A CRITIQUE OF THE CONCEPT OF PERMANENT STATE SOVEREIGNTY, STABILIZATION CLAUSES AND EXPROPRIATION IN INTERNATIONAL PETROLEUM CONTRACTS**

Abstract
The Government of the Libyan Arab Republic expropriated Texaco Overseas Petroleum Company's assets and cited public interest and development of Libya as the one of the reasons behind the act. The act of expropriation was anchored on Libya's exercise of State sovereignty over its natural resources and full control over its territorial jurisdiction. Texaco angered by the unilateral act of the host State, put in motion International arbitral resolution of the matter, which Libya was held under international law to recompense Texaco for its act of expropriation. This work examined the case of Texaco Overseas Petroleum Company v Libya and extracted the fundamental concepts, principles and doctrines that engineered the conclusion reached by the Arbitrator, such as State sovereignty over natural resources, stabilization clauses, expropriation, compensation and compensation standards after expropriation and so on. The aim of this work was to critically examine the Texaco Overseas Petroleum Company Case. The doctrinal research methodology was adopted. It was discovered that stabilization clause in petroleum contract most times internationalized the contract and confer jurisdiction on International Arbitral Tribunal. It was further discovered that developed countries favoured expropriation if prompt, adequate and effective compensation would be paid. It was concluded that inclusion of stabilization clauses in International Petroleum contracts, between host State and foreign private company, observance of the principle of pacta sunt servanda and recognition of legitimate expectation of the parties positively impacted on contractual relationship.

Keywords: Stabilization Clauses, Natural Resources, State Sovereignty, Expropriation and Compensation.

1. Introduction

State sovereignty and the exercise of the powers inherent and implicit in same by developing countries of Latin America, Asia and Africa, especially after decolonization gave rise to expropriation or nationalization of investments of aliens by host states. Theories such as Hull Doctrine, which supports expropriation or nationalization of foreign investment has found expression in Constitutions[1] of some Latin American countries; and Hull formula which supports expropriation but advocated that if expropriation must be made the orthodox parameters of prompt, adequate and effective compensation should serve as a standard for payment of compensation.

To protect foreign direct investments from the negative effects of invoking State sovereign rights over foreign investment, international investment laws were strengthened and Stabilization Clauses were included in Bilateral Investment Agreements and Contracts. The Stabilization Clauses are classic[2] and modern[3] – the classic approach includes provisions in the contract intending to insulate the contractual relationship from any subsequent government, legislative or administrative

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[1]Constitution of Bolivia 2009, art 180; Constitution of Honduras 1982, art 19; Constitution of Peru 1993, art. 17, Constitution of Mexico 1917, art 27; Constitution of Panama 1972, art 21

[2] AFM Maniruzzaman, 'The pursuit of Stability in International Energy Investment Contracts: A Critical Appraisal of the Energy Trend (2008) (1) (2) *Journal of World Energy Law and Business, 120*

[3] Ibid., 124.

measures that may have the effect of annulling or altering such relationship[4]. Another legal technique often used is to promulgate the contract itself as a law, to accord supremacy to the contract as *lex special's* over current or subsequent legislations or enactments.[5] The exercise of the sovereign authority by the state party to a contract cannot be completely restrained by virtue of a classic stabilization clause, certain techniques have been adopted in a way that respect the reality and at the same time protects the economic equilibrium of the contract.[6] This modern technique of modern stabilization clause is known as economic balancing provision or economic stabilization clause.[7]

In Africa, the Government of Libyan Arab Republic, in exercise of its sovereign rights over its natural resources nationalized all of *Texaco overseas petroleum company*'s assets, rights, interest and property in Libya.[8] Also, the rights, interest and property of *BP Exploration Company (Libya)* Ltd[9], and *Libyan American Oil Company (LIAMCO)*[10] were nationalized by Libya. The three cases concerned the concessions that the Libyan Government had given in relation to its oil industry during the 1950's and 1960 and the nationalization of the investment by the Government and the contestations that followed at the International Arbitral Tribunal. Libya was recognized as an independent sovereign State by the United Nations in 1949, effective 2 January 1952.

