may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by and be represented for the purpose before, the competent authority.

Article 3 of the European Convention on Establishment, 1956, provides that nationals of other contracting states lawfully residing in the territory may be expelled only if they endanger national security or offend against public order or morality, and Article 4 of the Fourth Protocol (1963) of the European Convention on Human Rights declares that 'collective expulsion of aliens is prohibited'. The burden of proving the wrongfulness of the expelling state's action falls upon the claimant alleging expulsion and the relevant rules would also apply where, even though there is no direct law or regulation forcing the alien to leave, his continued presence in that state is made impossible because of conditions generated by wrongful acts of the state or attributable to it. Where states have expelled aliens, international law requires their national state to admit them.

The expropriation of foreign property

The expansion of the Western economies since the nineteenth century in particular stimulated an outflow of capital and consequent heavy


270 This is a general principle, but cf. Lord Denning in the Thakrar case, 1974 QB 684; 59 ILR, p. 450. Note that the Lord Chancellor, in dealing with the expulsion of British aliens from East Africa, accepted that in international law a state was under a duty as between other states to accept expelled nationals: see 335 HL Deb., col. 497, 14 September 1972. See also Van Duyn v. Home Office [1974] ECR 1337; 60 ILR, p. 247.

investment in the developing areas of the world. This resulted in substantial areas of local economies falling within the ownership and control of Western corporations. However, with the granting of independence to the various Third World countries and in view of the nationalisation measures taken by the Soviet Union after the success of the communist revolution, such properties and influence began to come under pressure.

In assessing the state of international law with regard to the expropriation of the property of aliens, one is immediately confronted with two opposing objectives, although they need not be irreconcilable in all cases. On the one hand, the capital-exporting countries require some measure of protection and security before they will invest abroad and, on the other hand, the capital-importing countries are wary of the power of foreign investments and the drain of currency that occurs, and are often stimulated to take over such enterprises. Nationalisation for one reason or another is now a common feature not only in communist and Afro-Asian states, but also in Western Europe. The need to acquire control of some key privately owned property is felt by many states to be an essential requirement in the interests of economic and social reform. Indeed it is true to say that extensive sectors of the economies of most West European states were at some stages under national control after having been taken into public ownership.

Since it can hardly be denied that nationalisation is a perfectly legitimate measure for a state to adopt and clearly not illegal as such under international law, the problem arises where foreign property is involved. Not to expropriate such property in a general policy of nationalisation might be seen as equivalent to proposing a privileged status within the country for foreign property, as well as limiting the power of the state within its own jurisdiction. There is no doubt that under international law, expropriation of alien property is legitimate. This is not disputed. However, certain conditions must be fulfilled.


272 See e.g. De Sanchez v. Banco Central de Nicaragua and Others 770 F.2d 1385, 1397; 88 ILR, pp. 75, 89.

273 See e.g. AMCO v. Indonesia (Merits) 89 ILR, pp. 405, 466.

The question, of course, arises as to the stage at which international law in fact becomes involved in such a situation. Apart from the relevance of the general rules relating to the treatment of aliens noted in the preceding section, the issue will usually arise out of a contract between a state and a foreign private enterprise. In such a situation, several possibilities exist. It could be argued that the contract itself by its very nature becomes 'internationalised' and thus subject to international law rather than (or possibly in addition to) the law of the contracting state. The consequences of this would include the operation of the principle of international law that agreements are to be honoured (pacta sunt servanda) which would constrain the otherwise wide competence of a state party to alter unilaterally the terms of a relevant agreement. This proposition was adopted by the Arbitrator in the Texaco v. Libya case in 1977, where it was noted that this may be achieved in various ways: for example, by stating that the law governing the contract referred to 'general principles of law', which was taken to incorporate international law; by including an international arbitration clause for the settlement of disputes; and by including a stabilisation clause in an international development agreement, preventing unilateral variation of the terms of the agreement. However, this approach is controversial and case-law is by no means consistent. International law will dearly be engaged where the expropriation is unlawful, either because of, for example, the discriminatory manner in which it is carried out or the offering of inadequate or no compensation.

275 53 ILR, p. 389.
276 See e.g. C. Greenwood, 'State Contracts in International Law - The Libyan Oil Arbitrations', 53 BYIL, 1982, pp. 27, 41 ff. See also A. Fatouros, 'International Law and the Internationalised Contract', 74 AJIL, 1980, p. 134.
278 See in particular article 1 of Protocol I of the European Convention on Human Rights, 1950 as regards the protection of the right to property and the prohibition of deprivation of possessions 'except in the public interest and subject to the conditions provided for by law and by the general principles of international law'. See e.g. the following cases: Markx, European Court of Human Rights, Series A, No. 31; 58 ILR, p. 561; Sporang and Lönnroth, ECHR, Series A, No. 52; 68 ILR, p. 86; Loisidou v. Turkey, Judgment of 18 December 1996; 108 ILR, p. 444. See also e.g. Jacobs and White European Convention on Human Rights (eds. C. Ovey and R. C. A. White), 3rd edn, Oxford, 2002, chapter 15.