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# Supranational Regulation of Transnational Corporations: The UNCTAD and CTC Efforts

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JAMES D. KUREK

The focus of this article is the current United Nations' efforts designed to influence the activities of transnational corporations (TNCs) and other participants in the foreign investment arena, with special attention being given to those provisions which deal with concentration. The efforts to be discussed are primarily centered in the U. N. Conference on Trade and Development (UNCTAD) and the U. N. Economic and Social Council's Commission on Transnational Corporations (CTC). Since the approach and methods employed by these two bodies differ in several significant respects, each will be considered separately. The concluding discussion examines a variety of views on the international control of TNCs generally, and the UNCTAD and CTC efforts in particular.

In recent years the activities of TNCs have been subjected to the ever increasing scrutiny of a wide variety of national governments. Concern over the activities of TNCs has arisen from the fact that a growing number are acquiring, literally, worldwide operations that command tremendous economic resources. One problem created by worldwide operations is that the management of these enterprises necessarily must take a global perspective in making corporate decisions; consequently, such a perspective might require corporate actions within a particular nation which are contrary to that nation's governmentally defined developmental, social, and economic objectives. A further problem created by the vast resources of TNCs is that such enterprises may gain a dominant position in a particular market or even an entire sector of a nation's economy, bringing concomitant problems of anti-competitive concentration.

From the TNC perspective, the economies of developing nations often offer an attractive environment for TNC direct investment. From the developing nation perspective, TNCs can provide the type and amount of capital investments that host governments desire to stimulate domestic growth. In fact, these nations tend to rely to a great extent on TNCs as the major sources of foreign investment capital, technical expertise, and technology transfers.<sup>1</sup> Therefore, it is understandable that many developing nations be-

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lieve they are particularly susceptible to undesirable TNC activities, viewing the sheer magnitude of TNC investments as a conduit by which TNCs develop the ability to control the national economy and direct social development. Such a surrender of sovereign power is considered by some developing nations to be as reprehensible as the colonial domination with which they previously had to contend.<sup>2</sup>

Although one apparent solution to these concerns would be the implementation of national laws designed to curb potential TNC abuses, it is at this point that the real dilemma facing national governments surfaces. Authorities are generally agreed that the high degree of geographic diversification and vast global resources possessed by TNCs render most attempts to control TNC activities through national laws largely ineffective, since the TNC has the capability to shift its resources and operations beyond any particular nation's jurisdictional reach, thereby creating at least the theoretical possibility that the TNC will circumvent national controls.<sup>3</sup> A potential answer to this dilemma would be a broader system of control implemented at the regional or international level, thereby lessening the TNC's ability to circumvent the law by shifting resources. However, certain problems inherent in this proposal make the effective implementation of such a system very difficult.

The major obstacle to an agreement among governments on a supranational legal framework capable of controlling TNC activities is the governments themselves. Inevitably, all national governments have their own unique developmental objectives in mind when they approach the problem of establishing any type of international regulatory framework. Since social and economic conditions vary greatly between individual nations, their objectives also vary, and thus it is difficult to reach a consensus on the appropriate framework designed to control TNCs. One solution might be for nations with similar developmental objectives to form a group to deal with this problem on a collective basis—for example, the OECD.<sup>4</sup> But, if several distinct groups should develop, this would still allow TNCs to choose, albeit in a more restricted manner, the law under which they would operate. Moreover, there would still exist a problem of coordination. If some countries sought to attract TNC investment at “any cost” (in terms of potential harm to developmental objectives) their actions could greatly impede even effective regional regulatory efforts. Therefore, the most appealing objective seems to be the development of some sort of supranational system for regulating TNCs that would be acceptable to virtually all nations of the world.

