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## Multinational Enterprises and International Law: A Selected Bibliography

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# **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**

1. *An International Code of Conduct on the Transfer of Technology*, Report

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The author gratefully acknowledges the generous counsel and editorial advice generously given to him by Mark Joelson, Esq. and Joseph P. Griffin of the firm of Arent, Fox, Kintner, Plotkin & Kahn, of Washington, D.C.

- of the UNCTAD Secretariat, Dec., 1975, E.75.II.D15 (TD/B/C.6/AC.1/2/Supp. 1/Rev. 1).
2. *Multinational Corporations: Code of Conduct*, Meeting Records, E/AC.6/SR.710, 1975.
  3. *Commission on Transnational Corporations, Report of the First Session*,<sup>1</sup> 3/17-28/75, Eco. and Social Council, Official Records; Fifty-ninth Session, Supp. No. 12 (E/5655; E/C. 10/6), with Corrigendum, 6/3/75.
  4. "Preparation of a Draft Outline of an International Code of Conduct on the Transfer of Technology," submissions by Japan on behalf of the Experts of Group B (TD/B/C.6/AC.1/22, 5/9/75) and by Brazil, on behalf of the Group of 77 (TD/B/C.6/AC.1/L.1/Rev. 1, 5/16/75), to the Group of Experts on a Code of Conduct on the Transfer of Technology, UNCTAD, 1975.<sup>2</sup>
  5. *The Impact of Multinational Corporations on Development and on Int'l Relations*, Dept. of Eco. and Social Affairs, E/5500/Rev. 1, ST/ESA/6; U.N., N.Y., 1974 (Sales Nos. E.74, II.A.5).

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<sup>1</sup>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.

<sup>2</sup>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:

"Possible Methods of Work Related to the Drafting of a Code of Conduct," Note by the Secretariat, Jan. 19, 1976, E/C 10/10.

*National Legislation and Regulations Relating to Transnational Corporations*. Report of the Secretariat, Jan. 12, 1976, E/C 10/8.

6. *Summary of Hearings Before the Group of Eminent Persons To Study the Impact of Multinational Corporations on Development and on International Relations*, Dept. of Economic and Social Affairs, N.Y., 1974, ST/ESA/15 (Sales No. E.74.II.A.9).
7. *U.N. Commission on Int'l Trade Law*, "4/75 Report to the Secretary-General," A/CN.9/104 (Analysis of governmental replies to TNE questionnaire and considered proposals).
8. *Multinational Corporations in World Development*,<sup>3</sup> Dept. of Eco. & Social Affairs, U.N., N.Y., 1973, ST/ECA/190, and Corr. 1 (Sales No. E.73 EE.A.11).

#### 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.
2. *Report on Guiding Principles for International Enterprises* (Working Paper No. 11 of the Committee of Experts on Restrictive Business Practices), 2/27/73.<sup>4</sup>

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<sup>3</sup>The 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, I*, 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.

<sup>4</sup>A revised text of proposed MNE Guidelines on Restrictive Practices and Competition was

*C. Other Materials Dealing with a Code or Guidelines*

1. American Society of International Law, "Should Investment Capital Stay Home? A Canadian—U.S. Dialogue," 68 *A.S.I.L. Proc.*, April 16, 1974.
2. Andean Commission, "Andean Code on Multinational Enterprises and the Regulations with Regard to Subregional Capital," in 11 *Int'l Legal Mats.* 357 (1972).
3. Behrman, J.N., "Supranational Control of the Multinational Enterprise," in *Dusseldorf Conf. on MNCs*, cited *infra*, at 181.
4. Bulletin of the European Communities, "Draft Convention on the International Merger of Sociétés Anonymes; Report of the Draft," Suppl. No. 13, at 1, 1973.
5. Canadian Government, "Guiding Principles of Good Corporate Behavior for Subsidiaries in Canada of Foreign Companies" (reproduced in OECD Doc. No. DAF/RBP/A/72.23).
6. Carroll, M., "U.N. Proposals for the Regulation of Transnational Corporations," *Am. Management*, 1975.
7. Caterpillar Tractor Co., "A Code of Worldwide Business Conduct" (Peoria, Ill., 10/1/74).
8. Chamber of Commerce, International, "Guidelines for International Investment" (Paris, 1972).
9. Chamber of Commerce, International, "The International Corporation and the Transfer of Technology" (Paris, 1972).
10. Chamber of Commerce, International, "International Economic Growth; the Role, Rights and Responsibilities of the International Corporation; Definitions and Conclusions on the Congress Theme" (Paris, 1969).
11. U.S. Chamber of Commerce, "Elements of Global Business Conduct for Possible Inclusion in Individual Company Statements," Jan., 1975.
12. Fine, R., "The Control of Restrictive Business Practices in International Trade—A Viable Proposal for an International Trade Organization," 7 *Int'l Law* 635 (July, 1973).
13. Frank, T.M. & Gudgeon, K. S., "Canada's Foreign Investment Control Experiment: the Law, the Context and the Practice," 50 *N.Y.U.L. Rev.* 76 (April, 1975).
14. Goldberg, P.M. & Kindleberger, C.P., "Toward a GATT for Investment: A Proposal for the Supervision of the International Corporation," 2 *Law and Pol. in Int'l Bus.* 295 (Summer, 1970).
15. Golden, A.Z., "Canada's Foreign Investment Review Act," 10 *Real Prop.*

