

## Report on the Düsseldorf Conference on International Controls on Foreign Investment

After lengthy preparation, a conference on possible international controls on foreign investment, or, in more accurate terms than those of the conference title, on multi-national enterprise, was convened in Düsseldorf, Germany, on January 5 and 6, 1973.

The Conference was sponsored by the Institute of International and Foreign Trade Law of the Georgetown University Law Center, and was chaired by Professor Don Wallace, Jr., of the Institute, and Dr. Kurt Biedenkopf, Managing Director of Henckel G.m.b.H. and Chairman of the sister German Institute. The Conference united some 80 participants, representing industry, government, intergovernmental institutions, and scholars.

It is planned that the Conference papers and an edited version of the proceedings will be published later this year. The document should be a valuable one.

The theme of the Conference was an inquiry into the desirability and feasibility of some sort of international governmental body, which would affect the multi-nation operations of the international corporations. This very cumbersome statement of the "theme" results from the very clear organization and purposes of the Conference. The Conference assumed that all possibilities were open for discussion; that there should not only be no regulation of the multi-national enterprise beyond that which now exists (and perhaps even that present national regulatory laws, like the antitrust laws of the United States should be mitigated in their application across national boundaries); or, on the other hand, that there should be some sort of regulatory or information-gathering and distributing mechanism.

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On this side, again, a multitude of alternatives were open: an international organization limited to informational activities; one which would seek to establish rules, presumably for both the MNE and the host (and sometimes home) states—the GATT for Investment idea; or institutions which would seek to assist in the progressive disinvestment of foreign private capital.

The conference being thus focused on the broad idea of international action, as well as the more specific manifestations of that idea, it was split into two basic sessions. The first day of the meeting was devoted to a discussion of the substantive issues facing the MNE, its home state, and the nation in which it carried out its activities. In turn that session was carried on in two panels, one dealing with relations with the developed nations, the others with the less developed nations. These panels met simultaneously.

On the second day, brief reports were made by the chairmen of these two panels, and the Conference met in plenary session to consider what, if anything, should be done in the light of these prior discussions, in respect of international organization. The writer chaired the plenary session.

At the time of writing this report, the transcript is not available, though of course the papers submitted to the Conference are. Despite the careful preparation of a substantial number of papers reflecting the thoughts of a wide spectrum of experienced observers, the proceedings themselves deserve special attention. In the nature of things, papers are written in solitude, reflecting one's own thoughts. They can of course reflect study and careful composition. But the statements made in the course of an animated exchange of views take on the extra dimension of reaction to the points made by others. And since the discussion at Düsseldorf was one which reflected a wide variance of points of departure, the discussion was highly thought-provocative.

Given these divergent points of departure, what was perhaps most surprising was the considerable unanimity of opinion as to result: that a GATT for Investment, must less disinvestment, would at present be neither feasible nor desirable. This apparent consensus, modified by a luke-warm approval of a better compilation and availability of information, via either existing or new agencies, was greeted with some relief by some representatives of industry.

There is some doubt, at least in the mind of the present writer, whether this sentiment is wholly justified. The disapproval of an international agency on the part of less well-developed nation representatives does not, in this writer's opinion, reflect a future for the MNE in those areas of benevolent approval, or even benign neglect. Rather, the less developed

nations would seem to fear that the international agency would seek to restrain their actions in regard to the foreign-based MNEs. And this attitude neatly balances the worry of business that any international agency would rather fetter than free the MNE.

The several suggestions of the numerous studies and reports which have emanated from *developed* nations and their economists—the well-publicized Canadian views, both of the Watkins and the Gray Reports, the disinvestment proposals of Professor Hirschman and the sharing-of-production suggestions of Professor Behrman, not to speak of the massive studies conducted under the supervision of Professor Raymond Vernon—would seem to furnish some foundation for this concern on the part of the business community.

For widely disparate reasons, then, there was consensus at the Düsseldorf Conference against any major attempt at an international organization which would overlook the MNE. This does not mean, nonetheless, that no new effort, or extension of existing activities, will be made. On the side of gathering and exchange in information—a presumably safe enough subject—there was wide agreement that more ought to be done. The most incisive advocacy of an effort to “give small nations the knowledge necessary to deal with large corporations” came from a Nigerian economist, J. A. Oyelabi.