In light of these considerations, the most obvious forum for the development of a supranational framework to control TNC activities is the United Nations, since its membership includes most of the nations recognized in the world today. However, this forum highlights the problem of divergent national objectives, which is a key factor hindering a consensus solution to international problems, including the one discussed herein. Although a number of homogeneous groups exist within the U. N. structure, three major groups tend to be the focus of attention in the area of TNC regulation: (1) the highly

industrialized developed countries (Group B), which control much of the world's economic power, (2) the developing countries (Group of 77), which by sheer numbers control the voting power in the U. N., and (3) the Communist bloc countries (Group D), whose nonmarket economics control substantial resources. Reference in the following discussion will be made to these groups as though their membership acts in a unified manner, although it must be remembered that great diversity may in fact exist within each group.

#### UNCTAD

Within UNCTAD two separate efforts have been undertaken that bear on TNC activities; the effort in the Committee on Transfer of Technology to develop an International Code of Conduct on Transfer of Technology, and the work in the Committee on Manufactures to develop a set of multilaterally acceptable equitable principles and rules related to restrictive business practices. Although the latter effort is more relevant to the problem of corporate concentration, both endeavors may affect TNC activities.

The efforts to develop a code of conduct on transfer of technology began in 1974 when an UNCTAD working group proposed a code designed to aid developing countries in their efforts to control the international transfer of technology.<sup>5</sup> In particular, this proposal articulated some of the restrictive and abusive practices which can accompany the transfer of technology.<sup>6</sup> The working group called for initiatives to establish an international code,<sup>7</sup> and the UNCTAD secretary general appointed a Group of Experts for that purpose.<sup>8</sup> Although a draft code could not be agreed upon, the Group of 77 and the Group B nations offered separate drafts, reflecting their differing views on these issues.<sup>9</sup> The Committee on Transfer of Technology has since performed detailed studies of the effects of technology transfer on particular nations; although a code in this area has not yet been completed, a U. N. Conference on an International Code of Conduct on the Transfer of Technology is scheduled to hold its third session during the first six months of 1980 to work on the code.<sup>10</sup> Therefore, although this code does not directly address the specific issue of concentration, the regulation of technology transfer will necessarily affect the behavior and structure of TNCs.<sup>11</sup>

UNCTAD efforts in the area of restrictive business practices (RBPs) began in 1972 with the establishment of an Ad Hoc Group of Experts on RBPs to study the possible adverse impact of RBPs on developing country economies in their quest for development of trade and economic growth.<sup>12</sup> The experts submitted a report on RBPs and their relation to developing countries,<sup>13</sup> but this report was never used because these experts were not official representatives of their respective countries.<sup>14</sup> As a result, the Committee on Manufactures convened a Second Ad Hoc Group of Experts on RBPs, this time comprised of official representatives.<sup>15</sup> This Second Group was directed, *inter alia*, to identify those RBPs which adversely affect devel-

oping countries and to consider the formulation of a model antitrust law for developing countries.<sup>16</sup> Although the Second Group made some significant advances, reaching an agreement on some general principles and a model law, its efforts represented only the first steps toward a final agreement in this area.<sup>17</sup> It was resolved that the work of the Second Group should be expanded with a view toward developing a model law (or laws) to assist developing countries in formulating appropriate RBP policy and legislation.<sup>18</sup> To this end the UNCTAD secretary general appointed a Third Ad Hoc Group of Experts on RBPs.<sup>19</sup>

In the development of a set of multilaterally accepted equitable principles and rules on RBPs, the approach of the Third Group has been to accept various proposed texts and attempt to negotiate an "agreed text."<sup>20</sup> Close scrutiny of the most recent texts of these principles will provide some understanding of their potential affect on TNC activities, their concern with corporate concentration and their current stage of development.<sup>21</sup> The agreed set of objectives toward which the principles and rules should be framed contains the following statement concerning concentration:

To attain greater efficiency in international trade and development, particularly that of developing countries in accordance with national aims of economic and social development and existing economic structures, such as through:

- (a) The creation, encouragement and protection of competition;
- (b) Control of the concentration of capital and/or economic power . . . <sup>22</sup>