This work however will critically examine the case of *Libya v Texaco*, with a view of extracting and explaining the various concepts, doctrines and principles that engineered the tribunal decision.

2. Texaco Overseas Petroleum Company v Government of the Libya Arab Republic – Brief Facts

Texaco and Calasiatic, both United States Corporations, obtained fourteen Oil Concessions from Royal Libyan Government.[11] In 1973, the revolutionary government nationalized, fifty-one percent of the Companies' interest in the concession.[12] When the companies commenced arbitration proceedings, their remaining forty-nine percent interests were also nationalized.[13] Libya did not respond to the companies' request to submit to arbitration, but when the companies under clause 28 (3) asked the president of the International Court of Justice (ICJ) to appoint a sole arbitrator, the Libyan government opposed such appointment in a memorandum. Libya objected to the arbitration procedure stating that the disputes were not subject to arbitration because the nationalization were acts of sovereignty.[14] After considering the memorandum the president of the ICJ named a sole arbitrator.[15] A preliminary award was rendered in November of 1975, followed by award in the merits on January 1977[16].

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[4] Ibid.
[5] AFM Maniruzzaman (n2)
[6] Ibid
[7] Ibid
[8] *Texaco Overseas Petroleum Company v Libya* (1977) 531LR389
[9] *British Petroleum Exploration Company v Libya* (1974) 54 ILR 297
[10] *Libyan American Oil Company (LIAMCO) v Government of the Libyan Arab Republic* (1981) 20ILMI.
[11] C Greenwood, 'State Contracts in International Law: The Libyan Oil Arbitrations' (1982) (53) *Brit-YB Int'l*, 30
[12] Ibid.
[13] RBV Mehren and PN Kouzides, 'International Arbitration Between States and Foreign Private Parties: The Libya Nationalization Cases', (1981) 95) American Journal of International Law 476
[14] Ibid, 489.
[15] Ibid.
[16] RCA White, 'Expropriation of Libyan Oil Concessions – Two conflicting International Arbitrations' *Int'l & cm*. L Q, (1981) (30) 1.

Texaco Overseas Petroleum Company (TOPCO) arbitral tribunal looked at the whole issue in greater details and reached different conclusion about why TOPCO was entitled to compensation. Among other things the Arbitrator decided as follows:

1. He rejected the notion that the concession is an administrative contract.[17]
2. He considered the nature of the implications of the stabilization clause,[18] and firstly stated that clause 16 did not in principle impair the sovereignty of the Libyan State, since all its sovereign, legislative and regulatory powers are preserved, as this power can be exercised with respect to persons with whom the state has contractual obligations. On this point he held that:

> The recognition by international law of the right to nationalize is not sufficient to empower a state to disregard its commitments, because the same law also recognizes the power of a State to commit itself internationally, especially by accepting the inclusion of stabilization clauses in a contract entered into with a foreign private party.[19]

He then turned to the validity of stabilization clauses and reached the following conclusions:

> In respect of international law of contracts, nationalization cannot prevail over an internationalized contract, containing stabilization clauses, entered into between a state and a foreign private company. The situation could be different only if one were to conclude that the exercise by State of its right to nationalize place that state on a level outside of and superior to the contracts and also to the international legal order itself, and constitutes an act of government which is beyond the scope of any judicial redress or any criticism.[20]

The importance of the TOPCO arbitration is:

1. The arbitrator internationalized the contract
2. He interpreted the stabilization clauses as a bases to do so. In order words, the arbitrator held that when the contract is internationalized, the parties act as equals and the State host is bound by the guarantees it has offered to the investors.[21]

3. Basic Concepts, Doctrines and Principles Relied upon in Texaco overseas Petroleum's Case

The issue of State sovereignty over natural resources, stabilization clauses, Expropriation or Nationalization, compensation standards, the status of stabilization clauses under international law and the concept of legitimate expectation which formed part of the issues handled in the TOPCO case will be discussed below:

[17] RCA White (n16)
[18] Ibid
[19] Texaco (n8)
[20] Ibid
[21] RCA White (n16), 11

