SYMPOSIUM COMMENTARY

# The Persisting Case Against the Multinational Corporation

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I want to focus here on some broader issues relating to the large corporation, and especially the large multinational corporation. Several striking new developments in the immediate past two years have put a spotlight once again on the multinationals' alleged destabilization of national sovereignty. The debates at the time of the passage of NAFTA were infused with this issue, and it has risen once again in the recent Presidential campaign. Perhaps even more important is the establishment of the pathbreaking World Trade Organization (WTO); its supranational governing structure has challenged the economic sovereignty of both corporations and nations. There has been a worldwide striving for efficiency and competitiveness not only among traditionally democratic nations but with newly democratized countries all over Latin America, in Eastern Europe, and in parts of Africa and Asia. These forces have brought viable competitive alternatives even to hardline socialist nations such as China and Vietnam.

At the same time, there has been a dark side to efficiency with the fallout all over the world from the downsizing of corporations and governments, an issue that has confounded our presidential primaries, infiltrated the budget debates and garnered attention all over the world. Once again concerns exist about the ethics and values of the multinational corporations.

The issues here are not new. One of the most high profile periods for attacks on the MNCs was in the immediate post-Watergate period – the mid-1970's. Every Congressman and Senator wanted his or her own crusading investigating committee, and multinationals came under severe attack. Particularly wide-ranging was Sen. Frank Church's subcommittee under the aegis of the Senate's Committee on Foreign Relations. In hearings over a three-year period, the subcommittee explored International Telephone and Telegraph's involvement in the fall and murder of Salvador Allende in Chile, called a half dozen of the largest oil companies on the carpet for assorted machinations, probed bribery by Lockheeed Aircraft in Japan (where Prime Minister Nakasone fell because of the resulting scandals), and finally, took on

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the "big five" of the multinational grain companies, with particular concern for their involvement in the massive grain sales to Russia in this period.

The accusation that bribes were being widely proffered by MNCs in foreign countries was seen as a particularly nefarious practice, threatening to destabilize by stealth. The Securities and Exchange Commission homed in on hundreds of further cases, the preponderance in the international operations of the MNCs, and required all these corporations to publicly confess to what the SEC euphemistically called "irregular payments." The number and dollar amounts were startling. To make certain all bases were covered, the Internal Revenue Service followed by requiring that private companies not reporting to the SEC also make public all their comparable examples. The resulting hullabaloo led in 1977 to the passage of a draconian piece of legislation, the Foreign Corrupt Practices Act. It contained both anti-bribery and accounting standards, and sanctioned stiff civil and criminal penalties. A significant number of cases have been pursued over the years, and the law has been unpopular with MNCs. Significant business has been lost, their managements maintain, inasmuch as the U.S. is the only country with such a law with teeth.

Bribery was but one part of the overall case built against the MNCs at that time. The Senate Committee on Finance, in a perceptive overall analysis, maintained that the MNCs' diversity of interests "almost guarantees that conflicts will arise among the interests of the United States, the host country , the multinational corporation and its employees." Issues such as distribution of foreign earnings, type of ownership, methods of capital financing, potential monopoly positions, sources of components and raw materials, and effects on relative wage structures could be affected, bringing balance of trade and payments problems, affecting tax revenues and employee compensation, altering a country's strategic position in an essential industry such as aircraft, and even affecting basic national cultural patterns.

Hostility abroad toward extra-sovereign acts of the MNCs raged. One small example captures this feeling. Cargill had moved into fishmeal production in Peru at that time, and a local Peruvian operator wrote the Company, "through Cargill's display of efficiency you are making yourselves unreachable to the guy down the street who through his lack of sophistication, lack of education, lack of technical knowhow, and lack of marketing knowledge simply is afraid of you and is convinced that your overall objective is to eliminate we little guys down the street and set yourselves up in a nice big business to control the Peruvian fishmeal industry." It took only four more years of this kind of rancor for the Peruvian government to nationalize the entire foreign segment of the industry, in the process wiping out completely Cargill's role there.

Both the United States Congress and the Federal agencies at that time detailed a wide concern about the multinationals' escape from the sovereign power and prerogatives of both "home" and "host" countries. With its enormous flexibility, the MNC had ceased to be de facto corporate citizen of either, regardless of whatever de jure forms it took. In the Church Committee

hearings on the grain companies, the questioners of Cargill pushed to learn just how that firm's international subsidiary – it was called Tradax, operating out of Geneva – could sell with impunity into the Soviet Union despite strictures such as the Trading With the Enemy Act and other governmental efforts to constrain those massive sales that had had such a devastating effect on domestic inflation in the U.S in the mid-1970s. But the Church Committee investigators were never able to really understand Tradax. For tax reasons, the key operating company of this subsidiary was chartered in Panama; its location in Geneva gave it all the advantages of Swiss secrecy (for example, the authorities of Switzerland never allowed the Church Committee staff to interview in the country). Little wonder that a significant part of Cargill's "irregular payments" were attributable to Tradax.

So many of these issues are now coming to a head again in the process of determining just exactly what the World Trade Organization is meant to be. Once more questions of sovereignty are surfacing. The incredible speed of capital movements and the instantaneous nature of knowledge transfers has caused sensitivities to heighten about corporate, indeed national sovereignty. At the center again is the multinational corporation.

One of the most pungent assaults on the MNCs has come from a worldwide group of activists – churches, environmentalists and others – who are attacking the IMF and the World Bank with their "Fifty Years is Enough" effort to bring the Bank (in its fiftieth year anniversary) to heel. Richard Swift, editor of the activist magazine *The New Internationalist,* put the MNC at the forefront: "Capital moves so freely that it is often impossible for governments to find, let alone to tax. Corporations treat the world like a global chessboard bidding down wages and taxes, avoiding environmental regulation and pillaging natural resources."

The new WTO sanctions complicate the process, for while they put only modestly more pressure on its members, questions of sovereignty once again intrude. Under new agreements are not only the goods that were central to GATT, but also services and intellectual property (giving birth to yet two more acronyms – GATS for the General Agreement on Trade in Services, and TRIPS for the Agreement on Trade-Related Intellectual Property Rights). Multinationals themselves have been having many difficulties bringing about enforcement of key provisions of GATS and TRIPS. China, for example, is not yet a member of the WTO, and its excesses in pirating intellectual property have become infamous, but U.S. corporations also are having real difficulty with many of their traditional WTO-member trading partners – Germany and France, to name two.

Bribery, too, is back in the news, as U.S. Trade Representative Mickey Kantor telegraphed in a speech recently. While bribery and corruption are a major impediment to U.S. companies, Kantor was not willing to countenance any relaxation in the constraints of the Foreign Corrupt Practices Act, but rather advocated that other countries, too, pass tougher global anticorruption rules. Good luck, Mickey! Nevertheless, here the WTO may provide an interface.

So, today, "big" has all of its old baggage, plus several critically important and different new dimensions. Sovereignty underlies much of this, for the WTO is an organization possessing a stronger dispute settlement mechanism. And another dimension of sovereignty is still that "rogue" foreign subsidiary of the MNC, wheeling and dealing in a no-man's land of impunity. There is a striking article in a recent *Atlantic Monthly* that speaks directly to these issues of sovereignty. Its author, Michael Sandell, points out that at the same time national sovereignty is being eroded from above by mobility of capital, goods, and information and by the transnational character of production, it is also being challenged from below, by the resurgent aspirations of subnational groups for autonomy. This nexus, he concludes, requires citizens who can abide the ambiguity associated with divided sovereignty, and who can think and act as multiply situated selves. That is a tall order!

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