Further, the agreed objectives recognize the need "[t]o eliminate the disadvantages to trade and development which may result from the restrictive business practices of transnational corporations or other enterprises,"<sup>23</sup> and the need to adopt these principles and rules at the international level in order "to facilitate the adoption and strengthening of laws and policies in this area at the national and regional levels."<sup>24</sup> This language demonstrates that the UNCTAD intends to address TNC activities generally and TNC concentration specifically. In fact, a proposed Group D objective is to ensure that restrictive practices of TNCs do not impede national developmental objectives.<sup>25</sup> The Group of Experts' desire to control concentration is again shown in the agreed definitions and scope of application section. RBPs are generally defined as:

. . . acts or behaviour of enterprises which, through an abuse or *acquisition* and abuse of a dominant position of market power, limit access to markets or otherwise unduly restrain competition, having or being likely to to [*sic*] have adverse effects on international trade, particularly that of developing countries, and on the economic development of these countries, or which through formal, informal, written or unwritten agreements or arrangements among enterprises have the same effects.<sup>26</sup>

Additionally, *dominant position of market power* is defined as "a situation where an enterprise, either by itself or together with a few other enterprises, is in a position to control the relevant market for a particular product or service or groups of products or services."<sup>27</sup> Although these definitions are vague and somewhat ambiguous in their specific terms, they indicate the Group's concern with corporate concentration. Again, the Group D proposal more specifically addresses TNC practices which might be used to gain a dominant market position.<sup>28</sup> In addition to the previously cited language, specific reference to TNCs and concentration can also be found in other sections of the principles.<sup>29</sup>

Although several sections to be included in the proposed code have been agreed upon, some key elements of the principles have yet to be finalized. The unresolved elements include the issue of whether the developing countries should be able to exempt certain domestic actions from these principles,<sup>30</sup> and whether the developing countries should be accorded preferential or differential treatment for their national enterprises.<sup>31</sup> If these exceptions are accepted the result might be a set of principles which would bind only the developed countries. Therefore, the developed countries have not been amenable to these proposals by the Group of 77.<sup>32</sup> Due to the requirement of unanimity in the negotiating conference and the practical necessity that the Group B nations must accept the principles if they are to be effective, a negotiated solution to these and other differences will undoubtedly be attempted at future UNCTAD meetings.<sup>33</sup>

To aid developing countries in formulating their own RBP legislation, the UNCTAD Secretariat has submitted a draft model law for regulating RBPs to the Third Ad Hoc Group of Experts.<sup>34</sup> However, any affirmative action in this area is likely to be deferred until the general principles on RBPs have been agreed upon.

#### CTC

The U. N. Commission on Transnational Corporations, operating under the auspices of the Economic and Social Council, has taken a different approach to the problem of TNC activities than that of the UNCTAD. The CTC has its beginnings in a 1972 ECOSOC resolution that called for the appointment of a Group of Eminent Persons to study the effect of TNCs on world development.<sup>35</sup> The Eminent Persons, with the aid of a report issued by the ECOSOC Secretariat,<sup>36</sup> produced a report,<sup>37</sup> which together with other reports issued by the ECOSOC Secretariat<sup>38</sup> provided the impetus for the establishment of the CTC and the Centre on Transnational Corporations.<sup>39</sup>

One purpose of the CTC was to evolve "a set of recommendations which, taken together, would represent the basis for a code of conduct dealing with transnational corporations."<sup>40</sup> The Centre was mandated to function under the guidance of the CTC.<sup>41</sup> In performing its function of developing a code of

conduct for TNCs, a function assigned the highest priority,<sup>42</sup> the CTC has sought the opinions and advice of a wide variety of governmental and non-governmental experts.<sup>43</sup> The CTC's method in formulating the code has been to use an Intergovernmental Working Group, made up of official representatives of various nations, to consider proposals made by various nations and information gathered by the Centre.<sup>44</sup> The ultimate objective of the Working Group is to negotiate a single proposed code text prepared from the common elements of the various proposals which, once in final form, will be presented to the entire CTC.<sup>45</sup>

