

Session of Oslo - 1977

Multinational Enterprises

(Second Commission, Rapporteur : Mr Berthold Goldman)

(The French text is authoritative. The English text is a translation.)

The Institute of International Law,

Whereas enterprises characterized by the economic unity which they derive from the directing force of a parent company acting as their decision-making centre, as well as by the dissemination through a large number of countries of places of business, with or without legal personality, which constitute their operating centres, play a leading and increasing part in the sphere of international production and trade and thereby exert an economic, social and even political influence ;

Whereas at international level such enterprises are the subject of investigations, studies, debates and decisions, especially within the framework of many international organizations ;

Whereas these efforts have essentially been directed to the political economic and social problems which are raised by the activities of multinational enterprises, particularly in developing countries ;

Whereas a review of the legal problems relating specifically to multinational enterprises and a progressive study of solutions applicable to these problems can make a substantial contribution to the progress of political, economic and social efforts devoted to such enterprises ;

Whereas such an investigation should aim at developing an efficient legal regime for the enterprises in question, taking account of the interests of the international community, particularly those of developing countries ;

Whereas the Institute has, as a first step, explored some of the legal problems relating to multinational enterprises and is aware of the need to extend this work subsequently ;

Adopts this Resolution :

I

Enterprises which consist of a decision-making centre located in one country and of operating centres, with or without legal personality, situated in one or more other countries should, in law, be considered as multinational enterprises.

II

For the enterprises defined above there should be developed progressively a legal regime which would, in particular, safeguard the sovereignty and economic independence of States, especially of developing States.

III

1. (a) The legal connection of the parent company, as well as that of the subsidiaries, with a given State should take account, according to the circumstances, of the links of the parent company with the countries of the subsidiaries and conversely, of the links of the subsidiaries with the country of the parent company.

(b) It would be desirable that the principle set out in the preceding sub-paragraph be implemented through international agreements.

2. (a) It would be useful if a study were made on the introduction of an international registration of multinational enterprises, on a compulsory or voluntary basis, within an appropriate international organization, either existing or to be created.

(b) The study to be undertaken should, in particular, cover the ways and means of setting up the registration system, the types of enterprises which could or should register, and the consequences of registration (*inter alia* : extended obligations of information disclosure for registered enterprises : application to such enterprises of international agreements of Codes of Conduct concerning multinational enterprises in general ; possibility of resorting to arbitration or to other means for the settlement of disputes involving registered enterprises).

IV

1. The choice of law system of each forum considering the matter shall be applied to determine the law applicable to the formation, organization, functioning and activities of the various constituent members of the multinational enterprise. As regards the activities of multinational enterprises, it would be desirable that those systems be harmonized progressively so as to take account primarily of the country in which the activities are performed and, in addition, of the countries in which they produce direct and immediate effects.

2. It is desirable that a progressive international harmonization of the substantive rules of law concerning the activities of multinational enterprises be envisaged and that the preparation of "Codes of Conduct" for such enterprises be continued.

V

States in which the parent company and the subsidiaries or dependent places of business of multinational enterprises are located should co-operate in exercising their legislative, executive and judicial jurisdiction to control such enterprises and, to this end, envisage in particular the conclusion of international agreements.

VI

1. Jurisdiction to regulate, control and penalize restrictive competition practices of multinational enterprises, which shall be based in all cases on the place where such practices are performed, should, in addition, be made dependent on the effects of the latter, but only if these effects are deliberate - or at least predictable -, substantial, direct and immediate within the territory of the State concerned.

2. It would be desirable that international agreements be concluded for the allocation of jurisdiction in this field in order to prevent any gap or overlap between applicable rules.

3. It would also be desirable that the rules of competition concerning multinational enterprises be harmonized at international level.

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(7 September 1977)