

## PANEL DISCUSSION: REGULATION OF NATURAL RESOURCE DEVELOPMENT

**Harold Russell\***  
**Frank Ruddy**  
**Lorne S. Clark**  
**L.F.E. Goldie**

**MR. RUSSELL:** I very much liked the kind of give and take that Professor Barceló was able to promote this morning. I propose to deliver these somewhat miscellaneous remarks, and perhaps Mr. Ruddy would then make some comments, followed by Professor Goldie. I would encourage all of you just to speak right up and interrupt us as we go along if a thought occurs to you.

First let me thank my friend and colleague, Mr. Clark, for his excellent presentation of the evolution and development of these issues, particularly in the natural resource area. I'd like to express a few general thoughts about this evolving problem and then briefly address Canadian-U.S. bilateral issues. This whole effort which he described, perhaps the most important element of which is the United Nations Charter of Economic Rights and Duties of States,<sup>1</sup> is a very exciting and promising development. However, in Washington it is viewed as a very alarming development, because of some of the very essential defects in these instruments. Foreign investment comes principally from three sources: from governments, from international institutions, or from private sources. For all three, a certain amount of stability and predictability is essential, even for international institutions, such as the World Bank, which considers itself a moneymaking institution. The World Bank cannot and will not go out and make commitments that are losing propositions.

The same is true for a government. If you're going to set up an experimental research station in Peru, you want to make sure that two days after it is all set up, staffed, and equipped it is not turned into a football field. There have to be some assurances that what you're providing the other country will be carried forth on the

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\* *Harold Russell* is Assistant Legal Advisor for European Affairs for the United States Department of State.

*Frank Ruddy* is Counsel for the Exxon Corporation, Houston.

*Lorne S. Clark* is Counsellor for the Canadian Embassy, Washington, D.C.

*L.F.E. Goldie* is Professor of Law and Director of the International Legal Studies Program, Syracuse University College of Law.

1. Charter of Economic Rights and Duties of States, G.A. Res. 3281, 29 U.N. GAOR Supp. 31, at 50, U.N. Doc. A/9631 (1974).

grounds on which you engaged in the endeavor. It goes without saying, of course, that for private interests profit is a *sine qua non*. The chairman of the board who invests in a project which will not pay will not remain chairman very long.

We do need rules to govern the activities of all national corporations. These rules must lead to predictability, make economic sense, and be rational and consistent. This is, in broad terms, what disturbs us about the Charter of Economic Rights and Duties of States and the so-called New International Economic Order.<sup>2</sup>

There are many elements of these documents which we can and do support. We support liberalization of trade; access to markets; a system of generalized preferences for developing countries, which is now in our 1974 Trade Act;<sup>3</sup> agreements to stabilize commodity prices, which are not new but can be applied to new products; increased transfer of material resources to the less-developed countries; full participation by all countries in the development of world monetary policy; priority assistance in food production; and emergency measures for countries which are in the most serious difficulty. But it is the question of expropriation, which Mr. Clark touched upon, the provisions in the Charter which appear to support the creation of primary producer cartels,<sup>4</sup> and the so-called indexation of raw materials exports to manufactured goods imports which give us the most cause for concern.

The Charter exercise is a very important part of the picture, but it bears noting that we are engaged in perhaps an equally important and dangerous enterprise in the form of the drafting of codes of conduct for foreign investment. These codes are a very fashionable subject, one that is now being taken up by the UNCTAD, ILO, WIPO, OECD, and diverse organizations under the United Nations Economic and Social Council. In our view these should be codes of conduct that not only apply to multinational corporations, but will lead governments to consistent, predictable, and responsible behavior. There are others who see it somewhat differently. If this can be a two-sided and well-rounded enterprise, I think it has real possibili-

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2. Declaration and Programme of Action on the Establishment of a New International Economic Order, G.A. Res. 3201, 3202, 6 Special Sess. U.N. GAOR Supp. 1, at 3, 5, U.N. Doc. A/9559 (1974).