The CTC effort differs from the UNCTAD endeavors in two very significant respects. First, the code of conduct being developed by the CTC is designed to address a much broader range of TNC activities.<sup>46</sup> Predictably, its comprehensive nature makes it more controversial yet potentially more effective than the UNCTAD codes. Second, the negotiations within the Working Group have been on a single text developed from prior discussions in lieu of alternate text proposals by the Group of 77 or Group B nations. It is hoped that this approach will reduce the opportunity for the various groups to become too firmly entrenched in their own stated positions, and thus contribute to freer and more effective negotiations.<sup>47</sup>

Currently, although some tentative formulations of the code have been published,<sup>48</sup> a final draft has yet to be submitted to the CTC. It is worth noting that although the tentative draft contains a section on competition and RBPs, all work on this section has been postponed until relevant work in the UNCTAD is complete.<sup>49</sup> Therefore, the Working Group will only address the issue of TNC concentration after the UNCTAD code efforts are finished. In spite of this delay, negotiations continue on some of the unresolved provisions in the code.<sup>50</sup>

### *Concluding Observations on Efforts to Date*

While the current international efforts to control TNC activities have not yet attained final form, the mere existence and potential of these endeavors has sparked considerable academic and other discussion on international attempts to control TNC activities and concentration. In this final section some of the competing views on the key unresolved issues involved will be presented.

One issue of heated debate is whether the current efforts, if and when they become final, would be binding on the various countries involved. Although it is recognized that a country's consent to a negotiated effort will entail some sort of moral obligation to conform national regulations to the standards developed, what is important is whether the standards will be *legally* binding on the particular countries accepting them. One commentator, in discussing the legally binding nature of the UNCTAD codes, notes that the "common understanding at the inception of UNCTAD was that its actions could not be binding."<sup>51</sup> Thus he concludes that the codes will not become binding international law unless they are universally accepted and thereby

become customary international law.<sup>52</sup> Regarding the CTC code, the issue of implementation is currently under discussion, although it is generally conceded that a strictly binding code is not likely to result.<sup>53</sup> Therefore, it is likely that a particular country will be bound to these codes only if it so chooses.

Another unresolved issue is whether these codes should accord preferential treatment to the developing countries at the possible expense of the developed countries. As previously noted, this is a topic of current disagreement within UNCTAD.<sup>54</sup> On this issue one authority in particular advocates differential treatment as a compromise.<sup>55</sup> Specifically, he believes that according preferential treatment to the developing countries could be a means of achieving equal economic opportunity among the nations of the world, based upon the premise that unequal status can best be remedied by allowing unequal treatment which favors those who have been previously disfavored.<sup>56</sup> He also suggests that TNCs should be treated differently from domestic enterprises with no foreign operations, thus limiting the code's provisions to TNCs and allowing national governments to develop their own (perhaps discriminatory) regulations for domestic industries not involved in foreign investment.<sup>57</sup> Whether in fact the developed nations are ready to accept this sort of one-sided agreement is highly debatable.

The final, and perhaps broadest, issue concerns the ultimate efficacy of these efforts. Although ultimate resolution of the more specific issues will invariably determine the effectiveness of the codes, several commentators have nonetheless made some general observations in this regard. One authority believes that the conclusion of the present endeavors will serve as an intermediate step to future negotiations on a more general and effective regulatory agreement for TNC activities.<sup>58</sup> Others believe that these efforts will, at the very least, set a minimum standard for TNC behavior that both national governments and TNCs will embrace.<sup>59</sup> The TNCs may be likely to embrace these standards due to the fear that rejection of them could serve as the stimulus for future, even less desirable, regulations at both the national and international levels. Still others believe the standards enunciated in these codes could eventually be incorporated into national laws, particularly in those countries that presently lack any RBP legislation.<sup>60</sup> With respect to the specific development of an effective international antitrust law, some writers suggest that a drastic reconciliation of the various national values and objectives is necessary before an effective result in this area can be obtained.<sup>61</sup>

