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John M. Niehuss

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STORM OVER THE MULTINATIONALS—THE REAL ISSUES. By *Raymond Vernon.* Cambridge, Mass.: Harvard University Press. 1977. Pp. vii, 260. $12.50.

So much has been published on multinational corporations in recent years that one is inclined to pass over any new book on the subject for one in a more topical, less examined area. It would, however, be a mistake to miss Professor Vernon's *Storm over the Multinationals—The Real Issues.* This is not just another book on multinationals. It is the readable and carefully researched effort of one of the world's acknowledged experts on multinationals. As such, it deserves to be studied by anyone remotely interested in the future of international business.

Vernon has written extensively on multinationals, and his major work, *Sovereignty at Bay,* contributed to the concern in the early 1970s that multinationals were about to overwhelm the nations of the world.[1] His objective in writing yet another book on multinationals was "to help the reader who is trying to keep his head above the flood" (p. v.). The book does just that; and it is unfortunate that it, rather than *Sovereignty at Bay,* did not appear earlier, as its measured approach might have helped minimize the unsupported polemic and near hysteria over multinationals in the early 1970s.

Since those days, the controversy over multinationals has so waned that C. Fred Bergsten, Assistant Secretary of the Treasury, could note: "Fortunately, popular alarm over the power and growth of multinational firms has substantially abated during the past few years. It is now recognized—for better or for worse—that most governments are able to deal effectively with these firms. Hysteria over the 'global reach' of multinationals is much abated."[2] In this relatively quiet atmosphere, the turmoil and turbulence of "the MNC issue" in the early 1970s is often forgotten; a capsule review of recent history may help put Ver-

* Member, New York and Ohio Bars. B.A. 1958, Amherst College; J.D. 1962, University of Michigan.—Ed.

1. R. VERNON, SOVEREIGNTY AT BAY (1971).

2. "The International Investment Policy of the United States," Remarks by the Hon. C. Fred Bergsten, Assistant Secretary of the Treasury for International Affairs before the Fordham Corporate Law Institute, New York, N.Y., *reprinted in* Dept. of Treasury News Release B-1262 at 6 (Nov. 14, 1978).

non's analysis in better perspective.

Scholars first intensified their study of the multinationals in the late 1960s and early 1970s.[3] The American labor movement picked up the issue in the early 1970s and pushed the Burke-Hartke Bill as a means to minimize the alleged evils of the multinationals;[4] business responded by proposing codes of good conduct for corporations and governments.[5] Legislative bodies also began hearings and other investigations on multinational activities,[6] while governments[7] and international organizations[8] established task forces, special commissions, and advisory committees. All of this activity created what Vernon aptly calls the "storm" over the multinationals. For several years, opponents and defenders of multinationals traded charges and counter-

3. For a general discussion of the basic legal issues see Hadari, *The Structure of the Private Multinational Enterprise* (pt. 1), 71 MICH. L. REV. 729 (1973); Hadari, *The Choice of Law Applicable to the Multinational Enterprise and the Nationality of Such Enterprises* (pt. 2), 1974 DUKE L.J. 1; Rubin, *Multinational Enterprise and National Sovereignty: A Skeptic's Analysis,* 3 LAW AND POLY. INTL. BUS. 1 (1971); Vagts, *The Multinational Enterprise: A New Challenge for Transnational Law,* 83 HARV. L. REV. 739 (1970). For bibliographies of works on multinational corporation issues see S. LEA & S. WEBLEY, MULTINATIONAL CORPORATIONS IN DEVELOPED COUNTRIES (1973); Centre on Transnational Corporations, Survey of Research on Transnational Corporations, U.N. Doc. ST/CTC/3 (1977).

4. Proposed Foreign Trade and Investment Act of 1972, S. 2592, H.R. 10914, 92d Cong., 1st & 2d Sess. (1971-1972). *See* 117 CONG. REC. 33,583 for an introductory statement by Senator Hartke and a summary of the Burke-Hartke proposals. *See also 1972 Economic Report and the President, Part I, Before the Joint Econ. Comm.*, 92d Cong., 2d Sess. 181-90 (1972) (discussion by Arthur Burns).

5. In November 1972 the Council of the International Chamber of Commerce adopted a set of comprehensive "Guidelines for International Investment" which dealt with many of the multinational-related issues being discussed and debated at the time.

