Multinational Enterprises and International Law: A Selected Bibliography

Foreword

Presented herewith is a collection of recent publications dealing with multinational enterprise activity and its status under international law. While multinational enterprises are hardly new, their scope and character have radically changed in recent years. Because of this evolution, the bibliographer has been limited to materials published in the last two decades with emphasis on those items released since 1970.

As originally prepared, the bibliography was current through January, 1976. To the extent possible, an effort has been made to update it through midyear. The materials have been topically keyed to areas currently being researched by such groups as the United Nations Commission on Transnational Corporations in their effort to produce a code of conduct for multinationals. In addition to these "areas of concern," separate listings have been included for United States Government publications, materials dealing generally with multinational enterprises and international antitrust, and foreign publications. Insofar as this collection is designed to facilitate the production of a code for multinationals, comparative law studies and materials dealing with the relevance of domestic law to these enterprises have been excluded.

Materials Dealing with a Code and/or Guidelines for MNEs

A. United Nations


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\(^1\)At its March, 1975 meeting, the Commission amended and unanimously adopted its draft report to the Economic & Social Council; the Commission identified “areas of concern” regarding the activities of transnational corporations (at pp. 1-2, 18-22) and . . . decided that among the various tasks it would undertake in the next few years the priority would be assigned to the formulation of the code of conduct [to be observed] [dealing with] transnational corporations (at p. 3).

It outlined the establishment of a “comprehensive information system” (at p. 3) regarding TNC’s, and scheduled the submission in 1975 of “studies on the political, economic and social effects of the operations and practices of transnational corporations” (at p. 5). The list of documents before the Commission at its first session is included in Appendix IV of the Report (at p. 24) and includes a paper submitted by the delegations of eleven Latin American nations on “areas of concern which could be used as a basis for preliminary work for a code of conduct to be observed by transnational corporations” (E.C.10/L.2). It may be worth noting that the U.N. sponsored a Training Workshop in Negotiations with Transnationals on January 6-30, 1976 in Lusaka, Zambia. A number of working papers should be available, upon request, from the U.N. Center on Transnational Corporations.

\(^2\)These proposals are based upon the Draft Code of Conduct prepared by the Pugwash Conferences on Science & World Affairs and in response to the UNCTAD Secretariat’s Study, “Possibility and Feasibility of an International Code of Conduct on the Transfer of Technology,” UNCTAD, 11/74.

The Group of 77’s draft code on the transfer of technology was presented at the May, 1975 meeting of the Committee on Transfer of Technology. The code provides for an express series of obligations from licensor to licensee and numerous rules governing the transfer of all types of technology. Forty restrictive business practices are enumerated and prohibited. The code would be obligatory in nature and provides for special treatment for the developing nations. A United States counterdraft proposal provides for a voluntary code with obligations on both licensor and licensee and express protection for trade secrets and other types of confidential commercial information. The issue was discussed in December, 1975 at a meeting concerning amendments to the Paris Union International Patent Treaty. A meeting regarding a code of conduct on the transfer of technology was held under the auspices of UNCTAD in Geneva from November 24 to December.

See also:


B. Organization for Economic Cooperation and Development

1. In November, 1974, the OECD Executive Committee recommended the establishment of a provisional investigatory committee which would develop a code of conduct (or standards of behavior) for MNEs. This new OECD Committee on International Investment and Multinational Enterprise (IME) met in March, 1975, elected Fran Helga Steeg (of the German Federal Ministry of Economic Affairs) as its chairman and scheduled the submission of a report by the end of 1975. See "Sample of Texts for a Statement of Principles Related to the Activities of Transnational Enterprises Which Is Being Considered in the OECD," U.S. State Dept., In-House Memorandum, 6/75. There are three principal facets to this project, including a guideline for Transnational Enterprises (TNEs), an agreement for non-discriminatory treatment of TNEs, and consultation on incentives and disincentives for investment. The first project was completed in Summer, 1976; considerable work remains on the non-discriminatory treatment and the incentive/disincentive questions, however, and no agreement is expected on either for some time. See International Investment and Multinational Enterprises, OECD, Paris/Wash., D.C., 1976.


³The U.N. Economic & Social Council in resolution 1721 (LIII), adopted unanimously 6/28/72, requested the Secretary-General of the U.N. to appoint a Group of Eminent Persons to study the role of the multinational corporations in world development. This action was preceded by a similar resolution adopted by the International Labour Conference in 1971. In 1972, the U.N. Conference on Trade and Development adopted a resolution on restrictive business practices (Resol. 73(III)): this document listed (in Annex, 1, pp. 106-116) excerpts from a series of earlier related resolutions adopted by various U.N. organs. The above-listed 1973 Report resulted and stated, at p. 2:

The question at issue . . . is whether a set of institutions and devices can be worked out which will guide the multinational corporations' exercise of power and introduce some form of accountability to the international community into their activities.