3.1. Permanent State Sovereignty over Natural Resources

The principle of permanent sovereignty over natural resources essentially advances the argument that resource-rich nations should have control over their natural resources.[22] Such an exertion of control entails:

1. The right to freely dispose of natural resources
2. The right to freely explore and exploit natural resources
3. The right to use natural resources for development.
4. The right to regulate foreign investment, and
5. The right to settle dispute on the basis of natural law.[23]

It is pertinent to State that, in the exercise of the rights attached to this principle, a State must act within the parameters of International law.[24] More so, a degree of international cooperation is required.[25] There has been arguments regarding the legal status of the principle of permanent sovereignty over natural resources. It has been severally expressed that the fact that the principle was established by a Resolution of the United Nation General Assembly 1803, it lacks binding force.[26] On a different view, the resolution of the UN General Assembly has been concluded to constitute evidence of Customary International Law.[27]

Arbitral tribunals have supported the view. The tribunals in *Libyan American Oil Company v Libya,*[28] for example opined that the said resolution if not a unanimous source of law, are evidence of the recent dominant trend of international opinion concerning the sovereign rights of States over natural resources[29]. This position was reaffirmed in *Texaco v Libya*, where the tribunal held that Resolution 1803 reflected the tenets of Customary International Law.[30] Their rational was based on the said Resolution's reference to International Law when it addresses nationalization. The tribunal endorsed Resolution 1803, because it received the universal assent of both developed and developing nations. The tribunal in Texaco however, did not accept the charter on Economic Rights and Duties, which it argued must be analyzed as a political rather than as legal declaration concerned with the ideological strategy of development and such, supported only by non-industrialized States.[31]

3.2. Stabilization Clauses

The Parties to International Petroleum Contracts (especially foreign investors being anxious about legal security of their investment) adopt various techniques aimed at stabilization of contractual relationship. There are basically two stabilization clauses usually incorporated in investments contracts - the classic and the modern stabilization techniques.

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[22] RP Ng'ambi, 'Permanent Sovereignty Over natural Resources and The Sanctity of Contracts: From the Angle of Lucrum Cessans' *Loyola University Chicago International Law Review* (2015) (12)(2), 3
[23] Ibid
[24] RP Ng'ambi (n22)
[25] Ibid
[26] Ibid, 157
[27] Ibid
[28] Libyan American Oil Company (n10)
[29] Ibid*, 53*
[30] *Texaco Overseas Petroleum* (n8) 29-30
[31] A Lowenfeld 'Investment Agreements and International Law' *Columbian Journal of Transnational Law,* (2003) (42) 123-124

The classic approach include provisions in the contract intending to insulate the contractual relationship from any subsequent governmental, legislative or administrative measures that may have the effect of annulling or altering such relationship.[32] In Azerbyan and some middle Eastern countries such as Egypt[33] and Syria,[34] it is indeed a legal requirement for any International Petroleum Agreement to be operative.[35] The advantage of this method is that it is not always easy for a legislative body, let alone the governmental authorities to interfere with the contract straight away as there are various formalities to go through before it can happen. Attempts have also been made to insulate the contractual relationship by providing in the contract that any contrary or inconsistent legislation enacted by the host state subsequent to the agreement to be inapplicable to the contract itself. Art 18 (1) of the Dublin Tishrine Development Contract 2004, for the Development and Production of Petroleum among Government of Syria and Syria Petroleum Co and Dublin International Petroleum Ltd, provides as follows:

> Contractor and the operating Company shall be subject to all laws and regulations of local application in force in Syrian Arab Republic provided that contractor or the operating company shall not be subjected to any laws, regulation or modifications thereof which are contrary to this contract and which are in effect at any time from the effective date and throughout the terms of this contract.[36]

Simply put, the agreement will prevail over the contrary or inconsistent legislation of the State. Such freezing terms may apply to both current and future laws, and may also apply to any governmental actions inconsistent with the contract.[37] Also, the technique may also go to the extent of insulating the contractual relationship from any Material Adverse Effects (MAE) of an existing or a subsequent law that may have potentially inconsistent outcome.[38]

