

# International Codes of Conduct: An Analysis of Ethical Reasoning<sup>1</sup>

Kathleen A. Getz

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**ABSTRACT.** Four international codes of conduct (those of the International Chamber of Commerce, the Organization for Economic Cooperation and Development, the International Labor Organization, and the United Nations Commission on Transnational Corporations) are analyzed to determine the ethical bases of the behaviors they prescribe for multinational enterprises (MNEs). Although the four codes emphasize different aspects of business behavior, there is substantial agreement regarding many of the moral duties of MNEs. It is suggested that MNEs are morally bound to recognize the codes and to take them into account when engaging in international business.

Little fanfare has accompanied the entry of normative prescription into the area of international business, however the implications of this evolution may be far-reaching. The guidelines that have been laid out for multinational business enterprises, when integrated, provide a framework for identifying appropriate moral behaviors in a wide variety of situations. Most importantly, these guidelines incorporate normative principles about which leaders and representatives of governments, business organizations, and employee organizations agree. Thus, multinational corporations may feel compelled to abide by them.

The paper is organized into three major sections. First, a summary of modes of ethical reasoning is presented. In the second section, a description of one means of international regulation, that of codes of conduct, is presented. The importance of international regulation is noted, and four codes of conduct are briefly summarized. The third section of the paper is the most critical. In this section, the norma-

tive precepts of the four codes of conduct are enumerated, and the moral foundations of the precepts discussed.

## Ethical reasoning

Ethics is concerned with establishing systems of principles to help distinguish between good and bad or right and wrong. As such, ethics helps us determine what we ought to do and helps us justify our actions. The two broadest categories of ethical reasoning are consequentialism and deontology. These two approaches are described briefly here.

### *Consequentialism*

Consequentialist ethics is concerned with the goals or consequences of actions. Utilitarianism is the predominant form of consequentialist theory. The philosophers normally associated with utilitarianism are Jeremy Bentham and John Stuart Mill. According to Bentham's formulation, the principle of utility states that an action is right if it produces the greatest balance of pleasure or happiness over pain or unhappiness. Right and wrong are measured by the balance of happiness and unhappiness in light of alternate actions. Mill closely followed Bentham's idea of utility. However, he felt that it is sometimes difficult to discern the greatest good. At such times, rules which have grown out of human experience should serve as guides for behavior.

Later philosophers, known as pluralistic utilitarians, accept the idea of maximizing the good for the greatest number. However, they believe that the good includes ideas other than pleasure or happiness (Donaldson, 1984). The key to utilitarianism, how-

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*Kathleen A. Getz is a doctoral candidate at the Katz Graduate School of Business of the University of Pittsburgh.*

ever, remains the estimation of the costs and benefits of alternative actions and the selection of the action that yields the greatest net benefits.

Utilitarianism is highly criticized because it is unable to account for justice. Another typical criticism of utilitarianism concerns the determination of the good to be maximized. There is also the further problem of arbitrating trade-offs between goods when they conflict.

### *Deontology*

Deontological ethics is concerned with the rules and principles that guide actions and is based on systems of rights or duties. The philosopher most closely associated with deontology is Immanuel Kant. Kant believed that every person has inherent worth, and therefore possesses inalienable rights. Since this is true, every person has the corresponding duty to respect other persons. We should treat all persons as ends, rather than as means. Duty also requires that we act in such a way that we would want our action to become universal law.

A different version of deontology is offered by philosophers who focus on the principles that govern society at large. These philosophers, represented by John Locke and John Rawls, focus on the rights of individual persons and the duties of the societal system vis-à-vis those rights. Locke argued from the position of natural rights while Rawls argued from a reasonable person position. According to Locke, every person is born with and possesses certain basic rights that are natural, and are possessed equally by all. In formulating principles to govern the formation of social and political communities, rational persons construct a social contract whose rules protect natural rights. Rights then become deontological precepts by which rules, constitutions, governments and socio-economic systems are formed and evaluated.

Rawls argued that the principles which should guide behavior are those which rational persons would formulate if they had no idea how the principles would affect them personally, that is, if they were behind a "veil of ignorance." He suggested two principles to govern society: each person should have an equal right to a system of basic liberties; and any social and economic inequalities should be arranged so that they benefit the least advantaged.

