

The basic principles that a state enjoys permanent sovereignty over its natural resources and the right to regulate all forms of foreign investment within its territory, including the activities therein of multinational corporations, were not in dispute. As they had done at the Sixth Special Session of the U.N. General Assembly in the spring of this year, however, the developing countries insisted that the affirmation of these basic principles be accompanied by a specific reference to the right to nationalize foreign investment. Developed countries took the view that, while they did not dispute the existence of a right to nationalize foreign investment, specific reference to it in the Charter must be accompanied by provisions specifying the conditions governing the exercise of this right, in particular the duty to pay compensation and the requirement generally to observe relevant provisions of international law. It was the view of most developing countries that issues arising from measures of nationalization or expropriation, including determination of the amount and method of payment of compensation, if any, are subject to the exclusive jurisdiction of the domestic tribunals of the nationalizing state, applying domestic law. Representatives of these countries expressed the view that the only relevant international law obligations are those which the nationalizing state may have undertaken by treaty freely entered into. In contrast to the view held by most industrialized countries, these developing countries deny the existence of any body of customary international law relevant to the taking of foreign property.

Although discussion served to narrow the issues outstanding between developed and developing countries on foreign investment questions, it was not possible to reach agreement on a form of words satisfactory to both sides on the law applicable to nationalization and other measures taken against foreign property. The issue was not the substantive content of customary international law in this area but rather the existence of any such law.