The inability of the classic stabilization clause to completely restrain the exercise of the sovereign authority by a State Party to a contract gave rise to the development of certain other techniques in a way to respect this reality and at the same time protect the economic equilibrium of the contract. This modern technique is known as Economic Balancing Provisions or Economic Stabilization Clause.[39] As opposed to the classic stabilization approach the economic stabilization clause, ensures a balance of the interest of the parties concerned. In the modern approach the state exercise of sovereign authority is not contractually barred, rather such action is counterbalanced by the provision that the economic equilibrium of the contract as of the effective date of the contract will be maintained during the lifetime of the contract.[40] The reason for the increasing tendency of IOcs to favour economic balancing provisions lies in the fact that if the State's Unilateral acts adversely affect the contract, the available remedies could be more favourable than under the

[32] AFM Maniruzzam (n2)
[33] ASEL – Kosheri, 'The particularity of the Conflict avoidance methods pertaining to petroleum Agreements' *ICSID Rev – FLIJ* (1996) (11) 271 - 276
[34] Dublin Tishrine Development Contract, 2004, art 30
[35] A Z E L – Charate, ' Protection of Investment in the Context of Petroleum Agreements' (1988) (4) Recueil des cours 204
[36] Dublin (n35), art 18(1)
[37] The Ertberg Agreement between Indonesia and Freeport, Inc 1967, art 14(c)
[38] Sedebi Phikwe agreement between the Republic of Botswana and Bamanguato Concession Ltd, 1972, art. 44.
[39] AFM Maniruzzanun (n2), 124
[40] Ibid.

freezing clauses.[41] Accordingly, the breach of a freezing clause itself may result in only lump sum damages which could be far below that which the IOcs would consider to be necessary to 'kept it whole', whereas in economic balancing clauses the provision for "Government plays,' Government indemnifies' is designed to 'keep whole' the IOc on an ongoing basis.[42] In contractual practice classic/freezing and economic balancing provisions are often employed together[43] and sometimes individually. In some cases, where they are employed together, the economic balancing provisions lays down the outcome of the host country's breach of the promise contained in the freezing clause that it makes to the contracting parties.[44] In this sense, the economic balancing provision component provides an additional layer of protection for stability of the contract.[45]

3.3. Types of Economic Stabilization Clauses

Different kinds of economic balancing provisions can be found in recent international petroleum contracts to deal with the changed circumstances brought about by the unilateral acts of State, that is, legislative, regulatory, exercised in sovereign capacity after the effective date of the contract.[46] In line with their *modus operandi*, economic balancing provisions have been broadly divided into three categories:

i. Stipulated Economic Balancing
ii. Non-specified Economic Balancing and
iii. Negotiated Economic Balancing.[47]

These various categories, as opposed to the classic stabilization clauses, while approving the unilateral acts of the States, prescribes different ways of re-establishing the economic equilibrium of the contract as described on the effective date of the contract. Let me explain them *seriation*:

i. **Stipulated Economic Balancing:** It provides for automatic amendment of the contract in stipulated fashion; for example, by way of readjustment of 'profit petroleum split' in the case of Petroleum production sharing contract.[48] The Ecuadorian Model Contract provides as follows:

> In case of modification to the tax regime, including the creation of new taxes, or the labour participation, that have consequences on the economics of the contract, a corresponding factor will be included in the production sharing percentages to absorb the increase or decrease in the tax burden or in the labour participation in the previously indicated contractor. This correction factor will be calculated between the parties and approved by the Ministry of Energy and Mines.[49]

[41] Ibid.
[42] Ibid.
[43] Ibid.
[44] Ibid.
[45] Ibid.
[46] AFM Maniruzzanun, (n40)125
[47] Ibid.
[48] Ibid.
[49] Eluador P S C for the Exploration of Hydrocarbons and Exploration of Crude Oil, art 11.7

ii. **Non Specified Economic Balancing:** It provides for automatic amendment but does not stipulate the nature of such amendment, nor does it require the mutual agreement of the parties concerned for such amendment. An Azeri production sharing contract provides:

> In the event that any Government Authority invokes any present or future law, treaty, intergovernmental agreement, decree or administrative order which contravenes the provisions of this Agreement or adversely affects the rights or interest of contractors hereunder, including, but not limited to, any changes in tax legislation, regulations, or administrative practices, the terms of this Agreement shall be adjusted to re-establish the economic equilibrium of the parties and if the rights or interest of contractor have been adversely affected, the SOCAR shall indemnify the contractor (and its assignees) for any dis-benefit, deterioration in economic circumstances, loss or damages, that ensue therefrom. SOCAR within the limits of its authority use its reasonable lawful endeavours to ensure that appropriate Governmental authority will take appropriate measures to resolve promptly in accordance with the foregoing principles any conflicts or anomaly between all such treaty, intergovernmental agreement, law, decree or administrative order and this Agreements.[50]

iii. **Negotiated Economic Balancing:** It requires the parties to meet to negotiate amendments to the contract. The current Indian Model Production-Sharing Contract (PSC) includes the following provisions:

> If any change in or to any Indian law, rule or regulation imposed by any central state or local authority dealing with income tax or any other corporate tax export/import tax, custom duty or tax imposed on petroleum or dependent upon the value of petroleum results on material change to the economic benefits accruing to any of the parties after the effective date, the parties to this contract shall consult promptly to make necessary revisions and readjustments to the contract in order to maintain such expected economic benefits to each of the parties as of the effective date.[51]

The aforestated categories of Economic stabilization clauses, are often respectively found coupled with freezing clauses.[52]

Some economic stabilization clauses incorporate some kind of indemnification provisions such as 'Government pays,' government indemnifies' or National Oil company Indemnifies.'[53] The outcome of the rebalancing aimed at in some economic stabilization clause is either readjustment of the contract or indemnification to the party affected on a continuing or going basis, while in others it is both. However, a caveat needs to be established here that an arbitral tribunal might be

[50] AFM Mmniruzzanam (n2), 126
[51] AFM Maniruzzanun (n40).
[52] Ibid.
[53] Ibid.

willing to exempt the State from paying compensation to the foreign investor if the actions of the former that adversely affected the interests of the later were taken in a State of necessity.[54]

3.4. Nature of Expropriation

Expropriation is usually defined as conduct by host state which deprive an alien of substantially all benefits derived from property interests within the host State.[55] Historically the act of expropriation has been unanticipated and have often accompanied political unrest or upheaval.[56]

Increasingly, however, host States resort to less noticed methods of wealth deprivation. A forced or coerced sale is one of such methods.[57] Such sale occurs when host state cleverly and with intent to take over the assets of the foreign corporation induces the corporation to enter into negotiations for the sale of the asset of the corporation to it, but so undermines the corporation bargaining position that true negotiation demands.[58] The corporation has no desire to sell its assets a, good example of this is the chilean negotiated buyout of the Anaconda Cooper Company where it was clear that Anaconda was profiting from the agreement negotiated two years prior.[59] The Corporation is usually put under tension by the host State to the extent that it would have no alternative than to sell. The host State acts as if it were a fair and honest negotiator, possibly one whose basic philosophy requires it to reject an open or bare-faced expropriation.[60]

The State may be able to avoid possible backlash from international investors by assuming such an underhanded approach to expropriation, and thereby describing the sale as fair; nevertheless, a forced sale is not without dangers, both internationally and domestically. The International Investor may not accept the claims of the taking State; his protests could create vibrations affecting international lending institutions as well as potential investors and buyers of the expropriating States' products; domestically such actions may drum up fears among the business community of 'who is next?'[61] Whether the host State's action is termed expropriation or coerced sale, the effect is the same; the forfeiture of the benefit of the property held by the corporation or foreign investor.[62] Compensation after expropriation and the different views will be discussed below:

a. Compensation Standard

Almost all nations now recognize the obligation for some compensation for expropriation in breach of contract.[63] However, difficulty arises when an attempt is made to formulate a universal standard. In examining the compensation issue, four separate approaches exist to value corporation assets, two of which deny future profits.[64]

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[54] *Autopista Conceseonada de Venezuela, CA v Balivarian Republic of Venezuela (Venezula), ICAID* Case No: ARB/00/5 (2003)

[55] JW Weller, 'International Parties, Breach of Contract, and the Recovery of Future Profits' *Holstra Law Review,* (1987) (15) *3*

[56] Ibid.