The primary criticism of deontology is its apparent lack of concern for the consequences of actions. In adhering to the appropriate rule, a person has done what is morally right even if the consequence of the action is harm to another person. Perhaps when the outcome of an action is harm to another person, an exception to the general rule ought to be made. However, deontological ethics does not help determine the circumstances under which exceptions are allowed. Deontologists are also unable to solve problems of conflicting duties.

Philosophers instruct us to engage in ethical reasoning to assure that we make decisions morally and that we behave morally. Clearly, however, different theories of ethical reasoning may lead to different behaviors in similar circumstances. As Walton (1988) points out, confusion among the various forms of ethical reasoning may permit decision makers to employ "whichever weapon best suits his or her purposes at the time" (110). Schfeller (1982) suggests that we employ a compromise ethic, which he labels a hybrid. The hybrid ethic takes into account respect for rights and responsibility for consequences. This idea affirms that the different modes of reasoning can and should be drawn upon simultaneously. This is the course of action prescribed for corporations by Frederick (1986). He states:

Making decisions from this broader ethical perspective would infuse a sense of moral goodness into corporate affairs which is often lacking or under-emphasized. It would increase the likelihood that companies would act with rectitude, that they would show greater respect for others in society, that the values they promote would be more nearly consonant with those of their major social stakeholders (37).

### **Regulation of multinational enterprises**

For the past fifteen to twenty years, there has been an evolution of a set of public policies that are multinational, both in their origin and in their scope. In principle, these policies, promulgated by multinational organizations, supervene those of national governments. These new regulations toward business focus not on the traditional business-government relationship, but on the distinctions between home and host countries and domestic and foreign enter-

prises, and on the relationships among all of them. These public policies also differ in form from the traditional national regulation in that MNEs are not subject to the authority of international regulatory agencies. Rather, guidelines for MNE behavior are provided and compliance is voluntary.

There are many forms of international regulation for MNEs. The analysis in this paper focuses on international codes of conduct. Codes of conduct are particularly relevant in a discussion of ethics in business for they "are seen as an alternative means to constitute an international *moral* authority by agreements among governments and to provide guidelines for multinational business activities" (Trisciuzzi, 1983, as quoted in Preston, 1987, 3; italics added). For the present purpose, any agreements, declarations, or guidelines proposed or published by an international organization which make recommendations or rules about the behavior of MNEs are considered international codes of conduct. The codes of four organizations will be discussed: the International Chamber of Commerce (ICC) Guidelines for International Investment (1972); the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises (1976); the International Labor Organization (ILO) Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977); and the United Nations Commission on Transnational Corporations (UN/CTC) Code of Conduct (draft of 1984). These four organizations are the only ones with broad-based codes of conduct for MNEs. That is, among international compacts specifically intended to influence the behavior of MNEs, these four are the only ones with provisions regarding a wide variety of issues. The range of issues will be addressed below.

Some international organizations have promulgated codes dealing with a narrow set of issues. Examples include the European Economic Community's Code of Conduct for Companies with Interests in South Africa (1977) and the World Health Organization's International Code on the Marketing of Breast-Milk Substitutes (1981). Other international agreements, while they affect MNEs, are not designed exclusively to regulate corporate behavior. Included among these compacts are the United Nations Universal Declaration of Human Rights (1948), the European Convention on Human Rights (1950) and the Helsinki Final Act (1975).

#### *International Chamber of Commerce*

The International Chamber of Commerce (ICC) is an employers' federation operating at the international level. Since 1949 it has been concerned with fair treatment of MNEs and with conditions promoting the international flow of capital and skills. In 1972, the ICC unanimously accepted the Guidelines for International Investment, a series of recommendations for governments and MNEs.

In each of eight major sections, the ICC guidelines explicitly address the investor (the MNE), the government of the investor's country (home state), and the government of the host country (ICC, 1980). The eight sections of the guidelines are: investment policies, ownership and management, finance, fiscal policies, the legal framework, labor policies, technology, and commercial policies.