6. *E.g., A Foreign Economic Policy for the 1970's, Hearings on the Multinational Corporation and International Investment Before the Subcomm. on Foreign Econ. Policy of the Joint Econ. Comm.,* 91st Cong., 2d Sess. (1970); *Multinational Corporations and United States Foreign Policy, Hearings on the International Telephone and Telegraph Co. and Chile, 1970-71, Before the Subcomm. on Multinational Corporations of the Senate Comm. on Foreign Relations,* 93d Cong., 1st Sess. (1973); U.S. TARIFF COMM. REPORT TO THE COMM. ON FINANCE OF THE UNITED STATES SENATE AND ITS SUBCOMM. ON INTERNATIONAL TRADE, 93D CONG., 1ST SESS., ON IMPLICATIONS OF MULTINATIONAL FIRMS FOR WORLD TRADE AND INVESTMENT AND FOR U.S. TRADE AND LABOR (Comm. Print 1973).

7. *E.g.,* U.S. OFFICE OF INTERNATIONAL INVESTMENT, THE MULTINATIONAL CORPORATION—STUDIES ON U.S. FOREIGN INVESTMENT (March 1972); TASK FORCE ON THE STRUCTURE OF CANADIAN INDUSTRY, REPORT ON FOREIGN OWNERSHIP AND THE STRUCTURE OF CANADIAN INDUSTRY (1968) (also known as the Watkins Report); GOVERNMENT OF CANADA, FOREIGN DIRECT INVESTMENT IN CANADA (1972) (also known as the Gray Report).

8. *See, e.g.,* Department of Economic & Social Affairs, Multinational Corporations in World Development, U.N. Doc. ST/ECA/190 (1973); Department of Economic & Social Affairs, The Impact of Multinational Corporations on Development and on International Relations, U.N. Doc. E/5500/Rev. 1-ST/ESA/6 (1974).

charges, and thousands of man-hours were consumed arguing the pros and cons of the question. *Storm over the Multinationals* would have been a useful addition to this debate as it helps "filter out the polemic and the propaganda" (p. v) and provides an analytic framework that abhors clichés and identifies the truly unique aspects of a business operating simultaneously in several countries.

Vernon's basic premise is that the tension between multinationals and nations is caused by two completely different sets of problems which should be analyzed separately (pp. 11-12). The first set includes those broad structural and political problems arising out of the smaller and more interdependent world which improved communications, travel, computers, and technology have created. This smaller world has led to rising nationalism, efforts of various countries to assert economic hegemony, and a number of problems associated with increased economic interdependence and industrialization (pp. 191-93). Vernon believes that the multinational corporation has regrettably symbolized these problems because many wrongly believe that the multinationals produced them. In fact, the existence of multinationals is due, in large part, to the same basic factors which have created the new structural and political problems. As Vernon notes, the multinational is "much more a manifestation of the trend than a cause" (p. 212). Since these problems are not caused by multinationals, Vernon argues, it is wrong to try to cure them by restraining multinationals. In short, he implies that much of the "storm" over the multinationals results from blaming multinationals for problems they did not create and that our fascination with the multinational corporation may keep us from solving the broader, basic problems economic interdependence and industrialization cause.

On the other hand, Vernon does recognize a second set of problems which can be attributed to the growth, structure, and strategies of the multinational corporation (p. 212). The fact that the multinational operates simultaneously in home and host nations gives it a "split personality" or a "double identity." Many multinational business strategies combine with this multinational character to create conflicts with the countries in which they operate. Vernon discusses three illustrative multinational strategies: the desire to innovate to increase sales and profits; the drive to maintain stability in the face of competitive challenges to market position; and the attempt to avoid corporate decline when faced with potential new entrants to the corporation's market. As Vernon explains in some detail, decisions implementing these strategies cause problems in the home and host countries over (1) the location of research and development projects and the manufacture of new products, (2) the tendency to spread operations over many products and many countries in order to maintain corporate stability, and (3) the practice of combatting entropy by surrendering old product lines and starting new ones.

Within developed countries, the tensions between multinationals and home and host countries are particularly acute for such areas and issues as national security, employment security, labor relations and collective bargaining, transfer pricing and the allocation of costs and profits for tax purposes, balance-of-payments and capital-movement policy, antitrust, and allocating access to raw materials. When the multinational operates in developing countries, it faces a somewhat greater degree of nationalism and frequently becomes the subject of ideological and political debates over such issues as the new international economic order, permanent sovereignty over natural resources, economic imperialism, the evils of capitalism and industrialization, appropriate technology, and the proper division of the benefits of multinational activities.

