SYMPOSIUM

MULTINATIONAL CORPORATIONS AND THE ENERGY CRISIS

Foreign Governmental Control of Multinational Corporations Marketing in the United States

American Tax Credits and Foreign Taxes and Royalties

Expropriation, Threats of Expropriation and Developmental Policy

PANEL DISCUSSION: FOREIGN GOVERNMENTAL CONTROL OF MULTINATIONAL CORPORATIONS MARKETING IN THE UNITED STATES*

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MR. FINLAY: Before commenting on Mr. Griffin's paper, I would like to make a few preliminary remarks. In the first place, since I am listed as a former manager of the Government Relations Department of the Standard Oil Company of New Jersey, now the Exxon Corporation, I would like to point out that I have been retired for more than four years and that I am speaking strictly for myself and I have not discussed what I am about to say with anyone.

The term "multinational corporation" has become a popular catchword, but it contributes nothing to the identification or solution of specific issues. We are in an era of catchwords, ecology, multinational corporations and things of that sort, and if you want to solve problems you have to deal, as Mr. Griffin said, "with the facts." Let us get down to the facts of a specific problem and solve it on the basis of the facts and the relevant law and social policies, and not with catchwords.

Any corporation doing business in more than one country is a multinational corporation. It is something that has been going on at least since the early days of the British East Indies Company and the Hudson Bay Company. The rules under which foreign corporations do business within a country have long been established. The illusion, promoted by corporation-haters in the newsmedia and elsewhere, that the larger business corporations have greater power than the smaller countries in which they do business, is pure fantasy, without any foundation in fact. I might say here that I am going to talk about Mr. Griffin's comments later, but I was a little surprised that he commented, as if it were wrong,

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that the directors from the American parent companies of Aramco could outvote the Saudi Arabian nominee directors on the board of Aramco. What are they supposed to do in a business corporation? A business corporation runs itself as a business corporation and its relations with the government are something else. It certainly is not a source of alarm that a business corporation could vote to run its own affairs within the rules under which it does business.

Now there may have been a time when there was occasional justification for the statement that the big corporations had greater power than governments, but it passed out of the picture with the demise of gunboat diplomacy, if it ever existed at all. Today, the smallest country within its own borders has an inordinate degree of power over the largest corporations in the world. Witness what is happening to American investments in country after country: Peru, Chile, and the oil exporting countries. I have before me a clipping taken out of this week's issue of *The Oil and Gas Journal*.[1] The headline is not unusual these days: "Mobil surrenders in Libya, accepts 51% participation." Now, that is not 51 percent participation by Mobil, in its 100 percent investment; it is 51 percent participation by the Libyan government. The article goes on to say that the Libyan government, since last September, has exercised effective control of 51 percent of Mobil's crude output, and earlier in the year announced 100 percent nationalization of three holdouts under the 51 percent nationalization law. That is just a sample.

This action must be evaluated in the light of the Resolution on Permanent Sovereignty Over Natural Resources adopted by the United Nations General Assembly on December 17, 1973.[2] I might say here that Mr. Griffin is not up to date. He talked about an ECOSOC Resolution. Well, this Resolution of December 17, 1973, which was a General Assembly resolution, is based on the ECOSOC Resolution. It was passed by the top Assembly, however, and not by the subordinate ECOSOC Council. The pertinent portion that I wanted to mention is in paragraph 3:

> . . . Affirms that the application of the principle of nationalization carried out by States, as an expression of their sovereignty in order to safeguard their natural resources, implies that each State is entitled to determine the amount of possible compensation and the mode of payment and that any disputes which might arise should be settled in accordance with the national legislation of each State carrying out such measures.

Now, this is fortified with other paragraphs that deplore any armed aggression, economic coercion or anything else that would tend to interfere with each state's making its own decisions on the terms on which

1. THE OIL & GAS J., March 25, 1974, at 60.
2. G.A. Res. 3171, 28 U.N. GAOR Supp. 30, at 52, U.N. Doc. A/9030 (1973).

it will take over foreign investors' property. There is another paragraph in here that picks up the citation that Mr. Griffin mentioned. It says that the developing countries should get together to improve conditions of access to markets, to coordinate production policies, and thus to guarantee the full exercise of sovereignty by developing countries over their natural resources. That is paragraph seven.

This Resolution was adopted by the United Nations General Assembly by a vote of 108 to 1. The only government with the fortitude to vote against it was the United Kingdom. The United States joined with 15 other countries in abstaining from the Resolution. What a hypocrisy world peace through law is when the United Nations General Assembly passes resolutions such as this. The Resolution may well be discussed at some length this afternoon, but I want to mention it here to show how ridiculous it is to assume that super-powers in the field of government-industry relations go hand-in-hand with the size or financial resources of a corporation.

To me, two things are abundantly clear. First, within its own borders, the smallest country has greater power than the largest business corporation in the world. Second, that power alone without resources does not produce economic miracles. Accordingly, developing countries are in sad need of greater maturity than they now have, as reflected by this Resolution, if they are to attract the capital so vital to their economic development. This Resolution reflects a "help yourself" rather than a "self-help" attitude. It is disappointing, in this connection, to note that yesterday's *New York Times* said that 18 countries have pledged continuing aid to poorer nations, apparently without any regard whatever for their attitude as reflected in this Resolution.

With this off my chest, I would like to turn for a minute to the topic of the day, which is foreign governmental controls of multinational corporations marketing in the United States. If I had known that this was a petroleum seminar, I would have brought a few more statistics with me than I did. But Mr. Griffin apparently assumes that this is a petroleum seminar.

States may, of course, assert territorial jurisdiction without regard to nationality and, with respect to their own citizens, may go further and assert jurisdiction over them wherever they may be. Also, in appropriate circumstances, territorial jurisdiction may be asserted on the basis of effects caused within a state by acts done outside the territory of the state. Application of these rules to their full extent will often bring the same matter within the jurisdiction of more than one state. In such cases, rules of comity should govern the decision as to which state has jurisdiction.

In antitrust cases, Mr. Justice Holmes enunciated this sound principle of comity back in the early years of the 20th century in the so-

called *Banana Case*.[3] But later judges, including Judge Learned Hand in the *Aluminum Case*,[4] did what I regard as veering off the path by giving jurisdiction under the antitrust laws to overseas matters that more appropriately should have been left to foreign governments. On occasion, this has led to a foreign government flatly refusing to allow an American antitrust decree to be put into effect within its country. The Treasury Department also has on occasion gone too far in its attempt to apply the Trading With the Enemy Act to activities of U.S. companies or their affiliates in foreign countries conducted in full accord with the laws of those countries.