[57] JW Weller (n55).

[58] Vagts, Correction and Foreign, Investment Rearrangements (1978) (17) J. INT'LL., 18-19

[59] Ibid., 18

[60] Ibid.

[61] Ibid., 13-21

[62] Vagts (n[58]).

[63] R Dolzer, 'New Foundation on the law of Expropriation of Alien Property' *American Journal of International Law* (1981)(75) 560 -561.

[64] M H Muller, 'Compensation for Nationalization: "North – South Dialogue (1981) (19) *Columbian Journal of Transnational Law*, 35-37.

The first approach to valuation is known as the fair market value method.[65] When the corporation assets are assessed at fair market values, the corporation is provided with a complete recovery, it is 'made whole'. An attempt is made' to pay the corporation the price it would have received in an open market transaction where such a market is available.[66]

The second alternative is to value the assets as a going concern.[67] This 'profit based' method is calculated by multiplying either the past annual earnings or estimated future earnings by a capitalization factor. The capitalization factor is determined by considering factors such as the number of years the concession would have operated and the risk of loss in the particular industry. While this will not result in a complete recovery as fair market value, the corporation will recover the loss of intangibles such as future profits and good will.[68]

The third approach is to provide the replacement cost of the property forfeited to the expropriating State.[69] Such an award is equivalent to the price which the corporation must pay for new facilities and equipment but adjust for depreciation; it does not include future profits.[70]

The final approach is to award the book value.[71] This approach which provides the acquisition value of the bare physical assets at the time they were purchased is substantially less than the replacement value[72] and excludes future profits.

A dichotomy exists between the positions of the expropriating State and the corporation. The corporation desires future profits and so advocates use of fair market value or going concern method of valuation.[73]While the taking State prefers book value, the minimum compensation possible.[74]

Different views regarding compensation standard between developed and developing nations exist. The developed and the developing States position are explained below.

a(i). Developed States' Position

The developed States argue that expropriation must serve a public purpose,[75] and must be accompanied by compensation; such compensation must reflect the full value of the loss sustained by the expropriated corporation.[76] The taking by a State of property of an alien is wrongful under International Law if it is not for public purpose. Expropriation must be based on reasons of public necessity or public utility. This position; generally referred to as the classic or traditional approach, was described in 1938 by the then United States Secretary of States Hull, in a letter to the Mexican government. In charging Mexico with a deviation from International law, Hull Stated that International law required prompt, adequate and effective compensation.

The view that International law requires compensation for lost future profits is supported by a number of arguments. First, it is asserted that contracts must be enforced, because to do

[65] Ibid, 39-40.
[66] Ibid.
[67] Ibid.
[68] M H Muller (n64), 40
[69] Ibid
[70] Ibid
[71] R J Smith, 'The United States Government Perspective on Expropriation and Investment in Developing Countries (1976) (9) *VAND Journal Transnational Law*, 517
[72] Ibid
[73] Muller (n65)
[74]Smith (n72)
[75] United States Restatement of Foreign Relations Law, 1965, S. 185; Weston, 'The Charter of Economic Rights and Duties of States and the Deprivation of Foreign- owned Wealth' (1981) *American Journal of International Law* 437
[76] Ibid

otherwise would undermine the reasonable expectation of the parties.[77] It has been argued that the concept of *Pacta Sunt Servanda* (agreement must be kept) which originally developed as a concept enforcing treaties between States, applies as well to an agreement between a State and an alien.
Secondly, International Investment would be jeopardized if investors cannot be assured that agreement will be enforced.[78] When breach of contract occurs a full recovery will satisfy the non breaching party's expectations, since the party is placed in the same economic position they would have been in at the conclusion of the contract if it had been enforced.

