are having upon international law. The Chairman accompanied his report by a draft resolution of some twenty-two articles setting forth the principles of international law applicable to nationalizations, in which it is recognized that aliens are entitled to international treatment in the event of nationalization of property, even though this treatment is superior to that accorded to nationals.

We believe that eventually some regulation will be achieved either by non-governmental agencies or under the auspices of the United Nations for a compromise between the demands of national sovereignty and the international protection of foreign property in time of peace. If nationalization laws introduced as social reforms were to recognize full, adequate and prompt compensation, none could be carried out.[6] A compromise in the

[5] Printed proceedings of the Annual Meeting, Standard Oil Co. (N. J.) (published by the company July 9, 1951), p. 4.

[6] See N. R. Doman, "Postwar Nationalization of Foreign Property in Europe," Columbia Law Review, December, 1948, pp. 1123, 1161.

method of compensation is not a compromise in the principles of international law; on the other hand, nationalization should never be permitted or recognized if the compensation provided for is so inadequate as to constitute merely a disguise for the spoliation of foreign-owned property.

ARTHUR K. KUHN

THE NEED FOR A JAPANESE FISHERIES AGREEMENT

The near approach of peace with Japan necessitates careful consideration and prompt action with respect to Pacific Ocean fisheries relations.[1] The peace treaty with Japan provides in Article 9:

> Japan will enter promptly into negotiations with the Allied Powers so desiring for the conclusion of bilateral and multilateral agreements providing for the regulation or limitation of fishing and the conservation and development of fisheries on the high seas.[2]

[1] Many groups, particularly on the Pacific coast, urge that action should be taken at once, or should have been taken already. For example, the General Conference of the Pacific Northwest Trade Association adopted April 17–18, 1950, a resolution "that no peace treaty should be entered into with Japan by either Canada or the United States until and unless definite and binding commitments are made by Japan which will adequately protect the interests of Canada and the United States in their coastal fisheries not only within but beyond terriorial waters." The Pacific Fisheries Conference resolved on Nov. 29, 1950, "that in the treaty of peace with Japan, or in a separate treaty to be concluded prior to or at the same time, suitable treaty provisions be made which will ensure that Japanese fishermen will stay out of the fisheries of the Northeast Pacific Ocean which have been developed and husbanded by the United States and the other countries of North America." See also Report of the Committee on Fisheries and Territorial Waters, 1950 Proceedings of the Section of International and Comparative Law, American Bar Association, p. 37; E. W. Allen, "International Aspects of Fishery Conservation," Pacific Northwest Industry, June, 1950, p. 160.

[2] Department of State Bulletin, Vol. 25, No. 635 (Aug. 27, 1951), p. 350. In his address, "Essentials of a Peace with Japan," on March 31, 1951, at Whittier College (Department of State Publication 4171, p. 8), Ambassador J. F. Dulles pointed out that attempting to cover the problems of Japanese participation in high seas fisheries in the peace treaty itself, rather than in separate agreements between Japan and the country or countries concerned in each fishery, "would almost surely postpone indefinitely both the conclusion of peace and the obtaining of the results which are desired." He added, "There is, I believe, a considerable possibility of agreement between the United States and Japanese fishing interests. . . . No quick results can by won by attempting to make the peace treaty into a universal convention on high-seas fishing. . . . The Japanese now see the importance of avoiding practices which in the past brought Japan much ill will, and, if we can hold to our tentative timetable, there can,I believe, be an early and equitable settlement of this thorny problem."

On the other hand, at the recent San Francisco Conference the Indonesian and Netherlands representatives expressed the view that the treaty should have established greater safeguards against Japanese fishing in high seas areas off Indonesia and Dutch New Guinea. The New York Times, Sept. 7, 1951, p. 7, col. 5; *ibid.*, Sept. 8, 1951, p. 4, col. 3 and p. 5, col. 7.