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Closing Remarks and Discussion

Henry T. King, Jr.

This is a time when we discuss ideas for future programs of the *Canada-U.S. Law Institute*. Our programs have covered a various subjects, but many topics remain.

One topic that might be of interest is the question of sovereignty in the North American context and in a changing world; sovereignty - what is it; what are its implications; how are these implications felt by corporations that do business across borders? Another area is what are the multinational institutions which have to be dealt with; what are the bilateral or multilateral trade frameworks such as the Free Trade Agreement ("FTA") and the North American Free Trade Agreement ("NAFTA") which we will be concerned with?

Sovereignty has implications for corporations in terms of limitations on sovereignty and extensions of sovereignty in various areas such as anti-trust, export controls, taxes, dispute resolution, environmental regulation.

Another possible topic would be taxes. How do we look at the total tax contexts in the U.S. and Canada? We can break it down into levels and varieties of taxes. One subject area could be the impact that taxes have on trade and investment between the two countries. Another aspect is how the tax structures in Canada and the U.S. compare with competitive countries such as Germany and Japan. We can look at the impact of U.S. and Canadian taxes on income derived from overseas operations. And we could consider what legislative and regulatory changes could be made to make us more competitive with our primary competitors in Germany and Japan.

Another possible topic is intellectual property and the possible effect of NAFTA on this because this is the first trade agreement that covers intellectual property. There is no trade agreement outside of NAFTA that covers intellectual property. Intellectual property in a technologically-oriented world is very important. We can look at differences between the United States and Canada. How do we protect our intellectual property in other countries throughout the world? What about piracy and bootlegging of technology? What about variances between national trade secrets laws? What are our concerns with their effect on market expansion by our people?

These are some of the topics that are possible, but I would like to get your views on what may be important in the future. So I would like to open the floor to discussion. Does anybody have any suggestions on

what might be possible topics?

COMMENT, *Mr. Langmack*: Does it make any sense that the *Canada-United States Law Institute* would include in its program some kind of relationship with a Mexican university as you have done with the Canadians? With the North American Free Trade Agreement it would make sense that the Mexican counterparts to our Canadian and American institutions would be included in a future program. Would something like that be something of interest to the *Institute*?

COMMENT, *Professor King*: It is something that is certainly worth thinking about. Maybe it will impact on us inevitably, but NAFTA is not a fact at this time. I suspect it will become a fact, but we do not know when. I tend to like to deal in a realm of certainty rather than uncertainty. I assume NAFTA will pass, but I am not sure. I am assuming that certainly Canada is moving in the direction of NAFTA. There appears to be no problem in Mexico where President Salinas does favor it. On the other hand, there is a lot of noise in the United States against NAFTA. It is not a fact at this time. It is something to keep in mind for the future.

COMMENT, *Mr. Ryans*: I would like to tie into what you said about national sovereignty. There was discussion about the extraterritorial application of law and how the U.S. tries to make its laws apply in other countries. Do other nations try to extend their laws as we do? Questions like that could be part of your national sovereignty program.

COMMENT, *Professor King*: That is not a bad topic. It hits you every where you go. I like all-inclusive topics. Certainly we heard it raised a number of times even this morning. There are many interesting implications of national sovereignty. It is a front-burner issue. In practice we encounter it suddenly, and we do not have a frame of reference to deal with it.

COMMENT, *Mr. Delay*: We should examine perhaps whether the central banks should have a role in adjusting the monetary supply in relation to North American trade policy. This has been a debate as to whether countries should have a national trade policy or not or national industrial policy or not. I wondered whether the monetary policy should be actually trade neutral or whether it should be constantly adjusted to North American free trade objectives.

COMMENT, *Professor King*: That is an interesting point. I think they deal with that question in Europe. We certainly will encounter some concerns in this area as we expand our horizons in the hemisphere.

COMMENT, *Mr. Hart*: Your suggestion for our conference on sovereignty, I think, provides a very nice cover for a number of issues including the central bank issue and extraterritoriality. I would like to suggest as one of the dimensions on the conference on sovereignty the very difficult problem of social policy in a global economy. Given the

amount of international trade that takes place today and the integrating impact of that trade, this development is beginning to have a very — I do not want to say deleterious, but at least a very difficult impact on governments' abilities to use social policy as a lever to affect change and so on. And in a global economy I think governments increasingly are going to have to think about social policy no longer as strictly a domestic issue, but as an issue that has international implications. So, again, it ties in with your sovereignty theme.

COMMENT, *Mr. Shanker*: There will be a reality next year that does not exist this year. We will have had a Clinton Administration in the United States for one year. Presumably, by next year, we will have had a great deal of whatever is going to come out of there by way of a legislative package in terms of taxation, and all sorts of other things. We may get some better sense at that time of the policies his new administration will pursue with respect to trade and competition and many things we talked about. By the same token, our neighbor (Canada), by next year at least, will have an election and presumably a government that will have been in place for a couple months by the time we meet next year and presumably that government will have some new ideas. Could we somehow have a kind of critique, an assessment of how these two administrations will affect our competitiveness and the like?

COMMENT, *Professor King*: I think that is an interesting idea. It is a hard one to implement. But I do think the sovereignty issue is one of the problems in the world today. It is something that impacts as the world grows closer in terms of interfaces. So why not face it head on?