#### *Organization for Economic Cooperation and Development*

The Organization for Economic Cooperation and Development (OECD) is the major policy-formulating body for the industrialized nations. Its members are the nations of Western Europe, the United States, Canada, Japan, Australia, and New Zealand. The OECD is home to nearly all of the world's MNEs. The organization became involved in the development of a code of conduct for MNEs to provide a conservative institutional response to the demands of the Third World for control of MNE activities (Reynolds, 1985). In 1976, the OECD adopted a Declaration of International Investment and Multinational Enterprises, which included the Guidelines for Multinational Enterprises. The guidelines were revised in 1979 and in 1984.

The OECD guidelines are addressed to both MNEs and governments. Governments are directed to cooperate with one another and with non-member states in encouraging MNEs to comply with the guidelines, and are exhorted to provide national treatment to all foreign MNEs to which they are hosts. The directives for MNEs focus on five issues: competition, financing, taxation, employment and industrial relations, and science and technology.

#### *International Labor Organization*

The International Labor Organization (ILO) is a

specialized agency of the United Nations (UN). It has a tripartite structure, with representatives of governments, employers, and employees from 150 countries. Although affiliated with the UN, the ILO operates independently. The ILO's principal policy actions take the form of conventions and recommendations that become operational only when they are ratified by individual member countries. In effect, the ILO develops standards which become elements of a multinational policy regime through the process of national ratification.

ILO interest in MNEs emerged in the early 1970s out of its broader commitments in social policy. By 1976, the group had determined that appropriate arrangements should be made to prepare a code of conduct on principles concerning MNEs and social policy. However, a month after the decision was reached, the negotiations broke down (Black *et al.*, 1978; Robinson, 1983). Representatives of the Group of 77 (developing Third World countries) were concerned about the issue of the balance of economic power within states, while other participants wanted the code to focus on broader social issues. The representatives of management and of labor disagreed as to the extent the code should formally acknowledge that MNEs spur economic development throughout the world. Because of these and other disagreements the ILO has not adopted a formal code of conduct for MNEs. However, in 1977 the ILO did adopt the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy. Although the declaration is less formal than any of the participants may have wished, its inclusion in this analysis is justified. The declaration serves as a code by making suggestions for both MNEs and governments (Black *et al.*, 1978). Furthermore, many MNEs are aware of the declaration and acknowledge its potential impact on their behavior (Feld, 1980; Robinson, 1983).

Had the ILO promulgated a formal code in the form of a convention, its provisions may have become legally binding on MNEs, through national ratification of the convention. While it is difficult to assess whether the provisions of a convention would have differed significantly from those of the declaration, the difference in legal status would have a tremendous effect on corporations. MNEs would have both moral and legal obligations to comply with the terms of the accord.

The ILO declaration focuses on direct foreign investment in developing countries in six main issue areas: equality of opportunity and treatment; security of employment; wages, benefits, and conditions of work; safety and health; freedom of association; and collective bargaining.

#### *United Nations Commission on Transnational Corporations*

Responses in the United Nations to MNEs are wide-ranging and far-reaching. Five of the six principal bodies and eighteen of the 52 related agencies in the UN have direct impacts on activities of MNEs. Most of the subgroups focus on specific issues, but the Commission on Transnational Corporations (UN/CTC) was specially created in 1974 as a forum for comprehensive and in-depth consideration of the full range of issues relating to MNEs. The initial mandate of the UN/CTC was to prepare a code of conduct for MNEs. Several drafts of the code have been proposed, and negotiation on a final version continues. Although the code has not yet been formally adopted, it has been well-publicized and both governments and MNEs are aware of it.

It is unlikely that the final version of the code will differ greatly from the most recent draft. Currently, negotiations focus on the specific wording of the provisions. The main area of contention is whether the word "should" or "shall" is appropriate. For example, one statement currently reads: "Transnational corporations should/shall respect human rights and fundamental freedoms in the countries in which they operate" (United Nations Economic and Social Council, 1984, 628). Negotiators consider that "shall" implies that the code is legally binding, while "should" does not.

