

## CASENOTES

### NATIONALISATION

In Albertie v. Empresa Nicaraguense de la Carne 705 F.2D.250 (U.S. Court of Appeals for the Seventh Circuit 18 April, 1983) approved the traditional Western formulation that a Government effecting a nationalisation should provide "prompt adequate and effective compensation". However it noted that there was little agreement on the meaning of these terms.

The court rejected the plaintiff's proposition that prior payment was required under international law. "Prompt" means that the payment be made within a reasonable time after nationalisation.

### PROPER LAW OF CONTRACT

The proposition that the choice of a proper law excludes any renvoi under that proper law was confirmed by the House of Lords: Amin Rasheed Shipping Corporation v. Kuwait Insurance Co. [1983] 3 WLR 241.

### EXTRATERRITORIAL JURISDICTION - NATIONALITY OF CORPORATIONS

Dresser Industries Inc. v. Buldrige 549 F.Supp 108: Casenote 77 AJIL 626.

In an endeavour to prevent the building of the Liberian - European pipeline, sanctions were imposed on a U.S. subsidiary incorporated in France, Dresser (France) for violations of regulations made under the Export Administration Act; 1979. An order for injunctive relief was requested on the grounds, *inter alia*, that the sanctions breached international law. The jurisdiction claimed over U.S. subsidiaries incorporated elsewhere was the subject of strong protests by U.S. allies. The court rejected the request for injunctive relief; however an administrative review remains available.

### EXTRATERRITORIAL ORDER FOR DISCOVERY

Krupp Mak Maschinenbau G.M.B.H. v. Deutsche Bank AG. Judgement of Landgericht of Kiel (District Court) 30 June 1982: 22 ILM 740 (1983).

This was an appeal against a temporary order restraining the defendant from obeying subpoenas to produce documents from Germany and to give evidence thereon. The subpoenas were issued by the U.S. District Court for the Western District of Michigan in an investigation relating to the alleged unlawful conduct of the plaintiff in the sale by its subsidiaries diesel engines produced by it in the German Federal Republic. The U.S. court had rejected arguments of the defendant based on German bank secrecy laws both on the ground that there was no defence (See Societe Internationale v. Rogers 357 US 197 (1958): U.S. v. Vetco 644 F2d. 1324 9th Circ: 1981) and on its own interpretation of German Law.

The German court held that under German law the defendant had no right to disclose the information and documents sought; bank secrecy was subject to constitutional protection (Art 2 para 1 Basic Law). Only a lawful order issued by the competent German authorities could impair the right to bank secrecy. The fact that the defendant maintained a branch in New York did not mean that it was subject to local subpoena powers in relation to matters the subject of German jurisdiction.

This is yet another example of the collision of U.S. and foreign law where the U.S. seeks to exercise extraterritorial jurisdiction.