What the United States has done, other governments could conceivably try to do. The sound approach is to look to the principles of comity to provide a sensible solution in each case; and that is about as far as one can go as a generalization. I would be glad to discuss any specific point.

Now I have some notes on what Mr. Griffin said. First of all, his reference to the "Seven Sisters" is itself a pejorative word. It was coined by Enrico Mattei, who was the Chief Executive of the Italian State Oil Company prior to his death. It applied back to a time prior to the 1956 Arab-Israeli War, when virtually all of the foreign production of oil was in the hands of seven companies, five American and two British. Since that time, company after company has gone into foreign exploration and the catchword no longer has any relevance at all. He also spoke of joint ventures and spoke especially to the production level. Now the joint ventures producing oil in the Middle East, which were worked out with the full approbation of the State Department and the Department of Justice, are specifically limited to production and to refining in the producing countries. The carry-over of joint activities to marketing, or to any activities beyond the boundaries of the countries in which the joint ventures operate, was specifically excluded.

The statement that Aramco is a foreign subsidiary could be misleading. Aramco is a U.S. corporation. It is operating in a foreign land, but it is a U.S. corporation, and the United States has the same full control over Aramco that it has over any other American corporation. When it comes to the Arab embargo on oil, the United States has never hesitated to apply and enforce its neutrality laws and the Trading With the Enemy Act to any corporation doing business in the United States with respect to exports from the United States. It seems perfectly clear to me that as a matter of international law, Saudi Arabia and other Middle East countries have comparable powers with respect to exports

3. American Banana Co. v. United Fruit Co., 213 U.S. 347 (1909).
4. United States v. Aluminum Corp. of America, 148 F.2d 416 (2d Cir. 1945).

from their countries. I think that is all the comment I want to make prior to the discussion period.

DEAN BEACH: Thank you Mr. Finlay. It seems as if we may be starting to build up a very good fight before we are done here.

Professor, I see you have the telltale legal pads, so I think you are entitled to equal time.

PROF. GORDON: I would like to make a couple of comments about Mr. Griffin's statement. The word "multinational" is a rather difficult word. It is not an appropriate word. Any word which suggests a tie to a nation may be inappropriate for these companies. The companies would like to be able to eliminate any national ties; perhaps they would rather be referred to as omninational or even better, extranational. Indeed the chairman of Dow Chemical Company said a year ago "that he wished he could find an island somewhere where the company could locate and be beholden to no nation and to no man." I think that we have to start from a realistic base that multinational corporations are not very interested in directing their companies' activities to meet some national public goals; nor should they be. They are business corporations; they have primary obligations to make profits for their shareholders. The obligation of the government is to control all the corporations operating within their territory. I think governments spend a great deal of time hoping that multinational corporations will direct themselves to assume more socially responsible policies both in this country and abroad. I will comment on that more extensively this afternoon.

Mr. Griffin emphasized production in terms of the oil companies, perhaps implying that distribution is not an area that is to have much of an effect on multinational corporations. That may not be true. Those persons in Mr. Finlay's former company with whom I am most familiar are associates with their Latin American operations. Some few years back I was told that in three or four years they expected their difficulties to be in production, and not in the distribution area. They expected to become more dominant in distribution than they were then. We are discovering that national companies in this world are in countries becoming involved in distribution as well as production. An example of this is Costa Rica which, as several Central American countries have done, has organized a national refinery buying crude from Venezuela, and then selling the refined oil to various foreign controlled distributors. Until a couple of years ago, the distribution in Costa Rica was performed by Exxon, Gulf, and Texaco. Then the government entered the distribution process, and there was a great deal of difficulty since the government wanted to set a low retail price. Obviously once the government set a low price for its own distribution, it placed pressure upon the other companies to sell at a price less than they believed profitable. The purchase of gas is an interesting process in Costa Rica where I lived as

a researcher at the University. You would fill your tank about half full with regular gas, which seemed about 65 octane. This allowed you, hopefully, to reach a Texaco station which sold gasoline for light airplanes, about 110 octane, with which you would fill the remainder of your car. Then it sloshed around while you were driving to a mixture roughly comparable to what your engine needed.

Oil companies have long been attacking Mexico's oil production as being inefficient. The autos continue to run sputteringly, but they do run. The oil is theirs and that has become very important. It reminds me of a cartoon that appeared in Peru around the time of the IPC takeover. It showed a picture of an Exxon station and a peasant, with his arm around his little boy, saying, "Some day soon this will all be yours." This, of course, has come about. It illustrates the polarity of oil companies and the Third World.

The legal effects which Mr. Griffin has commented upon lead me to question whether or not this is an appropriate time to break up oil companies, at a time when there may be a greater need for further allowing oil companies to combine to bargain with foreign governments. There are great dangers in the extra-territorial application of our antitrust laws, even though they are subject to the defenses Mr. Griffin mentioned. Such application is illustrated by a very interesting 1958 consent decree in a Louisiana case dealing with the United Fruit Company. The United Fruit Company was ordered and agreed to divest itself of its distribution facilities in the United States, in addition to a substantial part of its infrastructure within Central American countries. Most interestingly, however, was its agreement to divest itself of nine million items of production. There was no input from any of the Central American nations on this. United Fruit was required to divest by spinning off a separate company owned by the current shareholders; over a period of time new and different shareholders would come into each company. Alternatively, they could form an entirely new company for sale to a new group of shareholders. Nine million items of production amounts to a great deal. The company initially decided to give up the western production in Panama. When this was proposed to an earlier government of Panama, the government offered to buy it. The court refused to accept this, essentially saying "you must sell to *private* ownership and not to ownership by one of the nations." I think if we were to say that to Panama now, they would respond, "We own it as of now, or we have taken it over as of now, and now we will talk about *possible* compensation." The decree is interesting. I talked to an official of the company who was about to retire. He was a dedicated and well known Latin Americanist. I asked him why he ever agreed to that. He said *he* had not agreed to it; it had been done by others. He said, "I think the reason we agreed was because the man who decided to go along with it

was about to retire, and he didn't have to live with it." He also said that it was a very hard consent decree to comply with. This raised several questions: whether we should be looking to our antitrust laws to resolve this type of problem, and whether or not we want to break up the oil companies at this time, at least whether or not we want to break up the oil companies in the fashion I am assuming that we are implying, as opposed to perhaps some other break-up of oil, such as attacking the vertical integration of the oil industry.

