

As the experience of Canada clearly demonstrates, issues relating to control of foreign investment are not always exclusively issues between developing and industrialized countries and, in the context of the Charter, the balance of Canadian interest corresponded to that of many developing countries. Canadian participation in the Working Group, reflecting this aspect of our national interest, has been directed at modifying some of the more traditional views held by some industrialized countries (e.g. prompt, adequate and effective compensation as determined by international disputes settlement machinery) while at the same time advocating the necessity for maintaining the principle of the rule of law in this area of international relations. Canada may differ with many other industrialized countries concerning the content of customary international law in this area, but has not disputed the existence of relevant principles. Thus the Canadian Delegation actively pursued the opportunity for encouraging the evolution and progressive development of customary international law through the Charter*.

One provision in a developing country proposal for the paragraph on foreign investment and related issues would assert that "Every State has the right and the duty to take all effective measures, inter alia, through the full exercise of permanent sovereignty over all its natural resources, to put an end to all forms of foreign occupation, apartheid, racial discrimination, colonial, neo-colonial and alien domination and exploitation". Given the highly subjective judgements required to determine whether a given situation is of a kind to which this provision applies, the issue raised by the proposal appears to be, in effect, whether economic coercion in the form of, e.g. embargoes on exports of vital national resources to a particular state or states, may be justified in pursuit of

* The ECOSOC "Group of Eminent Persons" report on Multinational Corporations, issued in New York at the fourth session began in Mexico City, recommended that nationalizing states "... should ensure that the compensation is fair and adequate and determined according to due process of law of the country concerned ..." The language leaves room for discussion whether the recommendation implies recognition of a "minimum standard" of treatment in accordance with customary international law. The Declaration which resulted from the Sixth Special UNGA asserts a right of nationalization in the particular context of permanent sovereignty over natural resources but is silent on the law applicable to disputes arising from measures of nationalization.