The entire issue of effectiveness may be ultimately resolved only when "the legal form, language and machinery for enforcement are agreed upon."<sup>62</sup> Although it is likely that the current negotiations and draft codes will have some impact on TNC behavior and national and international regulation of TNCs (in general and regarding concentration specifically), the extent of this impact cannot be measured with certainty until these efforts are finalized in a negotiated consensus to be reached by the various participating nations. Until then it is only possible to discuss the methods which might effect certain results, and ponder the eventual fate of these very ambitious endeavors.



## NOTES

1. See, e.g., Soloman, *Multinational Corporations and the Emerging World Order*, 8 CASE W. RES. J. INT'L L. 329 (1976).
2. *Id.* at 332-35.
3. See, e.g., Coonrod, *The United Nations Code of Conduct for Transnational Corporations*, 18 HARV. INT'L L.J. 273, 275 (1977); BARNET & MÜLLER, *GLOBAL REACH* (1974). It should be noted that although the TNCs possess this capability it does not necessarily mean that they will in fact be willing to take such actions, due to the adverse reactions they might receive from the international community as a whole. Also, if a majority of the developing nations were to develop laws designed to control TNC activities, it is unlikely that the TNCs would be willing to forego the economic benefits which could nonetheless be gained in these markets.
4. The OECD has actually developed "guidelines for multinational enterprises" promulgated in June 1976, in OECD, Annex to the *Declaration of 21st June, 1976 by Government of OECD Member Countries on International Investment and Multinational Enterprises*, reprinted in 15 INT'L LEGAL MATS. 967 (1976). See Stockmann, *Reflections on Recent OECD Activities: Regulation of Multinational Corporate Conduct and Structure*, *supra*. But, these guidelines are not acceptable to the developing countries due to their voluntary nature, Coonrod, *supra* note 3, at 289; Schwartz, *Are the OECD and UNCTAD Codes Legally Binding?*, 11 INT'L LAW. 529, 530 (1977), and because the OECD is an organization which represents the interests of most of the developed countries of the world, Coonrod, *supra* note 3, at 286 n.65. For a more general discussion of the OECD guidelines, see Chance, *Codes of Conduct for Multinational Corporations*, 33 BUS. LAW. 1799, 1808 (1978); Hawk, *The OECD Guidelines for Multinational Enterprises: Competition*, 46 FORDHAM L. REV. 241 (1977).
5. See UNCTAD, *The Possibility and Feasibility of an International Code of Conduct on Transfer of Technology*, U. N. Doc. TD/B/AC.11/22; GE.74-46032 (1974).
6. *Id.* at ¶¶ 24-29.
7. *Id.* at ¶¶ 141-50. This call also was made by the Intergovernmental Group on Transfer of Technology at its third session held at the Palais des Nations, Geneva from 15 to 26 July 1974, UNCTAD, Report of the Intergovernmental Group on Transfer of Technology on its Third Session ¶¶ 95-127, U. N. Doc. TD/B/520 (1974).
8. UNCTAD, *An International Code of Conduct on Transfer of Technology* ¶¶ 3, 5, U. N. Doc. TD/B/C.6/AC.1/2/Supp.1/Rev.1 (1975).
9. See UNCTAD, Report of the Intergovernmental Group of Experts on a Code of Conduct on Transfer of Technology, Annex I-III, U. N. Doc. TD/B/C.6/1 (1975). For a discussion of the content of these proposed drafts, see Joelson, *The Proposed International Codes of Conduct as Related to Restrictive Business Practices*, 8 LAW & POL'Y INT'L BUS. 837, 860-61 (1976).
10. See UNCTAD MONTHLY BULL. No. 157 (1979).
11. For a more detailed discussion of this code, see Jeffries, *Regulation of Transfer of Technology: An Evaluation of the UNCTAD Code of Conduct*, 18 HARV. INT'L L.J. 309 (1977).
12. See UNCTAD Secretariat, Res. 73(III), U.N. UNCTAD, Report and