The third area that Mr. Griffin discussed was his views of three actions of the Arabs: their embargo, their reduction in the amount of oil produced, and their increase in prices. I think we would like to know their reason for so acting. The purpose of this discussion seems to be to explore the effect on marketing in the United States by foreign governmental control over multinational organizations. I do not think the Arabs have any interest at all in controlling the markets abroad. They are interested in obtaining currency from the sale of oil to fulfill their goals. One of those goals does affect the United States. It has to do with the U.S. political posture toward Israel and, indeed, the Arabs have been extremely successful in drawing Henry Kissinger into a pro-Arab dialogue. Secondly, they have been quite successful in partially spliting the U.S./European alliance. They have also had a very strong effect on world financial markets. What do the Arabs really want out of this? I think they want a different market system for oil in the world. They no longer want what we have long maintained as an oil market process. This is good business on their part and it is exactly what we should expect businessmen and nations to want to do. They no longer want a system based solely upon a flow of an exhaustible resource from the Arab countries in return for products produced in the capital exporting nations. They want some form of mutually agreed-upon, integrated system of industrial and commercial cooperation extending beyond the realm of oil. I do not attempt to identify what the Arabs want in terms of development. They do not want to be like the United States. The heads of the Arab kingdoms are not interested in changing the form of hiring standards to that which exists in the United States. They would like to help other Arab countries in meeting some basic goals. I believe they will emphasize industrial diversification and utilize oil to develop oil-related products, in which case we will no longer be able to buy oil from the Arabs unless perhaps we also buy their petrochemical products. They undoubtedly have secondary aims which may deal with production of commodities such as engines for ships, turbines, or perhaps automobile assembly. They may also wish to begin production of some form of selective defense products. They are simply interested in using a mutual resource in order to achieve their concepts of development. I will speak more about this in the afternoon in the following terms: Can

countries with other resources do this? What is the philosophy of the banana producing countries? What are the current developmental theories? How may they be achieved vis-a-vis the developed part of the world?

DEAN BEACH: Everyone has had their introductory remarks. Let me ask a couple of questions.

Are we talking about international law or international power? Is there a distinction? It seems to me that Mr. Griffin suggested that Aramco was an Arabian corporation organized under the laws of Saudi Arabia and I think I understood Mr. Finlay to say that it was an American corporation organized under the laws of the United States. Is it relevant to find out if there is an answer or is it, as I think Professor Gordon suggested, irrelevant to even think about?

MR. GRIFFIN: I think it depends. I want to exercise my right to rebuttal or reply.

MR. FINLAY: Well, you know perfectly well it is a U.S. corporation. If you have any question about it we can get that resolved by the outside counsel of Aramco.

MR. YOUNG: Aramco is a Delaware corporation, and it always has been.

MR. GRIFFIN: I will admit an error—I based my statement on papers filed with the Church committee. I don't know if you are aware that there are papers with the Church committee.

I have seen newspaper reports that it is an Arabian company. I have seen papers that say it is an Arabian corporation. I will admit error based on your comment.

DEAN BEACH: Well, we cleared one thing up.

MR. GRIFFIN: I would like to reply to another of Mr. Finlay's comments concerning the directors of Aramco. The point I was trying to make was that the directors don't run Aramco or did not run Aramco. The group that did run Aramco before 1972 was the executive committee that met in New York. I think that Mr. Finlay is making the classic statement of "yes, the directors run a corporation—why shouldn't they and why shouldn't the majority of the owners out-vote the minority owners." That is all perfectly correct, but the point I was trying to make was that the composition of the board of directors of Aramco didn't make any difference because it was run by this executive committee. The executive committee didn't have any Arabians on it, just representatives of the four owners. Now, that situation has changed only because the Arabs have forced it to change. I raised the point to demonstrate the effect this Arab participation had on the running of these American owned companies.

MR. FINLAY: That is a generalization like Professor Gordon's generalization that all corporations want to be above any law. That is abso-

lutely ridiculous. Practically every corporate executive in the world recognizes that he is subject to the laws of the nation in which his corporation is incorporated and subject also to the laws of every nation in which he does business with respect to his activities in that country. Now maybe he doesn't like some of the things they do, but to suggest that corporations want to be a law unto themselves is a generalization without substance.

Practically every organization has an executive committee; a charitable organization, a vestry of churches and universities. That is just a way of trying to get material to put before a board of directors and to function between directors' meetings. Now, a board of directors can always overrule an executive committee and that is true of the Aramco board as of any other board. But ordinarily, the views of the executive committee will be accepted by the board. Now the minute the executive committee of Aramco decides something without the Saudi Arabian directors being in on it, and if it is totally contrary to their views, you can rest assured they will take it up at a board meeting. If they don't take it up, it is because the executive committee has anticipated their concern and has tried to achieve some kind of balance.

MR. GRIFFIN: I think that either I have failed to make my point clearly, or that we have reached a point of irreconcilable differences. The point I am trying to make is based on published interviews with Sheik Yamani. When he was asked, "Why do you people demand participation and what did you have to gain besides the buy-back provisions," he said, "Look, I was sitting there on the board of directors of Aramco, and people would walk in and say, 'Here is what New York decided.' I said, 'Do you want to take a vote on it?' They would say, 'yes.' The vote would be 4 to 1 against me." He said, "In 90 percent of the cases I agreed with what they wanted to do. But I was angry that nobody bothered to consult me even though we were the country that owned the oil." He was saying "we have decided that the only way we could exercise sovereignty—" (I don't think the term "sovereignty" is appropriate here, but that is the word he used) "the only way we could exercise our sovereignty over the oil we owned in the ground was to get on the executive committee. We wanted to be consulted beforehand, we didn't want to be presented with a fait accompli and just verify it."[5] I think that is his point. I think Mr. Finlay is talking about the technical operations of the companies and what are the proper legal standards. I agree with everything he is saying. What I am trying to say is that the Arabs felt they were getting the short end of the stick in policy. In fairness they demanded participation.

MR. FINLAY: Well, if you want to go down the road of socialization, that is correct.

5. *Quoted in* Mosley, *The Richest Oil Company in the World*, N.Y. Times, March 10, 1974, § 6 (Magazine), at 30.

MR. GRIFFIN: I think Mr. Young is going to jump on me.