COMMENT, *Mr. Kostyrsky*: I would like to follow up on the fact that the work done on the environment conference last year is now being used by the negotiators in Mexico this year, and some of the comments that Michael Hart and Howard Rosen have made about positive norms, by suggesting that within the context of sovereignty, which I think is a valuable and ductile enough theme, you might consider including some question of not the rules — it is way too far down the stream — but maybe the criteria for finding those areas where you can set some positive norms for governments that really, in effect, are a trade-off between national good, however defined, and a larger good whether it is Canada-U.S. or global. This is the start of looking at some criteria that will eventually get to rules where you are going to set up something that is more than just a national good but it will lead to an international good.

COMMENT, *Professor King*: That is a very good point. I think you hit the nail on the head. What you would like is a topic you can play with which looks to the future. As Hans Smit said yesterday, we like to look toward the future, and not look over our shoulder. I think

what makes life interesting is to have a vision and a sense of mission.

COMMENT, *Mr. Harvey*: I also like the idea very much of the sovereignty theme and of the various aggregates that have been added to it. The latest contribution is an excellent one. I thought perhaps of harmonization of rules versus dispute resolution, which has been a favorite theme of yours in the past, as worthy of study. It seems to me Richard Thomas last night also took us out to the brink, Cold War-like with Japan. He did not put it this way, but what we are really asking for from Japan is some sort of harmonization. Join the system. It seems to me that the sense of harmony, within the framework of national sovereignty, is an issue. What are the limits to it? What have been the traditional limits? What are the limits today given our economy? And, for the future, to what degree can we relinquish hard, hawk-like notions of sovereignty.

COMMENT, *Professor King*: In other words, you can also look at a better world with a sense of perhaps some idealism. I am an optimist.

COMMENT, *Mr. Wadsworth*: If you put on a conference on sovereignty you might consider getting an expert on population to discuss future trends which may have a very heavy impact on sovereignty issues. It would be interesting to study the increase in population, the aspects of communication, and the mixing of races in the future and how we handle all of these issues.

COMMENT, *Professor King*: The population problem is one of the fundamental problems that we have.

COMMENT, *Mr. Kasoff*: I am part of the sovereignty stampede as well and would suggest consideration of cultural policy as it relates to sovereignty issues. I think that is particularly important in the Canadian context in general and Quebec in particular.

COMMENT, *Professor King*: I agree profoundly because cultural policy is in the Free Trade Agreement. We do not want a fungible world. The Canadians maintain that they want their cultural sovereignty, and special provisions to preserve it in the Free Trade Agreement. The sovereignty issue is particularly adapted not only to the multilateral context, but also the Canada-U.S. context, because you are seeing changes. For instance, what do the Canadian firms who are subsidiaries of American parents do when they have to deal with the trade embargo that the U.S. has on Cuba? And here I refer to special legislation that recently was passed by Congress. There are a lot of interesting questions and sovereignty has very interesting cultural aspects. I still want to enjoy many things that are Canadian, and I like the differences, but sometimes it gets into some very sticky questions. I think the cultural aspects would certainly be one area we would want to cover.

COMMENT, *Mr. Anderson*: I also would like to join the sovereignty stampede. One more element which could be quite important is the issue of transnational jurisdiction in antitrust matters. That would

fit very well.

COMMENT, *Professor King*: That reminds me of the Aluminium case which is the first case that hit me when I went to work at Milbank, Tweed & Hope. Antitrust matters are very important from the transnational jurisdictional standpoint.

COMMENT, *Mr. Decker*: Speaking as an older white male, which is a dominant group here, some aspects which might arise with the sovereignty questions are political correctness, racial and ethnic conflicts, immigration and all of the women's issues such as employment equity.

COMMENT, *Mr. Redhead*: I just wanted to offer an observation to your point of branch plants being owned in the United States and operated in Canada. There is a flip side to that where some companies have the majority of their activities in the United States but their head office in Canada. That is another aspect of your discussion that might be worth pursuing.

COMMENT, *Professor King*: That is right. There are some that are represented at the Conference. I think that would be an interesting topic. I do not want to foreclose anything, but sovereignty intrigues me because it is a very good topic, not only from the standpoint of relevance, but also to have some concern over the future. This has a lot of interest.

Well, we are at the end of the day. I cannot help but thank our speakers for the wonderful job they did at the conference. I complimented them individually for the remarks, but a lot of work was put into these speeches, and they are very thought provoking.

I think it is very important that we pay special tribute to Adria Sankovic, our Program Coordinator. She did a magnificent job. We all owe her a great deal of gratitude and her effort is something that we will not forget. She did an excellent job.

I also want to thank Saleh Awadallah. He has been right hand at my side all the while. He was just wonderful. And Saleh put together the Conference Materials. Those materials are very important as a frame of reference for your memory of the conference. In addition, we will have Volume 19 of the *Canada-U.S. Law Journal*, which, thanks to Saleh, will be out sometime this fall. I also thank Lisa Hrovat, our court reporter, for her monumental concentration during this whole program.

COMMENT, *Mr. Langmack*: Not that fast, Henry. Henry is very organized. He knows how to run a conference not only from the very beginning, but through it, to the end. I think all of us owe a real debt of gratitude to our leader.

COMMENT, *Professor King*: Well, on such a high note and without further ado, I declare this conference adjourned.

