

International economic law

Natural resources, foreign investment and the activities of multinational enterprises were subjects of particular attention, notably within the UN organizations, during 1974. Discussion of these issues inevitably raised fundamental questions concerning the legal regimes relevant to these important areas of international economic law.

The sixth special session of the UN General Assembly on raw materials and development adopted a Declaration on the Establishment of a New International Economic Order and a related Program of Action. The Department was actively involved in the negotiation of the Declaration, particularly those provisions relating to permanent sovereignty over natural resources, treatment by host states of multinational enterprises and of foreign investment generally, and the difficult issue of nationalization and compensation. Although the Declaration and Program of Action were adopted without vote, the numerous reservations and interpretative statements made in the General Assembly following their adoption clearly revealed the absence of any real consensus on these issues. The Canadian position throughout the negotiation of the Declaration was that a state's right to undertake measures of nationalization must be exercised in accordance with generally accepted rules of international law and practice. This position was reflected in the Canadian statement in plenary following adoption of the Declaration.

The problems of sovereignty over natural resources and treatment of foreign investment arose again in the negotiation of the UN Charter of Economic Rights and Duties of States, adopted at the 29th UNGA in December. The fourth and final session of the UNCTAD Working Group, which had been charged with responsibility for drafting the charter, had taken place in Mexico City in June, and in many respects was a

continuation of inconclusive negotiations at the UNGA special session a few weeks earlier. Canada was a member of the working group and the Canadian delegation, which was led by the Legal Adviser of the Department, played a prominent role, in co-operation with representatives of key developing countries, in seeking a compromise resolution on the basic issue of whether the charter was to include reference to obligations in international law relevant to the treatment of foreign investment. Related to these discussions was the question of economic coercion through control over natural resources. As the charter text submitted by the working group did not contain agreed provisions on the issues related to foreign investment, further negotiations continued in New York prior to consideration of the charter in the Second Committee of the 29th UNGA. While inability to reach agreement on these and other issues prevented the adoption of the charter by consensus, the extensive formal and informal negotiations resulted in movement by both sides. Canada's inability to support the charter arose from both legal and other considerations. Foremost among the legal considerations was the question of the application of international law to the treatment of foreign investment. Although Canada recognized the need for progressive development of the law on this subject, the exclusion of international law (whatever its content) was unacceptable in principle. The Canadian statement on the charter also expressed concern about the extraterritorial implications of the charter's extension of the concept of permanent sovereignty beyond the area of natural resources.

It was expected that the issues would continue to arise in other contexts, and that in due course the realities of interdependence and the community of economic interest would assert themselves and lead to more general agreement. This, it was hoped, would form the basis for the progressive development of international