3. Trade Act of 1974, §§ 501 *et seq.*, 19 U.S.C. §§ 2461 *et seq.* (Supp. IV, 1974).

4. "All States have the right to associate in organizations of primary commodity producers in order to develop their national economies . . ." Charter of Economic Rights and Duties of States, art. 5, G.A. Res. 3281, 29 U.N. GAOR Supp. 31, at 52, U.N. Doc. A/9631 (1974).

ties for improving the climate of investment in the world.

I'm not familiar with the latest statistics, but from the few conversations I have had with businessmen, it's my impression that there is a growing skepticism about investment in the less-developed countries during a period when the overwhelming need is precisely the opposite. Canada has shared this concern with us, and we anticipate and hope that it will continue to share that concern.

The OECD endeavor, which is basically a friendly effort of developed countries, is quite far along. It is envisaged, at least by the United States, that that organization would produce three documents: some guidelines for the conduct of multinational enterprises, some principles of national treatment, and a series of guidelines for creating incentives and disincentives for investment. Our Canadian colleagues have been quite reluctant in the past to join us in the framing of a document on national treatment, but I am told that there is a new interest in this subject and that perhaps this now might be possible. This would be a step forward, in our judgment.

Turning briefly to U.S.-Canadian relations, and I'm afraid I'm straying a bit afield of the natural resource area, but, speaking generally, our relationship is a unique one, at least among those countries which have an uncoerced relationship. It's unique in its interdependence, which we discussed at some length and in the cooperation which exists between our two countries. The predictability of which I spoke is in fact so high that investment and attendant development have been equally high. There are signs that this relationship is changing. I will not judge whether this is good or bad, as I think that is really for others to assess. There's no question that Canada has the right to control and have permanent sovereignty over its natural resources. They clearly have the right to exercise their sovereignty and increase control if that is their desire, and to sever the traditional interdependence. In the course of doing so, however, I hope that at least three things will be kept in mind: (1) cases of undue hardship should be avoided, (2) it should be done in such a way as to promote laudable general rules of international conduct, and (3) it should be done with the fullest possible realization of the consequences of this course of action. I am confident that, as Canada seeks a new relationship of independence from the United States, our traditional cooperation will not be disturbed.

Canada clearly has the right to decide what kind of foreign investment it wishes to encourage and accept domestically. It is our view that those investments which have been allowed should be accorded national treatment. It's in this regard that the recent ex-

propriation of U.S. and other potash interests in the province of Saskatchewan is disturbing to many Americans. Expropriation is, of course, a recognized right, assuming it is carried out, as I know it will be in Canada, in accordance with international legal principles. It is disturbing, not because there's any question of its legality, but for other reasons.

First, Saskatchewan produces between 70 and 85 percent of the potash used in the United States. Americans are concerned that, with the growing enthusiasm for producers' cartels, this gives Canada leverage over the United States, and this makes some people uncomfortable. There have been reassurances, and I don't doubt those reassurances for a moment, that no one intends to exercise this new virtual monopoly position in a way that will produce any hardship or unfairness, but it must be said that this kind of thing does make people uneasy. Second, this means that not only do people have to be concerned with federal control over their investments, but that they can also expect increasing activity from the provinces.

There are other similar activities in Canada, such as the recent bill C-58 which required that 80 percent of all foreign publications contain material of Canadian origin in order for advertisers in those publications to qualify for a tax business deduction.<sup>5</sup> It's clearly legal, but it is perceived by many in the United States as a form of cultural nationalism and an anti-American move which inevitably will produce certain feelings of uneasiness and anxiety. There are, for example, the recent amendments to the Combines Investigation Act, giving the Restrictive Trade Practices Commission the right to order a Canadian entity to pay no attention to or act contrary to a foreign law, the decree of a foreign court, or activity ordered by the board of directors of the parent company.<sup>6</sup> Again, no one can make any legal objections to this, but it appears to some to be another move in the direction of crowding American interests. There is also the 1975 National Transportation Policy Statement, which states in Principle 3 that there should be a combination of public and private ownership of carriers, with private carriers being Canadian-controlled.<sup>7</sup> Well, if this is the long-term policy of Canada and if you happen to be in the trucking business and own a substantial piece

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5. Bill No. C-58, enacted as An Act to Amend the Income Tax Act, Can. Stat. c.106 (1976).

