

UN involvement

The UN GEP reported in 1974 and proposed that a Commission on (not *for*) Transnational Corporations (TNCs) and a Center on TNCs be established, and a non-compulsory code of conduct on TNCs (the new name to be used for MNEs, but it has never caught on outside the UN) be developed. Since its creation by ECOSOC in December 1974 the Commission on TNCs has given priority to the development of a comprehensive international code of conduct for TNCs. The Center on TNCs was established in November 1975, and has served both to gather and to generate data on international business and to provide technical advice to member countries in their relations with TNCs.

In 1975 revelations of illicit payments by MNEs led the UN General Assembly to condemn corrupt practices and to request the ECOSOC to develop guidelines on corrupt payments. By 1977 the ILO had adopted a Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy. Although the US had terminated its membership in the ILO earlier in the same year, their representatives had taken part in discussions leading to the Declaration and appeared to be in agreement with most of the provisions. UN activity picked up in 1978 with ECOSOC publishing a draft Code of Conduct on TNCs, and with the United Nations Conference on Trade and Development (UNCTAD) publishing a Code of Conduct on the Transfer of Technology. UNCTAD also organized discussions on a UN code dealing with restrictive business practices.

Regional action

Throughout this period the ICC remained active as did the Organization for Economic Cooperation and Development (OECD), the latter representing the developed country viewpoint on regulation of international investment. Partly as a reaction to UN-related activity, the OECD in 1976 passed a Declaration which included Guidelines for MNEs, as well as statements on the national treatment of foreign investment, and on incentives and disincentives for international investment. This has become the most influential initiative in effect, although it is neither mandatory nor agreed to by developing countries.

Other regional organizations which have been actively engaged in debate on international investment issues are the European Economic Community (EEC), the Council of Europe, the Organization of American States (OAS), the Andean Common Market (ANCOM) and the Pacific Basin Economic Council (PBEC). A chronological listing of these developments is shown in List 1. The role of the UN should be recognized both in terms of the initiatives taken by its own bodies, and by the impact which their discussions have had in other governmental, business and labor organizations. Often many of the same issues were being discussed more or less simultaneously in different settings, at times even with the same persons involved.

Codes today

There are presently two categories of codes: those agreed to and those still under discussion. The main codes and their current status are shown in List 2, with the UN-related international codes separated from other codes of a more regional focus. This does not mean that the UN codes

are necessarily more effective. In fact the actions of the OECD and the ICC probably have the greatest influence on foreign investors and capital exporting countries, in much the same way that the arbitration facilities of the ICC are used far more extensively than those of the World Bank's associated International Centre for the Settlement of Investment Disputes (ICSID). The latter has greater official government status but few users, while the procedures of the ICC have gained the respect of both host governments and investors.

The main issues addressed by these eleven existing and proposed codes are shown in List 3. The UN Code of Conduct on TNCs is the most comprehensive and the wording of the issues reflects the interests of the developing countries which have the majority voting representation in most UN bodies. The OECD Guidelines, reflecting the viewpoint of the Western industrialized and capital-exporting countries, stress the obligations of both corporations and host governments in dealing with foreign investment. At the insistence of developed countries, the proposed UN Code also contains a section on the treatment of MNEs by host countries, but this has been a source of considerable controversy due to opposition by developing and socialist countries.

UN initiatives

There are in addition a number of other UN initiatives which tend to be more specialized but which are of importance to corporations and to government policy makers. The most prominent of these initiatives are shown in List 4. The renegotiation of the Paris Convention on Industrial Property under the auspices of the World Intellectual Property Organization (WIPO) was undertaken at the suggestion of developing countries. The initiative represents part of a greater effort by developing countries to facilitate the transfer of the control of technology to their countries, in this case through the ultimate reduction in the monopoly rights of patent protection. In another specialized initiative, the World Health Assembly (WHA) negotiated and adopted the Code on Marketing Breast-milk Substitutes due to allegations that Nestlé, in particular, was promoting the use of inappropriate and hazardous infant formula in developing countries.

Although not elaborated upon in this article, specific investment issues are also addressed by the policies of individual governments, such as the Canadian government's Code for companies operating in South Africa. Some of these country initiatives are dealt with in the comprehensive UN Code on TNCs. Additionally, many bilateral treaties relating to international investment issues, such as double taxation and the applicable law in dispute settlement, find expression in both regional and international codes.

Voluntary versus mandatory

An important consideration in the eleven major codes mentioned in Lists 2 and 3 is the effectiveness of voluntary as opposed to mandatory codes. Developing countries argue in favor of implementing codes of conduct in the form of a legally binding multilateral agreement such as a convention or treaty. Signatories would then be obliged to enforce the codes domestically and an international enforcement arm could be established, under the auspices of