

LEGAL PROBLEMS OF MULTINATIONAL CORPORATIONS. Edited by K.R. SIMMONDS. [London: British Institute of International and Comparative Law. 1977. ix+233 pp.]

This work represents four papers originally prepared for the International Conference on Legal Problems of Multinational Enterprises organised by the British Institute of International and Comparative Law held in London in 1976. The four papers are entitled: "Foreign Investment, the International Law Standard, and the Multinational Corporation — An Overview" by K.R. Simmonds; "The Impact of the Multinational Corporation in the Third World" by M.W. Gordon; "The United Nations and Transnational Corporation" by I. Seidl-Hohenneldern; and "Group Liability of Multinationals" by C.M. Schmitthoff. This selection reflects the balance of opposing interests that bear on the legal regulation of multinational corporations. What enhances the value of this work is the addition of the text of the United Nations Resolutions on the "New International Economic Order" and the "Charter of Economic Rights and Duties of States" and extracts from General Assembly debates thereon as well as some national legislation and regulations relating to transnational corporations. In essence, therefore, it provides a convenient workbook for the study of legal problems of multinational corporations.

The first paper puts into focus the United Nations efforts and background to the principles underlying the Charter on Economic Rights and Duties of States and their linkages to the North/South dialogue and the control of multinational corporations. It focuses particularly on the major clauses which now express uneasy compromises. Thus, for example, the nationalisation issue and that of compensation are blurred by reference to the duty of States to "fulfil in good faith their legal obligations," leaving it deliciously vague as to whether such obligations mean only treaty obligations (advocated by Third World delegates) or whether they mean customary international law obligations (advocated by the United States). It then surveys current international efforts by the UN Commission on Transnational Corporations, the International Chambers of Commerce and

GATT towards a new legal order. It concludes with the needs for developed countries to make concessions to the developing world to forestall any danger to the already heavy capital investments they have already made. What needs reiteration and denouncing, however, is the current dangers of the protectionist sentiments prevailing in the developed world which now masquerade as voluntary restraints and quotas, and orderly marketing.

The second paper focuses on issues closer home. It quite correctly points out how the multinational corporations have been blamed for all the ills of the developing world when perhaps most of these ills are the result of weakness of political will and discipline of Third World governments. It then focuses on the cultural, economic and political impact of multinational corporations. In particular the outcry against sensational, distorted negative reporting by western news agencies of third world news is a legitimate grievance. This is compounded when Third World newspapers have to rely on such news agencies for their own domestic coverage as is the case where they function under censorship and other indirect controls. The Third World experience with State news agencies has not itself proved satisfactory as this is usually a response with excesses in the reverse direction of merely good news and government propaganda. The problem of the transfer of technology is a continuing one which raises the inevitable issues of closed shop practices as, for example, the IBM experience as well as that of the capacity of Third World countries to assimilate the technology. Investment in education, particularly technical education, is a necessary prerequisite to the ability to assimilate technology. In its absence, the Third World would be condemned to being users of obsolete technology and with always having to buy such software. The training of management skills is another shortcoming which is the common experience of most Third World countries. A major omission of this work, the reviewer feels, is that the experience to be learnt by Third World commodity producers from OPEC and its continuing relationships with the 7 Sisters (Mobil, Exxon, Dutch-Shell, Texaco, British Petroleum, Socal and Gulf). Otherwise its comprehensive raising of the issues from transfer pricing to corrupt payments to government officials, presents excellent discussion material.

The third paper focuses on the United Nations Commission on Transnational Corporations and its work so far on the prevailing issues of the relationship between sovereignty and economic power, with developing countries particularly those related to home state diplomatic protection of the multinational, anti-corruption rules and the monitoring of their activities by both home and host States and examines the various proposals tendered in these and other areas. Again, this treatment serves as a convenient check list of the problems raised and its bibliography aids further investigation into the details of such issues.

The final paper explores the legal regimes that under conventional company law is applied to multinational companies. Thus an economic entity with disparate subsidiaries is still treated as comprising separate legal entities for most purposes although the economic reality belies this treatment. The paper advocates treatment of the multinational corporation as one regardless of its numerous subsidiaries at least for the purposes of States taking jurisdiction of such subsidiaries even if

they are foreign subsidiaries as well as the making of the parent responsible for the debts of its wholly owned or controlled subsidiaries.

Of the appendices, the reproduction of the Charters in convenient form is of course useful. More interestingly the excerpts of General Assembly speeches prior to the adoption of the Charter are particularly useful teaching materials as it is useful to identify the various economic policies and practices of the States involved. The wide coverage given to differing interests of the European Economic Community, Kuwait, Indonesia and Singapore highlight these diverse interests and policies. Finally, the survey of national legislation and regulations by the UN Commission on Transnational Corporations, which are reproduced allow a study of the various approaches that have been taken by developed and developing countries.

With the caveat that these are revised conference papers, which quite ably have put the issues succinctly in focus to generate discussion as well as easy reference of pertinent documents which are reproduced the value of this work exceeds its being merely a reproduction of conference papers but proceeds to make it a convenient sourcebook on the legal issues and materials on multinational corporations.