⁴A revised text of proposed MNE Guidelines on Restrictive Practices and Competition was
C. Other Materials Dealing with a Code or Guidelines


approved by the OECD Committee on Restrictive Practices and Competition on December 18, 1975; the text was then forwarded to the OECD Committee on International Investment and Multinational Enterprise. At its January, 1976 meeting, the Investment Committee proposed a number of changes in the OECD Guidelines.


See Also:


D. Note:

Codes of Conduct for Multinational Enterprises are currently being drafted by Union Carbide and by C.P.C. International (formerly the Corn Products Corporation).⁵

II. Specific Areas of Concern

A. Competition, Market Structure and International Antitrust


⁵A number of such proposals may be expected from industrial/commercial groups in the coming months. In addition, note that via the November, 1975 S. Res. 265, the U.S. Senate adopted a measure urging the Ford Administration to negotiate an international ethical code for multinational corporations; this is in the context of multilateral trade negotiations under GATT. This “sense-of-the-Senate” resolution does not carry the force of law; it was adopted in the wake of disclosures of payments to foreign officials by some U.S. business concerns in order to obtain contract leverage, and calls upon President Ford’s Special Trade Representative to join other top Administration trade officials in seeking international negotiations for the purpose of developing a code of ethics for all world trade activities.

Discussions have also begun at the Organization of American States regarding the formulation of an agreement on international business practices; the focus of the effort, however, is restricted to those issues involved in trade policies and bribery of officials.

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B. Ownership and Control


27. Vicuna, F. O., "El Control . . .," *see Foreign Publications*, No. 68, *infra*.

C. Capital Movements & Balance of Payments


D. Technology


3. Chudson, W.A., *The Acquisition of Technology from Multinational Corporations by Developing Countries*, Dept. of Econ. & Social Affairs, ST/ESA/12, N.Y., 1974 (Sales No. E. 74. II. A.7).


11. United Nations, "Fiscal and Other Measures to Encourage the Transfer and Reduce the Cost of Technology to Developing Countries," ESA/FF/AC.2/5.

E. Employment and Labor


15. U.S. Senate, Committee on Finance, Implications of Multinational Firms . . . , see U.S. Government Publications, No. 9, infra.

F. Transfer Pricing


G. Taxation


3. Cahiers de Droit Fiscal International, "Tax Consequences . . .," see
Foreign Publications, No. 13, infra.
12. Snoy, B., "Politique . . .," see Foreign Publications, infra.

H. Information Disclosures and Evaluation
5. Vernon, R., "Multinational Enterprises: Performance and Accountabil-

I. Consumer Protection

III. U.S. Government Publications

The State Department Advisory Committee on Transnational Enterprises has to date devoted its attention to a review of the OECD discussions regarding guidelines for MNEs. In that regard, the State Department has produced alternative provisions to the OECD draft proposals on in-
dustrial relations, disclosure of information, technology and restrictive business practices.

7. U.S. Senate, Committee on the Judiciary, International Aspects of Anti-


**IV. General Publications Re Multinational Enterprises**


41. Cohen, B. I., The Role of the Multinational Firms in the Export of Manu-
62. Fatouros, A. A., “The Computer and the Mud Hut; Notes on Multina-
75. Goldstein, W., "Can the Nation States Control the Multinational Corporations?", *Center Report*, 12/73, p. 3.
80. Hahlo, H. R., Smith, J. G. & Wright, R. W., eds., *Nationalism and the*
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97. Kapoor, A., Planning for International Business Negotiation (Cambridge,


131. Obminsky, E., "International Monopolies in the 'Third World'," Int'l Affairs, No. 9 (Sept., 1975), at 55.


139. Penrose, E., The Growth of Firms—Middle East Oil and Other Essays (Frank Cass, Ltd., 1971).


150. Rolfe, S. & Damm, W., eds., The Multinational Corporation in The World


169. Torneden, R., Foreign Disinvestment by U.S. Multinational Corporations

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*Includes only those items maintained at the Dag Hammarskjold Library in New York.

Foreign Publications

5. Arnold, H. & others, Succursales et Filiales dans le Marche Commun: Problemes Juridiques et Fiscaux (Branches and Subsidiaries in the

See Also:


49. Nye, Jr., J.B., "Multinationale Unternehmen in der Weltpolitik," 29

67. Ubertazzi, G.M., "Les Sociétés Multinationales et les Communautés


*See also:*