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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.

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16. Hayden, P. R. & Bruns, J. H., "Canadian Foreign Investment Review Act," 21 *Prac. Law.* 55 (Oct., 1975).
  17. Lamont, D. F., "Emerging Neo-Mercantilism in Canadian Policy Toward State Enterprises and Foreign Direct Investment," 8 *Vand. J. Trans. L.* 121 (Fall, 1974).
  18. Litvak, I. A. & Maule, C. J., "Foreign Corporate Social Responsibility in Less Developed Economies," 9 *J. of World Trade L.* 121, No. 2 (March-April, 1975).
  19. MacLaren, R., "A Code of Conduct for Multinationals," *Int'l Perspectives* (May/June, 1974), p. 21.
  20. Nader, R. & Green, M. J., "Is the Worldcorp Above the Law? Time for the U.N. to Move," *War/Peace Report*, v. 12, No. 6 (Sept./Oct., 1973), p. 3.
  21. Nehemkis, P., "Supranational Control of the International Corporations: A Dissenting View," 10 *Calif. Western L. Rev.* 286 (Winter, 1974).
  22. Oliver, C. T., "The Andean Foreign Investment Code: A New Phase in the Quest for Normative Order as to Direct Foreign Investment," 66 *Am. J. Int'l L.* 763 (October, 1972).
  23. Reich, R. B., "Global Responsibility for the Multinationals," 8 *Texas Int'l L. J.* 187 (No. 2, Spring, 1973).
  24. Robuck, S. H., "The Case for Home Country Controls Over Multinationals," *Colum. J. World Bus.* (Summer, 1974).
  25. Rolfe, S. E., "The International Corporation" (with an epilogue on "rights and responsibilities"), Background Paper for the XXIIInd Congress of the Int'l Chamber of Commerce, Istanbul, May 31-June 7, 1969 (Paris: Int'l Ch. of Commerce, 1969).
  26. Rubin, S. J., "Corporations and Society: The Remedy of Federal and International Incorporation," 23 *Am. U. L. Rev.* 263 (No. 2, Winter, 1973).
  27. Rubin, S. J., "Reflections Concerning the United Nations Commission on Transnational Corporations," 70 *Amer. J. Int'l L.* 73 (No. 1, Jan., 1976).
  28. Rubin, S. J., "Transnational Corporations: Supervision, Regulation or What?," 1 *Int'l Trade Law J.* 1 (No. 1, Spring, 1975).
  29. Rubin, S. J., "Report on the Dusseldorf Conference on International Controls in Foreign Investment," 7 *Int'l Law.* 825 (1973).
  30. Schill, C. F., "The Mexican and Andean Foreign Investment Codes: An Overview and Comparison," 6 *L. & Pol. Int'l Bus.* 437 (Spring, 1974).
  31. Stanford Law Review, "Political Components and Practical Effects of the Andean Foreign Investment Code," 27 *Stan. L. Rev.* 1597 (July, 1975).
  32. Stebbings, R. Y., "Argentine Foreign Investment Law and the Andean Common Market Inspiration," 8 *Vand. J. Trans. L.* 277 (Spring, 1975).

33. Wallace, Jr., D. & Rouf-Koch, H., eds., *Dusseldorf Conference on MNCs, 1973, International Control of Investment* (New York: Praeger, 1974) (see generally).
34. Wallace, Jr., D., *International Regulation of Multinational Corporations* (New York: Praeger, 1976).
35. Wang, N. T., "The Design of an International Code of Conduct for Transnational Corporations," 10 *J. Int'l L. & Eco.* 319 (1975).

*See Also:*

1. Danino, R., *Regulating the Multinational: the Andean Code after Four Years* (Cambridge, Mass., 1975).
2. Pisar, S., "Trade, Law and Peace: a Model Code for East-West Transactions," 10 *J. Int'l L. & Eco.* 267 (1975).
3. Symposium: "Conference on the Regulation of Transnational Corporations, Columbia Law School, Feb. 26, 1976"; Regional A.S.I.L. Meeting, Columbia Journal of Transnational Law Association, Inc., N.Y., 1976.