- Annexes (Agenda Item 5) 82, U.N. Doc. TD/180(1972).
13. UNCTAD, Report of the *Ad Hoc* Group of Experts on Restrictive Business Practices in Relation to the Trade and Development of Developing Countries, U.N. Doc. TD/B/C.2/119/Rev.1 (1974). The Group listed some specific types of RBPs which are likely to have significantly adverse effects whether in developed or developing countries. It also found that TNC activities have a significant effect on the economic, social and political character of developing countries and that TNC behavior is not always in line with the particular nation's government policies; specific RBPs engaged in by TNCs were also mentioned. The Group concluded by calling for action in this area at both the national and international levels.
  14. Joelson, *supra* note 9, at 858.
  15. UNCTAD, Report of the Second *Ad Hoc* Group of Experts on Restrictive Business Practices ¶ 1, U.N. Doc. TD/B/600, TD/B/C.2/166, TD/B/C.2/AC.5/6 (1976).
  16. *Id.* at ¶ 3.
  17. *See Id.*; Joelson, *supra* note 9, at 858–59; Davidow, *Extraterritorial Application of U. S. Antitrust Law in a Changing World*, 8 *LAW & POL'Y INT'L BUS.* 895 (1976).
  18. *See* UNCTAD Res. 96(IV), sec. III, ¶ 3, U.N. Doc. TD/217 (1976).
  19. *See* UNCTAD, Interim Report of the Third *Ad Hoc* Group of Experts on Restrictive Business Practices to the Committee on Manufactures at its Eighth Session ¶ 3, U.N. Doc. TD/B/C.2/181, TD/B/C.2/AC.6/7 (1977).
  20. In its first interim report, the Group evidenced its multiple-text approach by providing for Group of 77 proposals, Group B proposals, and an agreed text, *Id.*, Annex I. This approach has been followed in subsequent reports, *see, e.g.*, UNCTAD, Report of the Third *Ad Hoc* Group of Experts on Restrictive Business Practices on its First Session, Annex I & II, U.N. Doc. TD/B/C.2/AC.6/4 (1976); UNCTAD, Report of the Third *Ad Hoc* Group of Experts on Restrictive Business Practices on its Third Session, Annex I, U.N. Doc. TD/B/C.2/AC.6/10 (1977); UNCTAD, Report of the Third *Ad Hoc* Group of Experts on Restrictive Business Practices on its Fourth Session, Annex I, U.N. Doc. TD/B/C.2/AC.6/13 (1978). It should be noted that beginning with the Group's fifth session, UNCTAD, Report of the Third *Ad Hoc* Group of Experts on Restrictive Business Practices on its Fifth Session, U.N. Doc. TD/B/C.2/AC.6/18 (1978), and carrying through to its most recent session, UNCTAD, Report of the Third *Ad Hoc* Group of Experts on Restrictive Business Practices on its Sixth Session, U.N. Doc. TD/B/C.2/AC.6/20 (1979), the proposed text categories have included proposals by the Group D nations.
  21. The most current text of the proposed and agreed principles appears in UNCTAD, Report of the Third *Ad Hoc* Group of Experts on Restrictive Business Practices on its Sixth Session, *supra* note 20, at ¶ 10, and is entitled "A Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices having Adverse Effects on International Trade, Particularly that of Developing Countries, and on the Economic Development of these Countries." The agreed principles are the result of unanimous acceptance at the negotiating conference, but they are subject to being reopened in subsequent negotiations.
  22. *Id.* Agreed text, § A, 2.
  23. *Id.* Agreed text, § A, 4.
  24. *Id.* Agreed text, § A, 5.
  25. *Id.* Proposals by Group D, § A, 6.