6. An Act to Amend the Combines Investigation Act, Can. Stat. c. 76, § 12 (1975).

7. TRANSPORT CANADA, TRANSPORTATION POLICY, A FRAMEWORK FOR TRANSPORT IN CANADA: SUMMARY REPORT 28 (1975); reprinted in 119 PARL. DEB., H.C. 6783 (Can. 1975).

of the trucking industry in Canada, as some American interests apparently do, or a few ore vessels on the Great Lakes under Canadian flag registry, you have to look at these statements and wonder what the future holds in store.

The only point I wish to make by citing these examples, and Mr. Spence really made this point this morning, is that although we all respect and understand Canada's desire for a new economic and cultural independence from the United States, it has to be recognized that this will be done at a price. What that price will be remains to be seen, but all of these measures do erode, either directly or indirectly, the kind of predictability necessary for the influx of capital which Mr. Clark and Mr. Spence feel will be required in Canada. There is a tension between these two policies, a tension between the desire to attract new capital and the desire to take measures which, in effect, dissuade that capital influx. That sums up the thoughts I have, and if no one has any questions for me, I'll turn it over to Mr. Ruddy.

**MR. RUDDY:** Thank you.

**QUESTION (Prof. Barceló):** Could I raise a question pertinent to some of your remarks? In particular, you suggested that one principle that ought to apply in the case of foreign investment in Canada is that Canada be allowed to decide for itself what standard will be applied when investment is seeking to enter Canada, but, once it's entered Canada it ought to be treated as a national. This seems to me to be directly contrary to what the Foreign Investment Review Act says. Under the Act, if investment in Canada is controlled by a noneligible person, then that investment may not extend into unrelated business without Canadian approval.<sup>8</sup> Of course, a Canadian-controlled company would not have to go through the same process, and different standards might well be applied. In some cases the extended business would not be allowed. Would you care to comment on that contradiction between what you say is a desirable objective and the current status of the Canadian law?

**MR. RUSSELL:** I agree with you that there is a distinction there. I think it is up to our Canadian colleagues to assess whether that difference is sufficient to dissuade foreign investment, and I think that's the test for them. The reason national treatment is desirable is not only because of abstract feelings of fairness and equitable treatment, but also because it will attract foreign investment, if

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8. Foreign Investment Review Act, Can. Stat. c. 46, §§ 8(2), 9 (1973).

people know that once they've invested they will be treated as nationals. If, after four or five years, it could be determined that prohibiting foreign investment from extending into unrelated areas dissuades that investment, Canada may wish to review that aspect of its program. It is generally the State Department's position that absent certain definable activities which are reserved to nationals, such as insurance or radio, it's healthy to extend national treatment to all who have invested.

**PROF. GOLDIE:** There's another aspect to the issue of national treatment. This is the debate between the OECD countries and the Group of 77 concerning Article 2 of the U.N. Resolution on the Charter of Economic Rights and Duties of States<sup>8,1</sup> and the subsequent history of that principle, which relates to the fact that the United States does not care to have national treatment when it comes to expropriations, but something better. This is the debate which existed between the United States and Mexico from the second decade of this century until its resolution under Roosevelt in the 1930's.<sup>9</sup> On the one hand, a demand for national treatment may look like a demand for privileges, which may be unacceptable to the capital-importing country, but, on the other hand, there may be a denial of rights unacceptable to the capital-exporting country. Surely one may find an alternative standard in international law today.

**MR. RUSSELL:** I think this is one of those areas to which Mr. Clark referred at the end of his remarks, and where international lawyers have both the opportunity and the obligation to make a real contribution. We do need some definition in this area. Mr. Ruddy, would you like to proceed?

**MR. RUDDY:** Yes, thank you. Let me make some remarks on Mr. Clark's paper, which I enjoyed very much. I quite agree with Mr. Clark that Canada is in a unique position, and its perspective as both a developing and a developed country makes his remarks all the more valuable. Turning to some of the substantive points of Mr. Clark's paper, I feel that he has quite accurately related the recent history of the question of control over natural resources as it

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8.1. Charter of Economic Rights and Duties of States, G.A. Res. 3281, 29 U.N. GAOR Supp. 31, at 50, U.N. Doc. A/9631 (1974).