*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).<sup>5</sup>

## **II. Specific Areas of Concern**

### *A. Competition, Market Structure and International Antitrust*

1. American Bar Association, Section of Antitrust Law, International Trade Committee, *A.B.A. Draft Paper Re Trade or Commerce with Foreign Nations*, 1972.
2. American Society of International Law, "The International Implications of United States and Canadian Antitrust Laws," Institute of Int'l Affairs, U. of Wash., *Bull. No. 12*, Part 1, June, 1956 (Pacific, Northwest Regional Meeting of A.S.I.L.).

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<sup>5</sup>A 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 re trade policies and bribery of officials.

3. Antitrust Bulletin, "Multinational Undertakings and the European Communities," 19 *Antitrust Bull.* 583 (1974).
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6. Feltham, I. R. & Graham, R. W., "The Extra Territorial Application of Domestic Law: Antitrust Law," *U. of Brit. Colum. L. Rev.*, v. 1, No. 3 (Dec., 1960).
7. Friedman, W., "Antitrust Laws and Joint International Business Ventures in Economically Underdeveloped Countries," 60 *Colum. L. Rev.* 779, No. 6 (June, 1960).
8. Fugate, W. L., "International Aspects of the United States Antitrust Laws," Int'l Conf. on Monopolies, Mergers and Restrictive Business Practices, Papers and Reports (Cambridge: 1969; London: H.M. Stationery Office, 1971).
9. Fugate, W. L., "International Distribution Agreements" in "Antitrust and International Business Transactions," Part 1, 43 *A.B.A. Antit. L. J.* 517 (1974).
10. Fugate, W. L., "An Overview of Antitrust Enforcement and the Multinational Corporation," in "International Antitrust Law Symposium," 8 *J. Int'l L. & Econ.* 1 (1973).
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12. Hunter, I., "Specific application to antitrust matters of general principles of international law governing the assumption and exercise of jurisdiction," 55 *Int'l L. Assn. Conf. Rep.* 156 (1972).
13. International Chamber of Commerce, Commentary on the Report of the UNCTAD Secretariat (TD/B/C.2/54 and add. 1), "Restrictive Business Practices," TC/B/NGO/10, 21 Jan. 1969.
14. Joelson, M. R., "International Technology Transfers and United States Antitrust Laws," 8 *J. Int'l L. & Econ.* 85 (1973).
15. Joelson, M. R., "International Antitrust: A Look at Recent Developments," 12 *Wm. & Mary L. Rev.* 565 (1971).
16. *J. of Int'l Law and Econ.*, "International Antitrust Law Symposium," Parts I & II, v. 8, Nos. 1 & 2, June, 1973; Dec., 1973.
17. Keohane, R.O. & Ooms, V.D., "The Multinational Firm and International Regulation," 29 *Int'l Org.* 169 (1975).
18. Kintner, E.W. & Hallgarten, K.D., "Application of U.S. Antitrust Laws to Foreign Trade and Commerce—Variations on American Banana Since



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  25. Thiesing, J., Turner, J. & Ellis, A., "Antitrust and International Law as Viewed From the United States and the European Common Market," *The Record of the Association of the Bar of the City of New York*, v. 25, No. 4 (April, 1970).
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  31. U.S. Dept. of Commerce, Comm. on Int'l Trade & Investment, "United States Policy . . .," *see* U.S. Gov't. Publications, No. 14, *supra*.
  32. U.S. Senate, Committee on the Judiciary, *International Aspects . . .*, *see* U.S. Government Publications, No. 7, *supra*.

33. Vagts, D., "The Global Corporation and International Law," 7 *J. Law & Econ.* 247 (1971).
34. Vernon, R., *Restrictive Business Practices: The Operation of Multinational United States Enterprises in Developing Countries, Their Role in Trade and Development*, U.N., 1972.
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16. Rosenstein-Rodan, P. N., "Multinational Investment in the Framework of Latin American Integration," in *Multinational Investment, Public and Private, in the Economic Development and Integration of Latin America*, Bogotá, 1968.
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23. Toynbee, A., "Are Businessmen Creating a New Pax Romana?," *Forbes*, April 15, 1974, at 68.
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27. Vicuna, F. O., "El Control . . .," see Foreign Publications, No. 68, *infra*.

### C. Capital Movements & Balance of Payments

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3. Manser, W. A. P., *The Financial Role of Multi-National Enterprises* (Halstead, N.Y., 1973).

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8. Severn, A.K., *The Financing of the Multinational Firm*, Div. of Int'l Finance, Fed. Reserve Bd., 1972.
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