

*No agreement
on exploitation
of the moon's
resources*

Uses of Outer Space will seek to reach a consensus on the main outstanding issue of the extent to which the consent or which Canada is a member, has successfully drafted four international conventions on outer space covering: the legal principles that will govern the use of outer space; the rescue and return of astronauts and the return of space objects; international liability for damage caused by space objects; and the registration of objects launched into outer space. That agreement has been possible on such a wide range of issues is largely due to the growing sense of interdependence among states and a realization of common concerns that the UN has helped to foster. The committee has now turned its attention to three priority subjects: a draft treaty concerning the moon; the legal implications of "remote-sensing" of the earth from space; and the elaboration of principles to govern direct broadcasting by satellites. With respect to the draft moon treaty, there has been little progress, primarily because there has been no agreement as yet on a regime for exploitation of the moon's resources. There continues to be basic differences between those countries that believe the resources of the moon should be treated as the "common heritage of mankind" and those that do not wish to place undue international legal restrictions on research and unforeseen future prospects for exploitation of the moon's resources.

While considerable progress has been made in the elaboration of legal principles to govern remote-sensing of the earth from space, there is still disagreement on the legal rights, if any, a "sensed" state should possess to protect itself from acquisition and release of information acquired by a "sensing" state that might be detrimental to the interests of the sensed state.

There has also been considerable progress in developing principles to govern direct television broadcasting from satellites. This year, the Legal Sub-Committee of the UN Committee on the Peaceful Uses of Outer Space will seek to reach a consensus on the main outstanding issue of the extent to which the consent or agreement of a state is a necessary prerequisite to the establishment of direct television broadcasting services from satellites. If this issue can be satisfactorily resolved, it should prove possible to draft an agreement containing a full set of principles respecting direct broadcasting from satellites.

The shift in focus at the UN towards North-South development issues has also made itself felt in UN lawmaking activities. Negotiation of the Declaration on

Human Rights of the sixth special session of the General Assembly and, shortly thereafter, the Charter of Economic Rights and Duties of States, disclosed a sharp divergence of views between developed and developing countries on the law relating to sovereignty over natural resources, control of national enterprises and compensation for nationalized property — all issues directly upon the treatment of foreign investment.

The transfer of capital and technology to developing countries, which is an important UN aim, will require large-scale flows of foreign investment in developing countries by developed-country investors. A legal regime governing both the terms and conduct of this investment will therefore, be one of the corner-stones of future international economic structure.

The fundamental differences revealed in the negotiation of the Declaration and the Economic Charter called into question the very existence of customary international law applicable to the treatment of foreign investment. In the subsequent two years, however, a rather sterile, doctrinaire standard has been followed by evidence — at the special session, the CIEC and elsewhere — of a willingness to achieve economic development objectives by seeking practical solutions to problems rather than by debating doctrine (which may, nevertheless, continue to be strongly adhered to).

Foreign investment

The need for foreign investment to make possible the achievement of economic development is obvious. That this investment will not take place without the framework offered by an accepted set of basic "ground-rules" is equally obvious. The Declaration of the 1974 Declaration and Charter suggests that, at this stage, the evolution of modern international law of foreign investment for development may have to be based upon bilateral state practice in the investment agreements and the terms of both procedural and substantive provisions. These agreements provide for the resolution of investment disputes. But even if they quickly. Increasing awareness by developing countries of the need for access to foreign capital markets, and awareness of the need to conform to international objectives, may be expected to speed the political will necessary to reach agreement on the "ground-rules." As the process occurs, the potential for multilateral negotiation of a legal framework for foreign investment will increase significantly, and it may then become possible