9. Agreement with Mexico Respecting Compensation for Expropriated Lands, Nov. 9, 1938, 53 Stat. 2442 (1939), E.A.S. No. 158 (effective Nov. 12, 1938), *superseded by* Convention with Mexico Respecting Claims, Nov. 19, 1941, 56 Stat. 1347 (1942), T.S. No. 980 (effective April 2, 1942).

has developed under the aegis of the United Nations. I certainly agree with him that the 1962 Resolution on Permanent Sovereignty over Natural Resources<sup>10</sup> merely reaffirms existing international law. However, in view of the current controversies I don't know whether the adverb "merely" is appropriate. It is no easy matter today to obtain reaffirmation of such basic principles at a time when Promethean efforts are being made to socialize all activities relating to natural resources and to weaken the protection of private property. That brings me to the unfortunate topic of the Charter of Economic Rights and Duties of States. My basic objection was well expressed by Ambassador Castañeda of Mexico, who confessed that the Working Group had attempted not only to reflect existing international law, but to establish new rules for the future.<sup>11</sup> He used the word codify. The great irony, of course, is that the Charter proclaims, in the name of international law, a regime regarding economic rights and duties of states to which international law is not pertinent. Article 2 clearly states that, in the case of an expropriation, the criteria for compensation established by the expropriating state, and not the traditional international standards, will apply. In addition, there is no provision for the binding nature of the sovereign's contracts, and there is no requirement that the expropriating state not discriminate in the act of expropriating. For these reasons, I associate myself with the position of the delegations of Canada, the United States, and other states whose substitute Article 2 was not adopted.<sup>12</sup> I share Mr. Clark's disappointment with what the Charter has left undone, and I also hope that the iron law of economics, the reality of the need to attract foreign capital, will reemphasize the role of law in this area. Having made these general observations, there are several points on which I would ask some clarification from Mr. Clark.

I understand and fully agree with the standard of protection which Mr. Clark has indicated is applicable to foreign investment. In preparing for this meeting today I reviewed provincial legislation since 1973, and I note that, in certain provinces, such as Alberta, there seems to have been an increase in royalties and crown leases

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10. Permanent Sovereignty over Natural Resources, G.A. Res. 1803, 17 U.N. GAOR Supp. 17, at 15, U.N. Doc. A/5217 (1962).

11. 29 U.N. GAOR, C.2, 1638th meeting 385, ¶ 14, U.N. Doc. A/C.2/SR.1638 (1975).

12. Proposed amendment to Article 2 of the Charter of Economic Rights and Duties of States, U.N. Doc. A/C.2/L.1404, *reprinted in* 29 U.N. GAOR, Annexes, Agenda Item No. 48, at 6, U.N. Doc. A/9946 (1974).

despite the fact that maximum royalties had been set in leases and legislation. This provincial legislation, which increases the royalties already established, appears to constitute a taking, and I think it requires some sort of compensation. Would this kind of provincial action be sanctioned by the Canadian federal government?

My second question is this: in your closing remarks, you stressed the need for international cooperation and multilateral action. How can that be reconciled with Canada's unilateral action in adopting the Arctic Waters Pollution Prevention Act,<sup>13</sup> which will have a significant impact on other states?

**MR. CLARK:** Let me first address myself to your comments and expand upon them a bit. This whole question of national treatment for foreign investment is a matter of great concern, not only in Canada, but in all countries where there is a substantial outflow of capital. It's interesting to note that, on a per capita basis, Canadians have more investment in the United States than Americans do in Canada. Thus, we are also very concerned about this whole question, though there is no concern about investment in the United States.

