

portion of its wealth abroad, for example in the form of foreign investment, nevertheless retained "permanent sovereignty" over that wealth. This would, of course, conflict with the "permanent sovereignty" of the host state over its "economic activities" and the paragraph was therefore internally inconsistent. Efforts to introduce into the text some limitation of the concept of permanent sovereignty, originally introduced in the particular context of control over foreign-owned natural resources, were not successful.

The right of every state to regulate foreign investment within its national jurisdiction "in accordance with its laws and regulations" is asserted in paragraph 2(a), which goes on to say that "No State shall be compelled to grant preferential treatment to foreign investment". While Canada did not advocate preferential treatment for foreign investment, it did take the view that, when a host state takes measures against foreign investment, it should not discriminate against foreign investment from one country in relation to foreign investment from other sources, and the measures which it applies to all foreign investment should be in accordance with its international obligations.

The right of a state to regulate and supervise the activities of transnational corporations within its jurisdiction, set out in paragraph 2(b), was supported by Canada.

The nationalization/compensation issue, dealt with in paragraph 2(c), proved incapable of resolution. The paragraph asserts the right of nationalization of foreign property "in which case appropriate compensation should be paid by the (nationalizing) State ..., taking into account its relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to controversy, it shall be settled under the domestic law of the nationalizing State and by its tribunals ..." unless the States concerned agree otherwise.

This provision raised, more clearly than any other, the fundamental issue of the relationship of international law to the treatment of foreign investment. The Canadian position was not only that the right of nationalization was conditional upon payment of compensation, but that the whole of Article 2 was defective because of the absence of any reference in the Article to the applicability of international law.