Because nations frequently have conflicting goals, the multinational corporation is often trapped in what is essentially a disagreement between nations. A multinational must often juggle the claims of national sovereigns through its corporate decisions and actions. Vernon sees this as a unique problem and feels that many of the recent efforts to ease the tension between multinationals and nations have been ineffective because by inadequately considering this dilemma of conflicting jurisdiction they ignore the basic causes of such tension. When trying to devise "solutions" to "multinational problems," Vernon suggests, the broader set of structural and political problems (*e.g.*, economic interdependence and industrialization) cannot be solved by any program aimed at the multinational enterprise alone (pp. 211-12). Of those problems directly related to multinationals, conflicting jurisdiction is the most serious and immediate.

To cope with this problem and to help prevent an eruption of beggar-thy-neighbor policies in the multinational and international-investment areas, he suggests: (1) that national authorities agree about the nature of needed public action; (2) that national jurisdictions relating to multinational corporations be disentangled and redirected; and (3) that an acceptable international regime be created (pp. 211-16).

Vernon feels that the current position of most developing countries will prevent an early consensus about what public action is needed. He believes that peer pressure forces those countries to maintain hostility toward multinationals which prevents them from "bargaining realistically" in devising any international regime which, to be acceptable, would require them to assume new obligations as well as receive new benefits (p. 214). Thus, he concludes that, for the time being, any effective international cooperation must be among the developed countries, and his starting point for discussing such cooperation is the problem of conflicting national jurisdictions (p. 214).

In *Sovereignty at Bay,* Vernon outlined his recommendations for a series of international commitments to reduce the problem of overlapping jurisdiction. He recommended (1) agreements by governments to give up the right to reach into the jurisdiction of others to influence actions that they feel affect their national interests; (2) international consultations to harmonize law and policy in areas like restrictive business practices, extraterritorial application of national security controls, and capital movements; (3) that governments of parent companies deny diplomatic support for foreign subsidiaries; and (4) finding a means of ensuring equitable treatment by host countries of foreign subsidiaries that would no longer be protected by the governments of their home state.[9] Unfortunately, *Storm over the Multinationals* adds little to these recommendations, and the reader is left uncertain precisely how Vernon would treat some of the major problems of "disentangling" national jurisdictions. Fortunately, in a recent article in *Foreign Policy,*[10] Vernon expands on some of the ideas first set forth in *Sovereignty at Bay,* and one can now piece together a reasonably clear picture of his proposals. For example, in his *Foreign Policy* article he suggests that home-country governments should accept the principle that all foreign-owned subsidiaries lie wholly within the jurisdiction of the host country and host governments should treat all such subsidiaries as national enterprises. He adds that developing countries (including those in Latin America) might be willing to give up the Calvo doctrine (under which the laws of the host country, not international law, govern disputes over foreign-owned subsidiaries) and to agree to give foreign owners access to an international tribunal in return for a commitment by the United States and other industrialized

9. R. VERNON, *supra* note 1, at 280.

10. Vernon, *The Multinationals: No Strings Attached,* 33 FOREIGN POLY. 121 (1978-1979).

countries to "orphan" foreign subsidiaries by refusing them diplomatic protection, not exercising extraterritorial control over them, and refraining from using them to intervene in the politics of other countries.[11]

Professor Vernon closes *Storm over the Multinationals* by asserting that we need an "acceptable international regime" for the multinational corporation. It is a frustrating place for an excellent book to leave an interested reader. Having come so far, the reader might realistically expect at least an outline of the kind of regime Vernon believes necessary. That Vernon closed *Sovereignty at Bay* on a similar note is all the more reason for the reader to expect some further discussion.

Vernon does make clear his belief that codes of conduct like the one negotiated with the Organization for Economic Cooperation and Development and being negotiated in the United Nations are not very useful because they do not deal with the real problems multinationals create. He believes that the drafters of such codes misunderstand the problem, which is the conflict between the global strategy of the multinational and the overlapping jurisdictions and differing objectives of the home and host nations (p. 215).[12] However, *Storm over the Multinationals* would have been far more useful had Vernon commented more specifically on the current OECD and UN attempts to regulate multinationals and had he evaluated more completely other proposals concerning international investment (such as a GATT for investment,[13] an "escape clause" for investment,[14] an International Corporation Consultation Group,[15] a series of mini-codes in several different areas,[16] and a Charter for Global Corporations[17]).

In fairness to Vernon, his views on most of these proposals are set forth in his other works. For example, in *Sovereignty at Bay* he dismisses the global corporation as "assuming the prob-

11. *Id.* at 129-32.