National treatment raises many problems, and I share your view that we may be able to adopt an approach to this issue that will put the United States and Canada on the same side. However, it is self-evident that if we have a screening process through the Agency, there is obviously a distinction between foreign and domestic investment. Once you have successfully passed through the screening procedure, or indeed you have been told that there's no need even to be screened because it's a clearly significant benefit to Canada, you could have something very close to national treatment and national status. A problem would then arise only if you wanted to branch out and move into unrelated areas. I think our experience in the next few years will be very instructive, because it is a novel system in Canada. It must be remembered that the Gray Report took several years to complete, and it stimulated a great deal of study and debate. It is not a political party issue in Canada, and that is quite important. This is an approach which has the support of the broad spectrum of Canadian society and Canadian political parties. When there is that kind of consensus in an area, then obviously there is a feeling that you're generally on the right track. Whether we will need this kind of approach indefinitely, or whether

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13. Arctic Waters Pollution Prevention Act, CAN. REV. STAT., 1st Supp., c. 2 (1970).

the situation will change, economically or otherwise, it is impossible to say. This whole subject is one which must be kept under review, and we will have to learn as we go along. I think that after a period of time, we will find that we can minimize the irritants to straightforward, reasonable investments which will be beneficial to Canada.

The potash situation is, of course, extremely important. First, there has not been any expropriation up to this point. Saskatchewan's legislation<sup>14</sup> gives the provincial government the authority, if necessary, to effectively nationalize the entire potash industry in the province, which supplies about 72 percent of U.S. potash imports. However, Saskatchewan is investigating the possibility of buying up, in the market, the majority of shares in the companies involved in potash exploitation in the province. The legislation provides that if this is not successful the province will be able to move ahead anyway.

The question of discrimination is something Saskatchewan is keeping in mind, and it should be noted that there are British, German, and other interests involved here as well. As long as there is no discrimination and the compensation is fair, then, of course, there is, as you pointed out, no violation or even a hint of violation of international law. But here the form is probably as important as the substance, and we expect the Saskatchewan government will try to be scrupulously fair. I would also like to point out that the actual legislation provides not only specifically for the payment of compensation in the event that nationalization is decided upon, but also for an appeal to an arbitration board of decisions of the provincial government.<sup>15</sup> The composition of this board is provided for in the legislation. If the nationalized company is still dissatisfied with the results, there is a further appeal from the arbitration board to the court system, and eventually to the Supreme Court of Canada.

Obviously this has been looked at very carefully, and there's also a problem area of control over resources. In the past, Saskatchewan has had a history of ups and downs in the potash industry, with dislocations and economic problems, and this is their particular approach. I would only add that it's very important to emphasize that, under the Canadian constitutional system, resources of that type are under provincial domain. As long as the province has internal "sovereignty" over those resources it's very difficult for the fed-

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14. Expropriation Procedure Act of 1968, Sask. Stat. c. 21.

15. *Id.* §§ 6-8, 20.

eral government, other than in a negotiating stance, or conceivably where there is some alleged violation of international law, to get too involved in either the prevention or modification of provincial legislation in this area.

It is instructive to note what Mr. Spence said this morning—that the figures show that since the FIRA has been in place, even taking into account the economic dislocation that we've suffered in the last two years, in dollar and percentage terms foreign and U.S. investment in Canada have increased. I don't say that's because we're such a great place to invest, in and of ourselves. However, in comparison with other areas of the world, the average investor in the United States and in Western Europe continues to view Canada as a reasonably profitable place to invest. There is a shrinking area around the world where in fact you can have a degree of security and the assurance that your investment is going to increase and give you some form of return. This sort of comparison has also had a major impact in this area.

Let me return to the question of provincial legislation, which Mr. Ruddy mentioned. The issue is very, very complex, at both the provincial and federal levels. We create a framework within which contracts are made and agreements are reached which provides for certain royalties or certain taxation percentages and systems. But the framework of the system also provides that, under certain circumstances, rule changes can be made as you go along. For example, with regard to natural gas exports from British Columbia to Washington, Oregon, and northern California, contracts were let at particular prices, with guarantees and so on, but within the framework of these negotiations it was always understood that if there was a diminution in the flow of natural gas so that its hydrocarbon value was far out of proportion to that of oil, then there could be a reassessment of the price that would be charged. So, in the system there are cushions, escalators, and provisions for changes in the rules. Clearly they do create difficulties, especially for lawyers, for companies, and especially for such northern tier states as Wisconsin, Minnesota, and northern Illinois which have been dependent on Canadian crude for nearly 12 years. Refineries have been built in anticipation of a continued flow, and are obviously being dramatically affected by the changes in these policies.