Two chapters of the UN/CTC code contain directives: Activities of Transnational Corporations and Treatment of Transnational Corporations. The first of these includes forty-five instructions to MNEs in five categories: general and political; economic, financial and social; disclosure of information; nationalization and compensation; and jurisdiction. The chapter on treatment of MNEs discusses the rights and responsibilities of states vis-à-vis MNEs. The UN does not deny that MNEs may contribute to the welfare of developing countries.

However, it is more concerned that MNEs have a disproportionate share of economic power within the less developed countries and often use unethical or immoral means to obtain and extend that power (Black *et al.*, 1978; Feld, 1980; Rhyne *et al.*, 1976).

### Ethical reasoning in codes of conduct

The literature review identified two kinds of ethical reasoning: deontology (duty-based) and consequentialism (utilitarian). It also emphasized the need for complementary application of both forms of moral reasoning in order to compensate for the shortcomings of each. It is generally accepted that business organizations tend to favor utilitarian reasoning in decision-making and policy-setting. (For an excellent discussion of this issue see Etzioni, 1988.) An appropriate function of international codes of conduct, therefore, is to provide MNEs with a basis for deontological reasoning.

A thoughtful reading of these four codes reveals a number of normative principles regarding the behavior of MNEs.<sup>2</sup> The principles address MNE behavior vis-à-vis governments, publics, and persons. A substantial number of the normative statements in the codes are omitted here because they are directed toward governmental activity.

In some instances the codes are explicit about the rights which correspond to MNE duties, and in others they are not. Nonetheless, a review of the duties attributed to MNEs allows us to discern the associated rights. Presented here is an inventory of the principles found in the codes of conduct and a summary of the rights and obligations in the principles. The associated deontological rules are noted.

#### *MNE and host governments*

##### *Economic and developmental policies*

- MNEs should consult with governmental authorities and national employers' and workers' organizations to assure that their investments conform to the economic and social development policies of the host country. (ICC; OECD; ILO; UN/CTC)
- MNEs should not adversely disturb the balance-of-payments or currency exchange rates

of the countries in which they operate. They should try, in consultation with the government, to resolve balance-of-payments and exchange rate difficulties when possible. (ICC; OECD; UN/CTC)

- MNEs should cooperate with governmental policies regarding local equity participation. (ICC; UN/CTC)
- MNEs should not dominate the capital markets of the countries in which they operate. (ICC; UN/CTC)
- MNEs should provide to host government authorities the information necessary for correctly assessing taxes to be paid. (ICC; OECD)
- MNEs should not engage in transfer pricing policies that modify the tax base on which their entities are assessed. (OECD; UN/CTC)
- MNEs should give preference to local sources for components and raw materials if prices and quality are competitive. (ICC; ILO)
- MNEs should reinvest some profits in the countries in which they operate. (ICC)

#### *Laws and regulations*

- MNEs are subject to the laws, regulations, and jurisdiction of the countries in which they operate. (ICC; OECD; UN/CTC)
- MNEs should respect the right of every country to exercise control over its natural resources, and to regulate the activities of entities operating within its territory. (ICC; OECD; UN/CTC)
- MNEs should use appropriate international dispute settlement mechanisms, including arbitration, to resolve conflicts with the governments of the countries in which they operate. (ICC; OECD)
- MNEs should not request the intervention of their home governments in disputes with host governments. (UN/CTC)
- MNEs should resolve disputes arising from expropriation by host governments under the domestic law of the host country. (UN/CTC)

#### *Political involvement*

- MNEs should refrain from improper or illegal involvement in local political activities. (OECD, UN/CTC)

- MNEs should not pay bribes or render improper benefits to any public servant. (OECD, UN/CTC)
- MNEs should not interfere in intergovernmental relations. (UN/CTC)

These statements focus on the relationship between MNEs and host governments. Thus, we expect these principles to outline the rights of states and the obligations of MNEs. The rights of countries to set developmental goals, to establish laws and regulations, and to enjoy political autonomy are apparent. The basic right is national sovereignty. MNEs have a duty to the countries in which they operate to respect that sovereignty, and to refrain from usurping it through undue exercise of economic power. Certainly, the deontological ideas of Kant are drawn upon here. The basic respect owed to sovereign nations has a parallel in Kant's idea of respect for other persons.