MR. YOUNG: No, may I comment Mr. Chairman? Aramco is my client and I have no authority to speak for it in this connection. What I say is entirely my own responsibility. I think on this particular point the discussion is in some sense irrelevant. It is quite true that you have the sordid situation on the Aramco board, just because of the distribution of ownership. I am speaking primarily on the period before the government became the stockholder. The center of gravity was between the company on the one hand and the Saudi Arabian government on the other. Negotiations between those two on the original 50/50 deal on royalties and income tax were worked out. Every time the government sought an increase in pay it was worked out in those negotiations. It wasn't a question of what went on inside. It was more a question of the company dealings with the government and the positions which the company took were not satisfactory to the government, whether or not the government directors were outvoted. Company representatives will very shortly find themselves trying to explain what they were doing, and why the government should not insist on a different arrangement. Do I make the point here?

MR. GRIFFIN: I agree with what you say.

MR. YOUNG: I think Sheik Yamani's point about "we could get nothing out of the company until we got on the board and the executive committee" is in a sense true, but it never affected the ultimate results. Perhaps it will make it a little easier to move things along from this point.

MR. GRIFFIN: I would agree and I also think I would agree with your first statement. Maybe we are off on a tangent that is not all that relevant.

DEAN BEACH: I would like to learn something here. Now is it correct that who runs Aramco and what committee and to what extent are all answered by the sufferance of the Arabian government?

MR. GRIFFIN: I am not sure of what you are asking. It depends on the context. We have to step back a minute. I was talking in the context of most of the cases that exist in the terms of the extra-territorial application of our antitrust laws. That is where most of these cases on jurisdiction and defenses come in. I think Professor Gordon raised an excellent point by saying, "Well, don't we have to ask a first question by saying, 'Do we want to apply antitrust laws in the context of oil?' " I think the question is, "Is who really runs Aramco important?" Well, it depends again upon what you want to do. If we have a legal suit brought under the U.S. antitrust laws, Aramco's defense would be, or more appropriately its American parent's defense would be: "Look, it is a combination of sovereign compulsion and sovereign immunity." They would argue, "We admit we didn't sell you any oil during those months,

but that was not our fault. The Arab governments ordered us to do it; we had to do it." It is exactly what Texaco argued in the *Interamerican Refining*[6] case and I believe that the oil companies probably have a very valid defense under this precedent. The question I was trying to raise by pointing that case out is, assuming that *Interamerican* is in accord with existing precedents, is it a good policy? Do we want to change the law on sovereign compulsion?

MR. FINLAY: I think you have to focus on specifics here. There are some things that are clearly within the government's national interest and there are other things which are within the sphere of corporate activities. Now when it comes to questions as to delivering oil to Israel, or even more recently, delivering oil to the United States or to the Netherlands, I believe that I am correct in saying that there is nothing in the concession agreements about that. A government can decide for itself the countries with which it will trade. If it flatly says, "You may not deliver oil to Israel, you may not deliver to the United States," the oil company has the option between complying or being in violation. The result of being in violation in most of these countries would be expropriation, and in the United States the result of a comparable violation of our law would be criminal prosecution. But in either case, you have got the force of governmental policy with which you must comply. Now, when you get to such questions as the prices at which you will sell, the concession agreements do not say anything about sales prices but they do say something about how the governments' royalties and income taxes are calculated and they have what they call the tax reference price for such purposes. In the course of the difficulty over the Middle East situation, the governments took the decision out of the hands of the companies and just said arbitrarily that the tax reference price is so and so, something like $11.65 a barrel for regular crude today. It used to be those things were negotiated, but in this confrontation situation the governments just declared what it will be.

PROF. GORDON: Mr. Finlay mentioned that the companies would be required to either ship or not ship oil to wherever the government would require them. A parallel situation occurred in Cuba. In 1959 the oil companies were expropriated in Cuba after they refused to refine Soviet oil at Castro's demand. Their arguments were two-fold. One was that the government can't tell us, as a private business, whose oil we could refine.

MR. FINLAY: The companies were expropriated as a result—that is what I said.

PROF. GORDON: The second argument was that they couldn't refine

6. Interamerican Refining Corp. v. Texaco Maracaibo, Inc., 307 F. Supp. 1291 (D. Del. 1970).

it because of the higher sulphur content in the Soviet oil. The inability to refine this oil proved to be incorrect. The oil apparently was refineable. The oil companies are recognizing the limitations of their power.

I don't think it makes a great deal of difference who owns the oil production facilities. What we are concerned with is what should the relationship of the oil companies be with the foreign government? It is interesting that the comment in *The Oil and Gas Journal* states that Mobil "accepts 51% participation by Libya." It did not have any choice here at all. It was very nice of Mobil to *accept* a joint venture, where the alternative was to give up 100 percent.

MR. FINLAY: They had a concession agreement that did not give the Libyan government any share of ownership, so what they did was to accept the unilateral modification of the concession agreement. They did it under the pressure of total nationalization.

DEAN BEACH: May I point out that we have in our audience Dr. Omar Ghobashy. He will be on the panel this afternoon, but I think we could implead him into this litigation that is developing here, perhaps as a proper party, or maybe as an indispensable party.

DR. GHOBASHY: This is a very interesting discussion. I appreciate your asking me to join. The point I have to make concerns the last comment in your statement that there was unilateral action on the part of the government of Libya; or was there multilateral action taken by the oil companies and the oil producing governments. I think that these actions have been done with mutual consent and these countries have at least the adequate funds available to pay for compensation. We know in the past that we talked about nationalization in Mexico and other countries which did not have the funds to pay for prompt, adequate, and effective compensation. These oil producing countries are in a position to do so. I think that Mr. Young and some of the people who deal with the oil companies realize that it is not really a question of nationalization but a question of participation. They are now content with the fact that this eventually will happen and it is a question of time and value and the amount of the book value of the oil that is actually in the countries that control the oil. So it is not really a question of nationalization or compensation but a question of value. In a matter of years the oil producing countries will reach an agreement with the oil companies as to the question of 100 percent participation. It is not even a question of 51 percent control, it is a question of full participation which more or less amounts to some kind of nationalization of production. The oil companies will eventually be the distributors, and they will be content. As someone already mentioned, the oil companies are not really interested in marketing, although there has been some statements as to some countries, such as Iran, which at one time or another, has participated in marketing. Few have stated that they are more interested in owning