I would say that there are difficulties in this whole royalty area, and it's not possible for the federal government to tell Alberta what to do. We can bring to the provinces' attention political problems and the international legal ramifications of what they may do, but

to some extent there are difficulties in the intraprovincial arena; the federal government is not in a position to intrude. Many Canadians will probably agree that Alberta has been treating American multinational oil companies in a manner which at least gives rise to the possibility of complaints and perhaps even charges of discrimination. This is something that hopefully can be worked out, but personally I am not terribly optimistic that, in the short term, these problems will be worked out. There's an energy crunch at the same time that road blocks have been put in the way of the inflow of capital, to allow us the kind of expansion in industry that might be desirable. There's no point in trying to excuse it or apologize for it; it is going to have to be worked out.

Briefly, I'd like to deal with your comment about the Arctic Waters Pollution Prevention Act,<sup>16</sup> which was passed in 1970. First, Canada has become very concerned with the fragile northern ecology. For example, it could take as long as 50 or 60 years to have the effects of a major oil spill neutralized. This great concern led us to consult initially with the United States and the Soviet Union, the two other directly concerned Arctic-rim countries. We thought in terms of trying to work out a trilateral treaty or agreement which would lay down certain environmental protection rules for the Arctic. For various reasons we were not successful, either with the United States or the Soviet Union, but I must say we were a little more successful with the Soviet Union than we were with the United States. However, to be fair to the United States as a major naval and sea power, the problem here was the question of freedom of passage. This goes back to the voyage of the *Manhattan*,<sup>17</sup> and this was an issue of great importance which had to be set off against what may have been considered by some as too keen a concern with the environment in Canada.

We did decide to go ahead with what is clearly unilateral action, and we make no apologies for it. Our argument was that traditional customary international law, in the absence of a governing treaty, did not apply to or deal with the question of the fragile northern ecology. In the Canadian government's opinion, there was a lacuna in international law in this area. So, we adopted the 100-mile pollution prevention zone, but we made it clear that, at such

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16. Arctic Waters Pollution Prevention Act, CAN. REV. STAT., 1st Supp., c. 2 (1970).

17. N.Y. Times, Sept. 15, 1969, at 1, col. 3; Note, *The Manhattan's Arctic Conquest and Canada's Response in Legal Diplomacy*, 3 CORNELL INT'L L.J. 189 (1970).

time as there might be an international agreement to deal with environmental threats to the fragile northern ecology, we would be glad to comply with the agreement and more or less let the unilateral step fade away.

I'm pleased to note that in the current third session of the law of the sea negotiations there is a growing consensus about what is being called the Arctic overlay, which will provide for a special kind of regime for environmental protection in the Arctic. I predict that if this proposal is codified in the eventual law of the sea treaty, we would be able to rescind our national legislation.

MR. RUSSELL: Thank you, Mr. Clark. I'll now turn to Professor Goldie.

PROF. GOLDIE: I would like to add a footnote to Lorne Clark's latest contribution. From reading the environmental material with regard to the Arctic Waters Pollution Prevention Act, I believe that the period for degradation of an oil spill was not 50 or 60 years, but 50 or 60 thousand years.

MR. CLARK: That was for a spill from a ship the size of the *Manhattan*.

PROF. GOLDIE: That's right. As an observer of Canadian policy, I feel the discussion of sovereignty over natural resources, from the Canadian perspective, has a kind of Janus-faced attitude. On the one hand, there are demands for controlled exploitation, for increased wealth, and for control of national development which are very laudatory. On the other hand, however, there is an equally laudatory, but mutually exclusive basis for this claim in terms of environmental concerns. It appears to me that these have not been resolved in the public press south of the border. This leads to a kind of skepticism on the part of people like myself who are students and friends of Canada.

I would like to ask my Canadian friend if it isn't time that the British North America Act was changed, so that provincial control over the export of natural resources is curtailed. I remember Mr. Bennett, for example, holding his own national government to ransom over the negotiation of the Columbia River hydroelectric scheme. I think that this was some time ago, but it seems to me that it's very hard for an enterprise to really be able to predict what's going to happen to them at the hands of the provincial governments, some of which have a tradition of bizarre economic policies extending back several generations.

MR. RUSSELL: Thank you. Could we invite comment on Pro-

fessor Goldie's comments? Perhaps we ought to start with Mr. Clark.