a(ii). **Developing State's Position**

Developing States have opposed the classical or traditional approach as an approach which was aimed at advancing the course of colonialism, which is no longer acceptable. The developing states' position is that they have the right to exercise full sovereignty over their natural resources and can dispose of their resources as they deem fit, free from outside influence.
The above position has been codified by some developing States' constitutions in compliance with the Calvo Doctrine, which is based on the general notion of exclusive jurisdiction of sovereign State over their own territory.[79] Thus, an alien corporation whose assets are expropriated may be provided with the same compensation a national corporation would receive.[80] This is in consonance with the Calvo Doctrine requirement of equal treatment of aliens and nationals. According to them, challenges to either the expropriation or evaluation can only be entertained by those structures established to handle the grievances of nationals.[81] To permit other forms of recourse for the corporation, such as an appeal to its home government for intervention would infringe the State sovereignty and employ incompetency on the State dispute resolution mechanisms.

b. **Remedies for Expropriation**

The corporation historically has had a series of options after expropriation, including direct negotiations with the host State's government, actions within the host State's legal system, international arbitration or appeal to the corporation's home government to assume the claim. The corporation most times shifts from options which are dominated by the developing State's attitude to mechanisms more receptive to its own view. Most questions, however, are resolved via negotiation with the taking State or actions in its courts, comparatively few disputes ever reach arbitration,[82] or other international dispute resolution mechanisms.

4. Conclusion

The *Texaco Overseas Petroleum Company* case and indeed the cases of *BP Exploration Company* as well as *Libyan American Oil Company* originated as a result of expropriation of these companies by the Libyan government. These expropriations were anchored on the exercise of State sovereignty over natural resources as decolonized States claimed full sovereignty over their

[77] M Donke, 'Foreign Nationalization: Some Aspect of Contemporary International Law *American Journal of International Law* (1961) (55) 585
[78] TW Walde, 'Revision of Transnational Investment Agreements: Contractual Flexibility in Natural Resources Development' <https://www.jstor.org/stable/40175798> accessed 19 October, 2023
[79] R Dolzer (n64), 560
[80] Ibid
[81] Ibid
[82] *Agip Co. v Popular Republic of the Congo* (1979) 21 LLMI, *Texaco Overseas Petroleum Co. v Libya Arab Republic* (1977) 53 ILR 389, *Kuwalt v American Independent Oil Company* (1982) 211Lm 976; *BP Exploration Co. v Libya Arab Republic* (1973) 53 ILR 297

territorial jurisdiction. The government of Libya advanced the argument that the expropriation was for public interest and development of the country.

International law favours expropriation with prompt, adequate and efficient compensation. The developed States favoured the compensation regime advanced by Hull, commonly known as the Hull formula while the developing countries favoured the Calvo regime, commonly known as the Calvo Doctrine.

The inclusion of stabilization clauses in the agreements between the host State and the alien's corporation and the observance of principles such as *pacta sunct servenda*, recognition of legitimate expectations of the parties and so on, have positively impacted on the contractual relationship between the alien and the host State, particularly on expropriation or nationalization of investment of the alien's corporation by the host State.

5. Recommendations

In consonance with the findings of this paper, it is hereby recommended as follows:

1. International petroleum agreement between the host state and an alien's corporation is a contract between the parties, therefore, the legitimate expectations of the parties should be recognized and fulfilled.
2. Host states in international petroleum contract should desist from unjust and unilateral expropriation of investment of the foreign investor, so as to encourage further foreign investments to boast employment and economic stability in the host state.
3. That if the host state has an equitable need to expropriate the assets or investment of the foreign investor, it should not be done unilaterally.
4. Where expropriation of the investment of the foreign investor by the host state is made, prompt, adequate and effective compensation as advanced by the Hull regime be paid to the foreign investor.
5. That where a state enters into an international contract, it is bound by its commitment in the contract and should not hide under state sovereignty to repudiate same.
6. That all international petroleum contracts should have a combination of the freezing and economic stabilization clause incorporated in it, in order to guarantee the stability of the contract.
7. Foreign investors are human beings who invest via artificial persons-corporations accordingly, they are entitled to respect, protection and fulfillment of their rights even outside their home state, as unlawful expropriation is injurious to their rights.