The right to national sovereignty is counterbalanced by the rights of MNEs when disputes occur, according to the ICC and OECD guidelines. Outside intervention is allowable only in the case of unresolvable disputes. According to these codes, disputes should be resolved by unbiased international mechanisms. Rawls' idea that each person has access to a system of basic liberties is consistent with this principle. Both MNEs and host country governments have access to international dispute-resolution systems. The UN/CTC code, however, calls for disputes to be settled within the courts of the host country. Clearly, this is consistent with Rawls' second principle, that social and economic inequalities should favor the least advantaged parties. At least in case of a developing country, the host government has less economic power than the MNE itself.

The four codes place different emphasis on the MNE-host government relationship. The UN/CTC code includes more principles on this topic than the other codes. That is clearly understandable given that one goal of the code is to facilitate a change in the international economic system toward the establishment of a New International Economic Order (Preston, 1987).

Although the ICC guidelines include several principles related to MNE-host government relations, they also provide an exception for MNEs. The

exception, which encourages hybrid reasoning, allows the MNE to violate any of these principles on the basis of "sound economic reasons" which the MNE should disclose to the host country government, unless "competitive reasons" dictate otherwise. None of the other codes makes a similar concession. Unscrupulous MNEs might abuse this exception indiscriminately, with the end result that their reasoning becomes entirely utilitarian.

### *MNEs and the public*

#### *Technology transfer*

- MNEs should cooperate with governmental authorities in assessing the impact of transfers of technology to developing countries, and should enhance the technological capacities of developing countries. (OECD; UN/CTC)
- MNEs should develop and adapt technologies to the needs and characteristics of the countries in which they operate. (ICC; OECD; ILO)
- MNEs should conduct research and development activities in developing countries, using local resources and personnel to the greatest extent possible. (ICC; UN/CTC)
- When granting licenses for the use of industrial property rights, MNEs should do so on reasonable terms and conditions. (ICC; OECD)
- MNEs should not require payment for the use of technologies of no real value to the enterprise. (ICC)

#### *Environmental protection*

- MNEs should respect the laws and regulations concerning environmental protection of the countries in which they operate. (OECD; UN/CTC)
- MNEs should cooperate with host governments and with international organizations in the development of national and international environmental protection standards. (ICC; UN/CTC)
- MNEs should supply to appropriate host governmental authorities, information concerning the environmental impact of the products and processes of their entities. (ICC; UN/CTC)

These two groups of principles consider issues of the relationship between MNEs and the public in host countries. These precepts focus on the rights of publics to the technology necessary for economic development and to a clean environment in which to live. These rights are presented rather subtly. None of the technology transfer statements explicitly links technology with economic development; however, all of the four international organizations discuss this link in other documents (Fejfar, 1983; Reynolds, 1985; Weinstein, 1979). Similarly, the rights of the public to a safe environment are implicit in the statements dealing with environmental protection. In response to these rights, MNEs are obligated to provide appropriate technologies in forms the host countries can use, and to establish and adhere to reasonable standards of environmental protection.

The ethical principles drawn upon here derive from Rawls and Locke. Both of Rawls' basic principles support the technology transfer statements. Technology is needed to meet the basic rights of publics to economic development, and developing countries should receive favorable treatment from MNEs due to their status as the least advantaged among world economies. Locke's idea of a social contract that protects natural rights is clearly supportive of the environmental protection statements. MNEs have an implicit social contract with the publics of each country in which they operate. One clause of that contract is MNEs' promise of environmental protection in exchange for permission to locate operations in the country and to use the country's natural resources. At least one of the precepts extends that social contract to the international sphere.

Of the four codes, the ICC guidelines contain the most statements regarding MNEs and the public, followed by the UN/CTC code, the OECD guidelines, and the ILO declaration. However, the ICC and OECD guidelines both incorporate some utilitarian reasoning in the area of technology transfer. Specifically, both codes assert that MNEs may expect reasonable reimbursement for the technological advancements they provide to developing societies. Thus, the MNEs should transfer technology because they expect to benefit from the transaction, rather than because they have a duty to do so. Some MNEs may decline to engage in tech-

nology transfer when they are unable to profit from it, and might cite this provision as support for their inaction.