gas stations or more interested in chemicals and petrochemical by-products of oil. The arguments are openly stated that the unilateral actions by the governments concerned are not necessarily correct. I think that the oil companies are realizing this fact and are moving into the area of negotiation. I would say that there is always a threat from the oil producing countries. People forget, however, that the oil companies have a certain amount of pressure. The governments of these companies, particularly the United States and Great Britain, also apply a degree of pressure, political, economic and otherwise. Therefore, there is mutual pressure from both sides. So when we say that Libya has threatened to expropriate, it really is not a very serious threat because the companies realize that they will be nationalized and they are working toward that extent. On the other hand, the United States may exert pressure if the oil company seeks that pressure in the form of politics, economics and so forth. We have seen mounting pressure by the United States to effectuate internal changes with the Soviet Union before expanding East-West trade. Technological and economic aid may be used as an incentive to cause a change in policy. The pressure is mutual. I think that when the oil companies invested in these countries, these countries had no choice but to accept those concessions. The oil companies have the know-how, the technology, the resources, the capital and so forth. Once the oil is discovered and produced and huge profits are acquired, demands are made to change the original concessions which were not fair when originally made. Now they are to be revised to arrive at a reasonable present-day market value. The days of cheap labor in the oil countries and low concession terms have passed. Now these countries want more compensation. But they must also take into consideration that the industrial supplies that they buy from the industrial countries are expensive. They have to maintain a balance between the value of oil production, the value of the raw material, and the value of manufactured products. This does not only apply to oil, but it applies to all natural resources. What these countries are asking for is value for their products equal to what they pay when they exchange it for industrial products, and it also takes into consideration what they pay for the technicians that work in these countries, inflation and devaluation of foreign currencies.

DEAN BEACH: Gentlemen, and particularly the two on my right, we hear now that the recent participation agreements have been bargained and mutually agreed upon.

MR. FINLAY: This is the article from *The Oil and Gas Journal.* According to the article, Mobil Oil Ltd. has been operating under protest against Libya's 51 percent nationalization decree of September 1, 1973, but says that:

> . . . now it is ready to bow to Libya's terms. The company has notified the Libyan Government that it is willing to continue operations under the provisions of the law and 'to enter a participation agreement with the government and national oil corporation'.[7]

Now when that agreement is signed it will be by agreement. But in the meantime, the article says that "[t]he Libyan Government has since last September exercised effective control of 51% of Mobil's crude output," thus putting its nationalization law into effect pending the agreement. Continuing, the article states that "[e]arlier this year, the Libyan Government announced 100% nationalization of three holdouts on the 51% nationalization law—units of Texaco, Inc., Standard Oil Co. of California, and Atlantic Richfield." So it is quite correct that these things are resolved by agreement. In the background of the negotiations, however, there is always the threat of nationalization. It is a question of the delicate balance between the companies on the one hand, and the governments on the other. Government attitudes of what is fair are radically different after oil is found than they were before it is found. The oil resources of Iran, Iraq, Kuwait and Saudi Arabia have been abundant over the years. There have been several substantial improvements in the government's position under successive modifications of the original concessions. Some of the new countries that don't have anything, in order to attract capital, have consciously and deliberately agreed to concession agreements with terms less favorable to the government than those prevailing in countries where vast crude resources have been found. Whenever these newer countries find oil, however, what was fair at the time the agreement was signed is re-examined in light of the discoveries and the concessionaires are pressured for a change in their concessions. It happened in Nigeria and in Ecuador, and it is happening in other countries. It is like a changing ball game, and the oil companies have accepted the facts of life and have found it possible to adjust to them. Certainly, you cannot suggest that the oil companies are free to ignore something like the boycott of the United States. I am sure that you will agree with me that if the oil companies had ignored the boycott of the United States and of the Netherlands in the recent Middle East situation, there would have been some radical measures taken against them.

DR. GHOBASHY: Yes, I agree with you, with the exception that Saudi Arabia would not have gone to that extent, although I think some other countries would have. I am almost sure Libya would definitely have gone all the way. There would have been some drastic steps, but I don't think Saudi Arabia would have totally nationalized the oil. They don't have the technicians to run it and they don't have the strong

7. THE OIL & GAS J., March 25, 1974, at 60.

backing to confront the United States at this time. I don't think they wanted a complete confrontation. I wouldn't place all the blame on the oil companies. I think they had reasons to fear damages to their industries and they had to take actions to obey the decisions of the oil producing countries. On the other hand, there could have been curtailment of production and other actions which could have been damaging. They could have problems in the renegotiation of the concession agreement because there could have been immediate demands by Saudi Arabia on immediate participation. But, I doubt very much that King Faisal would have moved in a drastic way, like the nationalization of the Suez Canal by President Nassar. He prefers to achieve his goals slowly with some moderation. But I agree with you fully that the oil companies have no choice but to obey the orders. On the other hand, in addition to the decision of the Saudi Arabian government, we are always forgetting that the decision of this government was not independent. It was a combined decision by the entire Arab oil producing countries and non-producing Arab countries. It is also of significance that non-oil producing countries have great influence on the oil producing countries and vice-versa. There is a combined effort of the oil producing countries with the highly organized Organization of Petroleum Exporting Countries. You noticed the lifting of the embargo was not taken by Saudi Arabia alone; it was a decision made by all Arab nations. You will recall the original meeting on that matter was to be held in Cairo and it was shifted to Libya and so forth. Libya held out. The decision of one of these countries was affected not only by the oil producing countries, but also by the non-oil producing countries, some of which were non-Arab, such as Nigeria, Indonesia and Iran and the other petroleum producing countries, who influence the decision on the price of oil.

DEAN BEACH: You know it may be in the international field as well as elsewhere, that the best possible bargain or contract is one where everybody feels he has been thoroughly abused.

Professor Gordon you have been biting your tongue for some time.

PROF. GORDON: I know of no instance where a large foreign corporation has gone to the government, knocked on the door, and said, "Could we sit down and talk about turning over some of our corporation to your government?" In that respect, at least, the inception of discussions was unilateral. Indeed it goes further; the hydrocarbon reversion law of Venezuela which I guess was passed—

DEAN BEACH: Let me interrupt. It may well be, in light of what Mr. Griffin suggested as a defense, that you will have some companies knocking on the door and getting a part ownership for their participation. That seems to be a pretty good shield to an antitrust action.

PROF. GORDON: Indeed, this is the way more companies should be thinking of operating. The hydrocarbon reversion law of Venezuela was

a unilateral decree indicating that at the end of the concessions in 1983 the properties must be left in a particular condition. It was quite shocking to the companies. Indeed, I think that most of the companies would like to think that as of the magic hour when their concession expired, they would all walk out the gate, turn the key and as they left the premises, the depreciation of their properties would be completed, the remaining equipment would be worthless, having been totally consumed in productive use.