26. *Id.* Agreed text § B, Definitions, 1. [Emphasis added.]
27. *Id.* Agreed text, § B, Definitions, 2.
28. *Id.* Proposals of Group D, § B, Definitions, (v). This proposal, coupled with other Group D proposals (*e.g.*, *supra* note 25), reflects their rather ambivalent position, since they want to control the western TNCs while keeping their own highly concentrated state-owned industries beyond the reach of these controls.
29. *See, e.g., Id.* Agreed text, § B, Scope of application, 1, “[t]he principles and rules apply to restrictive business practices, including those of transnational corporations . . .”; *Id.*, Agreed text, § C, 1, “action should be taken in a mutually reinforcing manner at national, regional and international levels to eliminate, or effectively deal with, restrictive business practices, including those of transnational corporations . . .”; *Id.*, Agreed text, § D, 4, where the rules for enterprises include refraining from acquisitions through “mergers, takeovers, joint ventures or other acquisitions of control, whether of a horizontal, vertical or a conglomerate nature” where such acquisitions can lead to an abuse of dominant market power.
30. *Id.*, Proposals by Group of 77, § B, Scope of application, (v).
31. *Id.*, Proposals by Group of 77, § C, (v).
32. *See Id.*, Proposals by Group B, § B, Scope of application, (v); *Id.*, Proposals by Group B, § C, (v).
33. The work of the Third Ad Hoc Group of Experts underwent further negotiation and change at a recent U.N. Conference on RBPs held in Geneva from November 19 to December 7, 1979. UNCTAD MONTHLY BULL. No. 156 (1979). Although the Conference did not adopt the principles and rules developed by the experts, some previously disputed issues were resolved; in particular, the conferees agreed that the code would be voluntary. Issues which remain unresolved include dispute settlement and the consideration of parent-subsidiary arrangements as RBPs. *See* ANTITRUST & TRADE REG. REP. (BNA) (Dec. 13, 1979) A-15. The Conference also resulted in some changes in the tentative code text, which are shown in excerpts from working papers at the Conference. ANTITRUST & TRADE REG. REP. (BNA) (Dec. 20, 1979) G-1—G-5. Although some disagreement exists concerning the characterization of the antitrust principles contained in this current draft, *Id.*, at A-12, the positive implications of this most recent effort are undisputed.
34. *See* UNCTAD Secretariat, First Draft of a Model Law or Laws on Restrictive Business Practices to Assist Developing Countries in Devising Appropriate Legislation, U.N. Doc. TD/B/C.2/AC.6/16 (1978).
35. *See* E.S.C. Res. 1721 (LIII), OFFICIAL RECORDS—53d Sess.—1972—Resolutions, U.N. Doc. E/5209 (1972).
36. E.S.C. Secretariat, Multinational Corporations in World Development, U.N. Doc. ST/ECA/190 (1973).
37. E.S.C., Report of the Group of Eminent Persons to Study the Role of Multinational Corporations on Development and on International Relations, U.N. Doc. E/5500/Add.1 (pts. I and II) (1974).
38. E.S.C. Secretariat, The Impact of Multinational Corporations on the Development Process and on International Relations, U.N. Doc. E/5500 (1974); E.S.C. Secretariat, The Impact of Transnational Corporations on the Development Process and on International Relations: Views of States on the Report of the Group of Eminent Persons, U.N. Doc. E/5595 and Add.1-6 (1974).