#### *MNEs and persons*

##### *Consumer protection*

- MNEs should respect the laws and regulations of the countries in which they operate with regard to consumer protection. (OECD; UN/CTC)
- MNEs should preserve the safety and health of consumers by disclosure of appropriate information, proper labeling, and accurate advertising. (UN/CTC)

##### *Employment practices*

- MNEs should cooperate with host governments' efforts to create employment opportunities in particular localities. (ICC)
- MNEs should support representative employers' organizations. (ICC; ILO)
- MNEs should try to increase employment opportunities and standards in the countries in which they operate. (ILO)
- MNEs should provide stable employment for their employees. (ILO)
- MNEs should establish non-discriminatory employment policies, and promote equal employment opportunities. (OECD; ILO)
- MNEs should give priority to the employment and promotion of nationals of the countries in which they operate. (ILO)
- MNEs should assure that adequate training is provided to all employees. (ILO)
- MNEs should contribute to the managerial and technical training of nationals of the countries in which they operate, and should employ qualified nationals in managerial and professional capacities. (ICC, OECD, UN/CTC)
- MNEs should respect the right of employees to organize for the purpose of collective bargaining. (OECD; ILO)
- MNEs should provide workers' representatives with information necessary to assist in the de-

- velopment of collective agreements. (OECD; ILO)
- MNEs should consult with workers' representatives in all matters directly affecting the interests of labor. (ICC)
  - MNEs, in the context of negotiations with workers' representatives, should not threaten to transfer the operating unit to another country. (OECD; ILO)
  - MNEs should give advance notice of plant closures, and mitigate the resultant adverse effects. (ICC; OECD; ILO)
  - MNEs should cooperate with governments in providing income protection for workers whose employment has been terminated. (ILO)
  - MNEs should provide standards of employment equal to or better than those of comparable employers in the countries in which they operate. (ICC; OECD; ILO)
  - MNEs should pay, at minimum, basic living wages. (ILO)
  - MNEs should maintain the highest standards of safety and health, and should provide adequate information about work-related health hazards. (ILO)

#### *Human rights*

- MNEs should respect human rights and fundamental freedoms in the countries in which they operate. (UN/CTC)
- MNEs should not discriminate on the basis of race, color, sex, religion, language, social, national and ethnic origin or political or other opinion. (UN/CTC)
- MNEs should respect the social and cultural objectives, values and traditions of the countries in which they operate. (UN/CTC)

This third set of normative statements focuses on the relationship between MNEs and persons. These precepts address the rights of persons as consumers, employees, and human beings. As consumers, persons have rights to safe products and to honest advertising; as employees, they have rights to representation by trade unions, to safe and fair working conditions, and to economic security; as human beings, they have the rights of free expression of social and cultural traditions and personal values,

and other basic liberties. These rights are expressed quite explicitly in the codes. Employee rights are actually repeated in the various principles, sometimes subtly and sometimes plainly. In response to these rights, MNEs are obligated to implement policies that account for the basic human rights of their customers, their employees, and other persons with whom they come in contact.

The ethical principles drawn upon here derive from Kant and Rawls. Clearly, all of the principles are consistent with Kant's idea that people should be respected as ends in themselves, rather than abused as means to others' ends. The principles related to employment practices are also compatible with Rawls' ideas. Employees are entitled to participate in an employment system that promotes their rights to work and to have some influence upon the conditions of their work. Any employment practice that treats persons unequally should favor the least advantaged. For example, nationals of the host country should be favored in hiring and promotion policies.

Of the four codes, the ILO declaration contains the most statements regarding MNEs and persons. All of the ILO statements, not surprisingly, are in the category of employment practices. The OECD guidelines include more person-related principles than either the UN/CTC code or the ICC guidelines. The UN/CTC code is the only one which explicitly addresses human rights. Further, the UN/CTC code includes only one statement related to employment practices.<sup>3</sup> Once again, the ICC guidelines make an allowance for utilitarian reasoning in MNE decision-making. MNEs are instructed to engage in a variety of employment practices "to the extent consistent with the efficient operation of the enterprise" (ICC, 1980, 11). As with the utilitarian exceptions noted above, this clause might be abused by some MNEs as a dispensation when certain employment practices are viewed as inconvenient or cumbersome.