DEAN BEACH: So after 1983 comes 1984.

PROF. GORDON: I don't think we are going to reach 1983 because the oil properties are likely to be taken over before then. It is a serious political problem. I think they are asking for too much. But I would respond along the lines of Dr. Ghobashy, when he said that present contracts are often unfair. Many of the concession agreements entered into years ago were so lopsided because the foreign companies were able to say, "Take it or leave it." It is like buying a car. You sign a loan agreement with a bank without being able to negotiate its terms. If you do not want the loan on their terms, that is fine, go elsewhere. But the other bank has the same kind of agreement. So these contracts, in a sense, have an adhesive quality, and consequently it would be interesting to see what would happen with that kind of concession contract in an international court. Should a contract designated as adhesive give the weaker party the right to renegotiate?

It is nevertheless wrong to say that all concession contracts are adhesive. The foreign companies have brought a great deal of development to Latin American countries. Central America would have few roads, railroads, and port facilities today, and the standard of living would be much worse, were it not for the United Fruit Company. Yet United Fruit has been castigated greatly in Central America for its dominance and for its control, in many instances, over host governments.

We are facing a surge of nationalism in the developing areas which is not going to go away. If anything, it is going to be more severe. We have got to learn better ways of dealing with nationalism, better preventive care. Highly qualified people at Exxon put together a file on the legal analysis of the IPC issue, and with the exception of a few flaws in the land titles, it is an extremely well presented legal argument. It overlooks one basic thing—that is the desire of the people, in developing areas, to control the production of basic commodities. We can't condemn corporations for acting like corporations. As a shareholder of a corporation, I would be concerned if representatives of my company went to a Third World government and said, "Let's all sit down, we would like you to have a greater share in our profits." Now I wouldn't be concerned with what has been suggested by our moderator. Perhaps

this is what should be done. Indeed, I think it is tragic that the negotiations enforced upon the copper companies by President Frei of Chile did not have an opportunity to come to a natural result. The negotiations led to an assumption of ownership by Chile of 51 percent of the copper companies with very substantial technical assistance, and a right of the government to assume an even greater interest in the copper production. It did not have a chance to work out according to the agreement. The nationalistic pressures were sufficient enough and the tragedies which took place under the Allende government led to a total takeover of those companies. Chile would be far better off if that had not happened.

MR. HAIGHT: It seems to me we have a dilemma here. We want to work out some system of bringing the capital into the developing countries so that they can develop along the lines that they would like. At the same time we need to protect the capital that goes into the country to provide what the government wants. There are certain basics. First of all, it is generally clear from what has been said that the effective power within a country lies with the government. When a company goes in to work out a deal and they embody the deal in a contract, as was recently done in Ecuador, the government has the power whenever it wishes to change it. If there is a negotiation over change, the dealing is completely unilateral because if the company does not agree with what the government wants to do, the latter simply takes over. What we need to do is to find a way of balancing the interest of a government in regulating its own economy with the interest of the private party in having a stable legal regime in which it can operate.

There are perhaps two ways of doing this. One is to agree on a method of settling disputes or even a technique for renegotiation. That would at least be better than leaving it all in the hands of the government. The other is to follow along the lines of the French administrative contract. Such a contract provides that the government can make changes, but whenever the private party or the other party is prejudiced in any way, he is entitled to compensation. Perhaps we are moving in that direction in research development contracts. But at the same time I think we all must recognize that the present situation is one of complete anarchy. The only people that seem to benefit are the governments of the developing countires. The question is how long they will benefit from this way of "doing business" with the developed world. One would hope that there would be some form of accommodation which would permit private capital to come in and operate on reasonable terms.

Mr. Griffin referred to the defenses available to an American company vis-a-vis its own government, where it is compelled to do something in another country in which it operates. Suppose the general situation was reversed and we were dealing with a foreign company here which was prohibited by any law from selling to Peking or to North

Korea. It would certainly be considered outrageous behavior for any foreign company in this country to do this contrary to the order of the U.S. Government. Such prohibitions should be recognized by the government of the parent company. The defense of sovereign compulsion is reasonable and in line with our own ideas of due process.

Mr. Griffin cited the *Anglo-Iranian Oil Company* case in the Proceedings before the Grand Jury in 1952 as a case of sovereign immunity. It was actually not such a case, although the court released Anglo-Iranian on that ground. Anglo-Iranian never asked for sovereign immunity. What they said was: "We have an order from the Minister in London which prohibits us from producing documents outside the United States." The judge did not know what to do with this. Very much impressed by the document with a great big seal on it, and with the fact that 51 or 52 percent of it was owned by the British government, he concluded that he was dealing with an arm of the British government. So, he let them out. But actually that was a case of sovereign compulsion.

There are many other cases. In the *Swiss Watchmakers* case, Judge Cashion said that he could not punish the companies for doing something that the Swiss government ordered them to do in Switzerland. He decided against the companies in that case because he said the Swiss government had not ordered them. The government had merely approved their conduct without actually giving them an order.

DEAN BEACH: Thank you, Mr. Haight. I have a promise over here. But before I get to that, let me say that my ears are bothering me again. I think Mr. Griffin, you suggested that 35 percent was sufficient to trigger the doctrine of sovereign immunity.

MR. GRIFFIN: I don't think it is relevant. I think Mr. Haight makes a good point. The case here says 35 percent, but I don't think it makes any difference.

MR. FINLAY: Thirty-five percent is clearly incorrect.

MR. GRIFFIN: I have the case report here, and it says 35 percent, but the court could have been wrong when it wrote the opinion.[8]

MR. HAIGHT: They have more than 50 percent.

DEAN BEACH: Do you think it would have been different at 35 percent? Although you said it was not really the ground of the decision anyway, suppose it had been 35 percent.

MR. HAIGHT: No, I don't think 35 percent would give them sovereign immunity.

MR. GRIFFIN: Even though the court used the language that Anglo-Iranian was an instrumentality of and indistinguishable from the British government?[9]

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8. *In re* Investigation of World Arrangements, 13 F.R.D. 280, 288, 290 (D.D.C. 1952).
9. *Id.* at 290-91.

MR. HAIGHT: It is not in fact an instrumentality. The British government plays absolutely no role in the operation of the company. They are about as indepedent as Exxon. But the government owns the stock and has two directors on the board. They attend board meetings, but are not active in the business. No, it certainly is not an instrumentality of the British government.