39. E.S.C. Res. 1908(LVII), U.N. E.S.C.—OFFICIAL RECORDS—57th Sess.—Resolutions, U.N. Doc. E/5570 (1974), at ¶ 6, established the Centre on Transnational Corporations (Centre) to function in an administrative capacity and to gather information on the various effects of TNCs, to aid the CTC in its work. *See infra* note 40.
40. E.S.C. Res. 1913(LVII), U.N. E.S.C.—OFFICIAL RECORDS—57th Sess.—Resolutions, U.N. Doc. E/5570/Add.1 (1974), at ¶ 1, established the CTC.
41. *Id.* at ¶ 3 (e).
42. *Id.* at ¶ 4.
43. *See* CTC, Report on the Second Session ¶ 9, U.N. Doc. E/5782 (1976).
44. The CTC was advised to seek such advice by E.S.C. Res. 1913(LVII), *supra* note 39, at ¶ 1 (d), while the Centre was instructed to gather and compile information on TNCs from an equally wide range of experts, CTC, Report on the Second Session, *supra* note 42, at ¶ 16.
45. *See* CTC, Report on the Second Session, *supra* note 42, at ¶ 11.
46. *Id.* at ¶ 13.
47. The most current tentative code text is entitled *Transnational Corporations: Code of Conduct; Formulations of the Chairman*, U.N. Doc. E/C.10/AC.2/8 (1978), reprinted in 1 CTC REP. No. 6 (1979), at 5.
48. Statements of Mr. S. Mousouris, Secretary of the Working Group, at a symposium on TNC Concentration held at the University of Michigan Law School, November 9 & 10, 1979 (unpublished).
49. *See* 1 CTC REP. No. 6, *supra* note 46. This draft includes provisions dealing with respect of national sovereignty, adherence to economic and developmental objectives, ownership and control, transfer pricing, disclosure of information, treatment of TNCs by the countries in which they operate, and intergovernmental cooperation.
50. *Id.* at 6.
51. Some of the unresolved issues include nationalization of TNCs and implementation of the code, *see* Statements of Mousouris, *supra* note 47. For a discussion of the current areas of concern within the CTC and future plans for this effort, *see* 1 CTC REP. No. 6, *supra* note 46, at 3; 1 CTC REP. No. 7 (1979), at 5. For a general discussion of the problem and issues involved in the development of this comprehensive code of conduct for TNCs, *see* Note, *Transnational Corporations—The United Nations Code of Conduct*, 5 BROOKLYN J. INT'L L. 129 (1979); Coonrod, *supra* note 3.
52. Schwartz, *supra* note 4, at 531.
53. *Id.* at 536. There has in fact been recent agreement within UNCTAD that the RBP code will be voluntary. *See* ANTITRUST & TRADE REG. REP. (BNA) (Dec. 13, 1979), *supra* note 33.
54. *See, e.g.*, 1 CTC REP. No. 6, *supra* note 46, at 3, 11; CTC Secretariat, *Transnational Corporations: Certain Modalities for Implementation of a Code of Conduct in Relation to its Possible Legal Nature*, U.N. Doc. E/C.10/AC.2/9 (1978).
55. *See* text accompanying notes 30–32 *supra*.
56. Wex, *A Code of Conduct on Restrictive Business Practices: A Third Option*, 1977 CAN. Y.B. INT'L L. 198 (1977).
57. *Id.* at 231.
58. *Id.* at 232.
59. *See* Wang, *The Design of an International Code of Conduct for Transnational Corporations*, 10 J. INT'L L. & ECON. 319 (1975).
60. *See, e.g.*, Chance, *supra* note 4, at 1820; Coonrod, *supra* note 3, at 306; Rubin, *Harmonization of*

*Rules: A Perspective on the U.N. Commission on Transnational Corporations*, 8 L. & POL'Y INT'L BUS. 875, 889 (1976).

60. Joelson & Griffin, *International Regulation of Restrictive Business Practices Engaged in by Transna-*

*tional Enterprises: A Prognosis*, 11 INT'L LAW. 5, 20 (1977).

61. Kintner, Joelson & Vaghi, *Groping for a Truly International Antitrust Law*, 14 VA. J. INT'L L. 75, 97 (1973).
62. Note, 5 BROOKLYN J. INT'L L. 129, *supra* note 50, at 152.