12. In addition, see *id.* at 133.

13. *See* Goldberg & Kindleberger, *Toward a GATT for Investment: A Proposal for Supervision of the International Corporation,* 2 LAW & POLY. INTL. BUS. 295 (1970).

14. *See* Bergsten, *Discussion, The Multinational Firm: Bane or Boom?,* 28 J. FINANCE 457, 461-62 (1973); C. BERGSTEN, T. HORST & T. MORAN, AMERICAN MULTINATIONALS AND AMERICAN INTERESTS 467-72 (1978).

15. *See* Rubin, *supra* note 3, at 36.

16. *See* INTERNATIONAL ECONOMIC REPORT OF THE PRESIDENT 16 (1974) [hereinafter cited as ECONOMIC REPORT].

17. *See* Ball, *Cosmocorp: The Importance of Being Stateless,* 2 COLUM. J. WORLD BUS. 25 (1967). *But see* Rubin, *Corporations and Society: The Remedy of Federal and International Incorporation,* 23 AM. U.L. REV. 263 (1973).

lem away,"[18] and in his recent article in *Foreign Policy* one also glimpses the kind of international regime he may have in mind. In that article he notes:

> What will eventually be required is the creation of a set of new institutions at the international level that will collectively cover the whole range of major relationships between business and government from drug labeling and pollution to taxes and competition.
>
> Once the problem is perceived in its full dimensions, it will be possible to face the disconcerting fact that each major subject may call for a separately tailored institutional approach. After all, within any national system, governments pursue their tax problems through one set of institutions, their competition problems through another, their drug-labeling requirements through another, their environmental controls through still another, and so on.[19]

Ironically, this overall approach resembles the response of the United States government in 1973-1974 to moves in the OECD and the UN toward a single code of conduct for all multinational activities. At that time, the United States urged the OECD to (1) accept the principle of national treatment as the basis for regulating foreign investors, (2) review national investment policies (*e.g.*, subsidies, tax incentives, and procurement regulations) that distort trade and investment patterns, and (3) begin to treat the problems raised by multinationals in the established, specialized OECD committees on taxation, restrictive business practices, technology, and information disclosure.[20] Unfortunately, the United States eventually acquiesced in a single multinational code within the OECD, and the other members of the OECD refused to accept any meaningful guidelines on national treatment and investment incentives. The result was the OECD "Guidelines for Multinational Enterprises," which, as Vernon notes, "still leave largely unresolved most of the underlying problems" (p. 203).

A clear presentation of an "acceptable international regime" to deal with multinational issues would, I have said, have been especially useful during the near hysteria of the early 1970s. On the other hand, multinationals still exist—a bit more enlightened, perhaps, and certainly subject to increased public scrutiny and regulation. Nations are still sovereign and are presumably

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18. R. VERNON, *supra* note 1, at 272.
19. Vernon, *supra* note 10, at 133-34.
20. *See* ECONOMIC REPORT, *supra* note 16, at 15-16.

wiser and better informed as to the problems the multinationals present. There are, moreover, still a few reminders of the earlier turbulence. For example, the OECD "Guidelines" will be reviewed in June 1979; the Inter-Governmental Working Group on a Code of Conduct established by the United Nation's Commission on Transnational Corporations is expected to produce a draft code in early 1979; and substantial agreement has been reached on an UNCTAD International Code of Conduct on the Transfer of Technology.

Furthermore, controversial issues in international economics appear incapable of permanent solution; they have ways of briefly disappearing and suddenly reappearing. For example, waves of protectionism periodically sweep the United States and other industrialized nations; concerns over foreign investment in the United States seem to rise and fall in roughly twenty-year cycles; and there are recurring efforts to reform the world's international monetary system. In the international investment area, the ITO and GATT Conferences in 1947 and 1948 discussed rules designed to regulate the restrictive business practices of companies doing business abroad; and in the early 1950s ECOSOC proposed a set of international antitrust rules. Neither the ITO Havana Charter nor the ECOSOC rules were adopted, and international direct investment and multinational issues were almost ignored until the latest wave of attention in the late 1960s and early 1970s. Thus, history suggests that the present calm is simply a lull before another storm of activity over international investment and multinationals.

One should not dwell too much on Vernon's failure to outline an appropriate international regime more precisely or to evaluate the many proposals for controlling multinationals. Vernon clearly and admirably achieves his own goal by giving us a reasoned "large perspective" on multinationals. I hope, though, that Vernon will soon give another of his now regular encores so that, when the multinational storm clouds appear again, we will have the full benefit of his recommendations on an international regime.