DEAN BEACH: Mr. Finlay, I promised that you might say something.

MR. FINLAY: I want to say something about Professor Gordon's reference to contracts of adhesion. I am not sure what that means. I guess it is when some poor devil has no power except to take what is thrust upon him. Is that the general implication of the term?

PROF. GORDON: Partially.

MR. FINLAY: Now, I wanted to say that that is totally passe in the oil industry. For more than 20 years *Petroleum Intelligence Weekly* and *Platts Oilgram International* have been publicizing the terms of every oil company agreement made with every country all over the world. There are special services that publish the terms of every concession agreement. Every significant oil country has officials who get these things, and they know precisely what is going on, so that they will know how to negotiate. Now, way back in the early days of the international oil business, it is conceivable that Ecuador would have been forced to deal with a single company. But at the time they made the agreements with Texaco and whatever other company it was, there were hundreds of people interested in new concessions around the world. The papers are just full of stories about small companies that had never been heard of before that now have concessions either alone or with others in the North Sea, the Persian Gulf, the South China Sea and many other parts of the world. Governments have complete information about what other countries have obtained in the way of agreements and they have international consultants to assist them. These consultants go out to draft the petroleum laws. When Malayasia and Thailand became interested in granting concessions, the very first thing they did was get themselves an international consultant to help them set up a modern oil law that would protect their interests. And then when they come to negotiating a concession, they can do the same thing. So the idea that these contracts are contracts of adhesion, I really don't think can be supported by the facts. The point is that you have a very precipitous Andean terrain in Ecuador. The prospective areas were on the Atlantic side of the Continental Divide, with perfectly horrendous costs for getting the oil out if and when it was found, so the Ecuadorian government made the best deal it could make in the absence of proven reserves sufficient to support a huge investment. When the reserves came along, they said, "Let us have another look at this." And that is when the renegotiations

started. Now, as far as I am concerned, if you were dealing with fellow Americans, you would hold their feet to the fire. There are all sorts of experimental ventures here. The fellow who sold the Xerox patent would probably want a better deal today than the one he probably got when he sold it to the Haloid Corporation which later became the Xerox Corporation, but that is just too bad. He made a deal in light of the circumstances at the time he made it. I think you have to consider that. I don't think that in legal discussions you should use generalities without looking at the total facts and effect of the agreements.

DEAN BEACH: There have been a couple of hands up in the audience.

MR. SNOOK: I think both Mr. Finlay and Mr. Griffin use the terms "control" and "run" interchangeably. I would think that there would be a distinction in that by "control" it means that the oil producing countries want control. But in the end, the oil industry is still going to run everything. As Dr. Ghobashy said, Saudi Arabia probably wouldn't nationalize because they didn't have the technicians. I am just wondering, in all the discussion about taking over control, the only thing it seems to me that the oil companies are losing are their anticipated profits, and they are losing a large cut of the pie, but they will still be running the industry. And with the technology, I am not sure about this, but I think that Hunt Tods Company makes most of the drill bits in the world. What I would like to know is whether the oil producing countries run the whole show by themselves? Aren't the multinational companies an indispensable party?

DEAN BEACH: I am glad we got a question that could be answered yes or no. Anybody want to attempt that?

MR. GRIFFIN: Well, I might say, first of all, that when I was talking about control, I was speaking in the context of American law and extraterritoriality. Control becomes a very important aspect of parent-subsidiary relationships, especially in "lifting the veil" cases. Courts rarely do a careful analysis of the facts. In most cases they merely speak of "control" and similar labels.[10] That was the context in which I spoke of "control," *i.e.*, the legal criteria for when two legal entities will be held to be a single entity because the same people control both. I think you are using control in a much broader sense. You ask, "Can the Arab states run the oil industry themselves?" I think the answer is clearly no. I think also, it has already been said here today, that they really are not interested in doing that. I think we have to ask a more basic question. So far today we have skirted the issue, but no one has actually come out

10. *See* Griffin, *The Power of Host Countries Over the Multinational: Lifting the Veil in the European Economic Community and the United States*, 6 L. & POL. INT'L BUS. 375 (1974).

and made a statement on the issue of, "Have the Arab countries done anything that violates international law?" Yes or no. Check box 1 or 2.

MR. HAIGHT: They have refused to abide by contracts with foreign nationals.

MR. GRIFFIN: That is what we ought to be talking about. In other words, specifically, what have the Arab countries done that we as the United States, or we as American international lawyers are upset about? After we answer that question we can go back to renegotiating pricing and concession agreements. Are we complaining because we don't like the Arab policy? It is not the way we like to see things done. Or are we complaining as international lawyers because these Arabs have clearly violated existing standards of international law as Mr. Haight argues, and I tend to agree. Perhaps we are crossing over into the afternoon discussion panel on expropriation.

MR. HAIGHT: I thought from your talk we were talking along the lines of the Church committee which is exploring what should be the new pattern of relationships. According to that committee, the old pattern is no longer satisfactory. Therefore, we should think of something else. As far as international law is concerned, the position is quite clear. The principles are established. All you have to do is to read the *Restatement*. The realities of the situation are, however, that governments are not obeying international law. They are repudiating international law, as Mr. Finlay said. In the General Assembly of the United Nations, they are now working on a charter of economic rights and duties of states in which they are endeavoring to establish the principle that every country can expropriate property within its jurisdiction and determine itself what compensation should be. This is a new ball game. Whether there is any international law left in this area is difficult to say. Governments will not agree to go to the World Court and have the International Court of Justice decide these issues. There is no means of adjudication outside the expropriating countries. As the world needs oil and as these countries have the oil, it is just a clash of power. The oil companies are in the middle. What can the oil companies do in this area? It has been said that they have the technology and therefore they are indispensable. But anybody can go out and buy the technology. The problem is one of management. If you look at Petroleos Mexicanos in Mexico, they have got the oil, they have got the technology, they have got the people. They just don't know how to run it. Perhaps I shouldn't say that because they are running it the way they want to run it. But it may not be the most efficient way.

PROF. GORDON: But it is theirs, and that is a very important thing in Mexico.

MR. YOUNG: I only have one minor comment. But I might say first that I agree almost entirely with what Mr. Haight has just said. I think,

for example, that there is a clear violation of international law in Libya, over the Libyan concessions. Now, where new arrangements have been negotiated, there may be more doubt as to whether there has been any such violation, unless you want to argue the issue of duress. And we would be here all weekend if we got into that. I will make one further comment on this business of the contract of adhesion. If you are going to use that argument today, I think it would probably run in favor of the companies. For example, In Libya, the contracts under which the companies operated were based on a form attached to the Libyan petroleum law. It was the government that dictated the contract, not the company.