The suggestion of a better way of collecting and exchanging information was endorsed by Luis Escobar, of the IBRD. Several speakers—the writer included—pointed to ambiguities in the concept. What kind of information? How would it be disseminated? And how utilized? A possible though not stated difference may exist: what some seemed to be discussing was the attainment of information as to how to “deal with” the MNE, while others were discussing the kind of statistical information compiled by the United States Department of Commerce. Between that kind of information and that relating to more effective LDC negotiating ability there lies a wide gap.

The existence of such a gap, in fundamental attitudes, underlay the comments of many of the principal speakers. The U.N. Undersecretary for Economic and Social Affairs, M. deSeynes, discussed the developments at the last General Assembly of the U.N., and the increased activities of the U.N. in this field, emphasizing the basically political nature of many of the problems. Professor Detlev Vagts, analyzing possibilities for an international control agency, arrived at the conclusion of its impracticability. So also, from another point of view, did the Assistant Secretary of State for Economic Affairs, Mr. Willis Armstrong, who expressed the belief that increased consultation (which might eventually lead to some institutional

structure) would be far better than any present attempt to set up a new international organization.

On the substantive side, suggestions and comments varied. The work of the OECD was discussed by M. Raymond Bertrand of that organization. Former Assistant Secretary of State Anthony Solomon suggested that a principal problem was not that of transfer-pricing or similar parent-subsidiary issues, but of the possible lessening of competition, through assignment of territories to subsidiaries, and similar devices. He suggested, within the OECD framework, a semi-independent group to screen take-over proposals and transborder mergers.

Former Assistant Secretary of Commerce (now Professor) Behrman saw the problem as deeper, and proposed what many considered to be the most far-reaching of regulatory organizations, with the objective, by these drastic means, of saving the MNE and preserving its unique benefits. On the whole, though there were notable contributions, as for example from former Treasury Assistant Secretary John Petty, the relations of MNEs in the developed world seemed to evoke few worries and very little in the way of organizational proposals.

Considering that the vast literature of the MNE owes much to the worries eloquently expressed by J. J. Servan-Schreiber in his *Le Défi Américain*, this may indicate how much the focus of concern has shifted. Perhaps the fact is that countries like France are considered well able to take care of themselves; the effort toward international controls, guarantees, exchange of information, etc., seems pretty well limited at present to MNE operations in the LDCs.

In an extremely interesting and brilliantly analytical statement, Ambassador Edwin Martin, Chairman of the Development Assistance Committee, examined both the substantive and the procedural aspects of various regulatory or similar proposals. One great problem of assigning significant power to any organization, existing or to be formed, would, he thought, be the nature of that organization. The IBRD, suggested by some, and whose representative indicated his feeling that it would not be appropriate, was dominated by Anglo-American votes and officers. The OECD is a "rich man's club." Other organizations—the general assembly of the GATT, as presently constituted, for example, or certainly UNCTAD—would be unacceptable for opposite reasons.

In conclusion, although one should properly await the transcript before pronouncement, it is the personal opinion of the writer that some movement toward a new international organization, or toward increasing the powers and the role of existing organizations, is likely. It does not seem possible to put together a new information-gathering and distributing

agency (a proposition almost universally endorsed) without facing the question of what kind of information this shall be, and in this way coming to substantive conclusions.

If, for example, information is gathered with respect to take-overs and trans-national mergers, some inferences could well be drawn with respect to enforcement, across national frontiers as well as domestically, of anti-trust and restraint of competition legislation. If information is directed toward the profits of the MNE, a decision with wide implications will have to be made; does one take the normal accounting standards in calculating such profits, or does one accept, in whole or in part, the argument forcefully made by the Secretary of the Andean Commission, that profits must be recalculated to take into account their having been drastically lowered in the LDCs by unfair transfer prices?

Movement toward cooperation via existing or new international organizations will thus be difficult, even where seemingly non-controversial issues are concerned. It would seem, therefore, that drafters might better seek a forum than a present definition of rules, or perhaps even of functions. As Mr. Armstrong has pointed out, better consultation may result in some progress toward agreement. But consultation at present is on a hit-or-miss basis. It tends not only to be spotty, but to take place in an atmosphere of crisis.

There is no forum in which the problems, even those of a regional nature, are systematically examined. It would seem sensible *now* to establish such a forum, or perhaps such forums, without attempting to formulate GATT-like rules. Within such a forum, with a disinterested secretariat and a regular program of discussion, there might be generated, not the heat which often characterizes these matters, but a considerable amount of light.

It remains to remind the reader that all participants in the Düsseldorf Conference were there in their personal capacities, and not as representatives of organizations.