**MR. CLARK:** Very briefly, as a staunch federalist, I share your views as to provincial powers. Canada was conceived originally, as you know, as a confederation, not a federation, and there have been problems with respect to the respective powers of the federal and provincial governments. This has never been more important than today in the natural resource area. This whole issue has been looked at during the current discussions concerning security of pipelines, especially the consideration of an American pipeline from the North Slope of Alaska through Canada. The pipeline treaty, which we are negotiating with the United States, seeks to provide, in effect, for security against provincial interference with the operation of the pipelines.

These very issues of disposition of power in Canada, and its effects on international obligations, potential investors, and those who are dependent on Canadian resources, are things that have been of great concern. In the near term, I don't foresee any great reversal of the flow of power. I do see us reaching at least a plateau where I doubt very much that there's going to be an increase in provincial power vis-à-vis federal, and I would think that there'd be a slight increase in federal power. I don't, however, see a reversal where we're going to get away from the whole provincial rights aspect. This would have to be something that we could hope for in the middle to long term, rather than the near future.

**MR. RUSSELL:** Thank you, Lorne. We had a question from the floor.

**COMMENT:** Referring to what you just said, it seems in some ways that the federal government in Canada has attempted to reduce the provincial prerogative by enacting the Oil Export Tax Act<sup>18</sup> and by interjecting the federal government into areas previously under the jurisdiction of the provinces. This has in a sense cut across the whole development of the federal-provincial system, and perhaps, because of this and because of the entry of the national energy board and various other agencies, the Foreign Investment Review Agency included, the federal government is making in effect an end run and asserting its power over the provinces.

**MR. CLARK:** That's a perceptive comment, and I would only say that I think we're exceedingly fortunate that not all the hydro-

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18. Oil Export Tax Act, Can. Stat. c. 53 (1974).

carbon resources in Canada are in one province alone. If all these particular resources were within the boundaries of one province in Canada, then I think we would have a very severe problem.

**MR. RUSSELL:** If there are no further comments, I would like to ask Mr. Ruddy a question. In my remarks I suggested, and there is concern about this issue, that recent Canadian initiatives in the areas we have been discussing are creating increasing apprehension in the United States that might not only cause political problems, but could eventually lead to a diminution in investment in Canada. I'd like to ask Mr. Ruddy, as a representative of a large corporation, and as someone who undoubtedly has contacts with other people in the business community, whether he senses this phenomenon. Do you detect a growing concern about the situation in Canada in this context?

**MR. RUDDY:** Yes, I think the right word is concern. We do have what you described as a special relationship with Canada, and I think that we have faith in the ultimate disposition of the issues that are being examined right now, but I think it's fair to say that there is concern in the investment community. I don't think it goes much beyond that.

**MR. RUSSELL:** Thank you.

**MR. CLARK:** As a footnote I would like to draw attention to the Texasgulf takeover as an example of what happens when the shoe is on the other foot. Briefly, this was an effort by the Canada Development Corporation (CDC) to execute, in effect, a takeover bid to secure the majority of voting shares of Texasgulf. The CDC was interested in furthering its long-term policy of trying to get into areas that have hitherto been controlled from abroad. Opponents of this exercise, mostly shareholders in the State of Texas, actually went to court to try to block this foreign corporation from buying up this American company which controlled a whole area of resources in Canada. This effort to block Canadian control was seen by many Canadians as reflecting, and I want to choose my words carefully, either an incredible lack of knowledge about the Canadian-U.S. economic relationship, or pure and simple hypocrisy. Fortunately, of course, the court decided the right way, and the CDC does today control Texasgulf.<sup>19</sup>

**MR. RUDDY:** Let me just add that this problem is not one-sided. The U.S. Government's legislation, both existing and pro-

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19. *Texasgulf, Inc. v. Canada Dev. Corp.*, 366 F. Supp. 374 (S.D. Tex. 1973).

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posed, in the area of mineral and petroleum rights is not a model of enlightenment either, so we're talking about something that extends beyond Canadian borders, and certainly we see very ominous symptoms of this in our own Congress.

**MR. RUSSELL:** Thank you, gentlemen.