DEAN BEACH: I am feeling my responsibilities as moderator to be very heavy here because I realize cutting anybody off might well cut-off an insight that might solve all of the world's problems. In that context, we will take a few more remarks.

PROF. GORDON: I think the comments by Mr. Haight with regard to Mexico need to be responded to. As I began saying, we should note that the Mexicans are generally content with the way the oil companies are operating. They are willing to have a less efficiently operated company; it is clearly less efficiently operated than it would be if it were operated by one of the American companies. The gas is not good, but the cars do run. I think that is very important. What does bother me is to see two of our distinguished practitioners say that there is a clear international law involving this area because it is in the *Restatement*. Congress enacted the Gonzalez Amendment and the Hickenlooper Amendment, and assumed that there is a certain international law. But there is no real agreement throughout the world. Maybe there *was* an international law at one time. If there was, it was developed by the capital-exporting countries without any input by the capital-importing countries. We have not been able to get together and determine what international law should be. I think clearly there is a right to take property. It does bother me that when there is a government grant of a concession there is often a unilateral change of that grant. Of course it is a different government that changes the grant in most cases. It was a different government in Cuba that took over the property, a different government in Peru, a different government in Guatemala in 1954 that took over United Fruit. What we generally recognize though, is that there is a right to take property in this country. It is provided for in the Constitution. But we have always recognized that there must be a right to compensation. And we consider that a right to prompt, adequate, and effective compensation. But we have not yet resolved what prompt, adequate, and effective means. In the context of a developing country, they cannot pay cash immediately. We have to talk in terms of long-term bonds in order to be realistic at all. But what is most troublesome is the view that there

is no right to compensation. This seems to be a view of many of the countries in the United Nations. This view is simply unrealistic. Companies will not go into a nation and invest if there is no way of protecting their property, or they will invest in ways which are undesirable. One of those ways is to get in and out quickly. I think it is tragic that a company be forced to take the view that we have to get in with a minimum contact and get as much profit out as quickly as possible before they are taken over. I think we have to resolve the problem and come up with an international law that has some realistic way of solving the compensation issue. But to say that it is there already, because it is in the *Restatement*, or because it is in the Hickenlooper Amendment, I think is wrong.

MR. HAIGHT: I should not have referred to the *Restatement*. I think that the fact that it is in the *Restatement* does not make it international law. Of course not. The *Restatement* is merely an attempt to restate what international law is, and to that extent it is of some utility. The international law on this subject has been developed over a period of time, as you know. It is based on a series of adjudications, the widespread acceptance of certain principles of international law, such as the right of a government to protect its own citizens in the territory of another state. It is true that we are going through a great revolution in international law. All you have to do is read the debates in the General Assembly and the Resolutions to which we have been referred. It is certainly to be considered whether, if there is to be a change, what the change should be. But, I think that whatever the developing countries may say, in speeches from time to time, or in official pronouncements, basically there is law today. That is evidenced by the vast network of treaties. I am sorry I didn't bring up a collection of these treaties that is available in booklet form. They are treaties with developing countries; and not merely the old friendship treaties with the United States, but treaties made in the last few years by Germany, Switzerland, France, Netherlands, United Kingdom, Italy; and among developing countries themselves there are treaties—such as between Kuwait and Iraq, an old treaty between Cuba and Japan, and between Japan and Costa Rica. There are many treaties that recognize the right of a government to protect its own citizens in the territory of another state and the principles of protection of alien property and the payment of compensation if it is expropriated. Those are the three essentials. Now, maybe it has to be changed. But I don't see any way of getting a flow of private capital into developing countries unless there are some basic principles that are accepted.

DEAN BEACH: Let us give everybody on the panel one minute, waivable, but maximum one minute, to sum up and then we can break for lunch.

PROF. GORDON: I will just sum up with a comment by De Tocqueville saying that "Nations are like men, they love that which flatters their passions, even more than that which serves their interests." We have seen divergent views here this morning, and I wish that we could focus more upon those areas which serve interests as opposed to those which flatter passions.

MR. FINLAY: I would like to go along with the point that Mr. Haight just made. The developing nations will never achieve their goals of an improved standard of living for their own citizens unless they get massive influxes of capital into their countries. Inter-governmental aid cannot fill the bill and private capital is the alternative. And that won't fill the bill unless they provide a milieu of reasonable assurance that the investors can get a fair return on their money. This is the whole basis of private investment. I think that until such time as the developing countries generally recognize this point and work together with the industrial countries for some reasonable protection of private investment, they will continue to flounder as India and many others are floundering today.

MR. GRIFFIN: I will end on an optimistic note. I think we have had a lot of down-beat discussion on how bad things are, and how they are going to get worse. I think we may be overestimating this whole issue, mainly because we all sat in cars in lines at gas stations. I think there is a danger in exaggerating the power of the multinational company as it faces national sovereignty. Raymond Vernon's famous quote that "suddenly the sovereign states are feeling naked"[11] is an overstatement at one end of the spectrum. But I think the opposite extreme is also dangerous. If we say that multinational companies are now at the mercy of every single developing country in the world, and that the major capital-exporting countries are also at the mercy of the underdeveloped countries, that is a gross overstatement.[12] I think that in all these areas, the truth lies somewhere in between. I guess the appropriate thing to say is "To be continued this afternoon to find the answer."

DEAN BEACH: Well, I would like to thank the three panelists for a very entertaining and informative discussion. I would like to thank the people in the audience who did brave our Syracuse elements to come out and listen to it. May I point out that many of the concepts discussed here overlap the afternoon topic entitled "Expropriation, Threats of Expropriation and Developmental Policy." Knowing nothing about in-

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11. R. VERNON, SOVEREIGNTY AT BAY 1 (1971).

12. It has been reported that Saudi Arabia will boost its participation in Aramco from 25% to 60%. Wall St. J., June 11, 1974, at 3, col. 1.

For a review of the attempts to establish a banana exporting cartel similar to OPEC see Morgenthaler, *Banana Tax Causes A Bunch of Trouble in Central America*, Wall. St. J., June 13, 1974, at 1, col. 4.

ternational law, I came to learn something about it. I have heard a great deal about international power. At lunch, I am going to try to figure out if that is indeed a distinction without a difference. Thank you for being here.