NATIONALISATIONS AND EXPROPRIATIONS - CHINA AND CHILE

China has entered into agreement with Western companies, beginning with B.P. and including Australian interests for oil exploration in the promising South China Sea bed. The Chinese Prime minister said that China will not nationalise or expropriate western interests (BBC World Service 24 August 1983, The Economist, 26 November 1983, 79.) (See also the section in this issue, "Casenotes".)

In 1971, the late President Allende signed and proclaimed a constitutional amendment which nationalised the important copper mines of Chile. After deducting "excess profits" from a valuation of the enterprises, no compensation was paid. Litigation by the former owners was instituted in Chile and in other countries; copper shipments were seized in proceedings in Stockholm, Hamburg, Milan, Rome and Brescia. The only case which proceeded beyond the preliminary stages was in Germany: Sociedad Minera El Teniente S.A. v. Aktiengesellschaft Norddetsche Affinerie (1963). The court found that under international law, a nationalisation must provide reasonable indemnification. This did not occur, it held, in Chile; however the court would not grant relief as it was a prerequisite that there be a relationship between the act of the foreign government and some German interest. These events are treated in detail by Andreas F. Lowenfeld in International Economic Law Vol II. International Private Investment, New York, Matthew Bender 1982. In early December 1983 the Pinochet government, which came to office after the coup against and the assissination of President Allende, announced an intention to bring back foreign investment into the Unclean copper industry, an emotive issue in that country. Demonstrations against this development have already taken place.

D.F

NEW WORLD INFORMATION ORDER

One aspect of the new international economic order is the New World Information Order. Briefly this refers to the series of proposals advanced in UNESCO concerning a proposed new regime for international communication. In a report of the international commission for the study of communication problems, "Many Voices, One World", UNESCO Paris, 1980 (the "McBride Report") three major issues in relation to international communications were isolated:

(a) the issues of the impact of the imbalance of the flow of information on national cultures,

(b) issues of control over communication, and

(c) issues of communication resources.

It was argued, for example, that scarce resources were inequitably allocated as in relation to the short wave band, the electromagnetic spectrum, as well as to satellites paths, the geostationary orbit. Further, information flows were said to be concentrated in the hands of the major press agencies such as Reuters, Agence France Presse as well as the two American agencies.

News of the Third World was translated through the eyes of these agencies and consequently only news of disasters - famine, war, coups were reported. The McBride Report caused a major stir in western press circles which saw it as an attack on the traditional western freedom of the press. An important side issue has been whether a state's sovereignty would be involved in relation to the transmission of DBS direct broadcast satellites services. The United States in particular has argued against the need for the prior consent of the receiving states whereas, for example, the Soviet Union has been a strong supporter of the need for a prior consent before direct broadcasting of programmes from satellites. The World is on the verge of a major proliferation

of new technologies in the field of communication, and it is appropriate that both international and national law keep up to date in this area. International lawyers will of course recall the very speedy development of custom in relation to the development of other technologies - the development of the aeroplane, and the technological and economic viability of the exploitation of the continental shelf. General Assembly Resolution 37/92 of 10 December, 1982 appears to proceed from the basis that the geostationary orbit, the orbit from which DBS service may be transmitted, is res communis. The resolution however also appears to proceed on the basis that the prior consent of receiving states must be obtained: 1983 22 ILM 451. This contrasts with the practice in relation to the electromagnetic spectrum, short wave radio. It seems hard to see technological or juristic reasons to make this distinction between the two systems, apart from the fact that control is more feasible. This resolution was adopted by a large majority 107 to 13 with 13 abstaining. The Western powers essentially either voted against the resolution or abstained. The traditional view is that such a resolution, in itself, would not be binding even if it purported to be the clarity of law. See the opinion of the arbitrator, Professor Dupuy in Texaco v. Libya 1978 53 ILR 389 at 483-495: for a contrasting Third World view see ICJ Judge Mohamed Bedjaoui in Towards a New International Economic Order, New York, 1979.

The UNESCO position on the NW10 is one of the reasons given by the U.S. for its recent notice of withdrawal from UNESCO. Newspaper reports have suggested that the Australian Ambassador to UNESCO, former Prime Minister Gough Whitlam may have an important role to play in seeking a compromise which will ensure the U.S. remains in the organisation.

INTERNATIONAL FNANCIAL LAW

Regulation of International Financial Matters - Non traditional sources of International Economic Law

Professor Carreau (D. Carreau et al., Droit International Economique, Paris, 1978 at 17, 18) categorises certain subjects of International Law as "non traditional". They can have an important impact on international affairs and international economic law, for example the famous Acnacarry Agreement, made in 1928 between what is now B.P. Exxon and Shell. This was the beginning of what was in effect a private international oil cartel having a major impact on the world and in many respects dominating the energy market down to the establishment of the public cartel, OPEC. In the field of international financial law, agreements entered into between the central banks of nation states may have a very substantial effect on the worlds' financial markets, although these are not treaties in the traditional sense. Indeed some central banks enjoy considerable autonomy from their governments. The most famous of these agreements is the so called Basle Concordat, made in 1975 and endorsed in December 1975 by the governors of the central banks of the Group of Ten. This attempted to establish guidelines for the supervision of multi national or transnational banks, after it was discovered that there was a potential for branches and subsidiaries of such banks to escape supervision. Its weakness was seen in the collapse of the Banco Ambrosiano - neither the Italian nor the Luxembourg authorities would accept responsibility for the liabilities of the bank's Luxembourg subsidiary. Neither country was in breach of the terms of the concordat - accordingly tighter guidelines have recently been endorsed by the central banks of the Groups of Ten, Luxembourg and Switzerland (International Financial Law Review, July 1983, p.26 (1983) 22 ILM 900). However, neither the 1975 nor the 1983 version provide a "lender of last resort" facility. Internally, of course, modern banking involves not only central bank supervision; the central bank is also a lender of last resort.

In the meantime, the U.S. Comptroller of the Currency and the U.S. Federal