#### **Summary and conclusions**

The discussion above demonstrates clearly that all international codes of conduct are not equivalent. Based on the number of deontological principles (the more the better) and utilitarian exclusions (the fewer



the better) per category, the codes can be ranked. The use of these criteria is not intended to negate the importance of utilitarian reasoning. Rather, the point is that MNEs and other business institutions tend to rely too heavily on utilitarian ethics, and rights-based, deontological reasoning is needed as a counterweight. The rankings for each category are as follows:

- MNEs and Governments: UN/CTC; OECD; ICC; ILO
- MNEs and Publics: UN/CTC; ICC; OECD; ILO
- MNEs and Persons: ILO; OECD; UN/CTC; ICC

It would be inappropriate to aggregate these rankings to determine an overall “score” for the various codes. The organizations clearly are not in complete agreement regarding all of MNEs’ moral obligations. Each code places its emphasis on different areas. This is particularly evident for the ILO declaration, which focuses on employment practices almost to the exclusion of other important issues. Two other differences in emphasis are apparent.

First, only the OECD guidelines and the UN/CTC code have specific provisions in the area of political involvement. The absence of such provisions in the ILO declaration is not surprising, given its emphasis on employment practices. However, the absence of similar statements in the ICC guidelines is notable. While this omission does not necessarily imply that the ICC promotes MNE involvement in local political activities, it does signify a non-recognition of the moral aspects of such involvement.

Only the UN/CTC code explicitly mentions human rights issues. The absence of similar provisions in the ICC and OECD guidelines probably stems from the recognition by both organizations of the Helsinki Final Act of 1975, which focuses explicitly on human rights. Similarly, the exclusion of such statements in the ILO declaration may be due to the ILO’s recognition of the UN Universal Declaration of Human Rights of 1948. Despite this reasonable explanation, the omission of human rights provisions is important. Inclusion of statements regarding human rights would demonstrate an explicit recognition of MNEs’ responsibility to promote human rights.

Given this analysis, what conclusions can be

drawn and what recommendations can be made? First, it is clear that none of the codes is sufficient to guide all MNE behaviors. Each of them has weaknesses. The UN/CTC code, as noted above, makes no recommendations regarding employment practices, which is obviously an important issue area. Furthermore, the UN/CTC code has not yet been finalized, and may change before final adoption. The OECD and ICC guidelines include no precepts regarding basic human rights. Further, the ICC guidelines allow a number of exceptions that might undermine the deontological principles they promote. Due to the narrow focus of the ILO declaration, it is ineffective in the issue areas related to governments and publics.

MNEs, then, must not rely upon only one of the codes to guide their behavior. They should integrate the provisions of all the codes to assure that decision-making is based on the highest moral standards and that the rights of governments, publics, and persons are considered. In cases where the precepts of the codes conflict, MNEs should consult directly with appropriate stakeholders (e.g. governments, public interest groups, consumer groups and employees organizations) in an effort to reach consensus. Although achieving consensus is difficult, it may be possible in specific cases.

Alternatively, MNEs may wish to collaborate with one another and with a number of international organizations to establish a comprehensive code of conduct to which they, host governments, and other interested parties assent. This course of action, however, is unlikely due to various difficulties in initiating and implementing collaboration. For example, Gray (1989) suggests that although parties to collaboration are interested in aspects of the same problems, their motivations for participating are not necessarily coincident. Historical alignments, which lead to suspicion of each other’s motives, pose another obstacle to successful collaboration.

A second conclusion is that there is overwhelming evidence that the four international organizations which promulgated these codes have substantial agreement regarding many of the moral duties of MNEs. They all affirm that MNEs are moral agents, an issue hotly debated in the literature. (For a discussion of this issue see Donaldson, 1984.) MNEs, then, should be held morally accountable for their behavior. When governments, publics or persons are

harmful by MNE behavior, retribution should be exacted.

Two closing remarks are important. The first is a comment about the relationship between the authors of these codes of conduct and MNEs, and the obligatory nature of the codes. The ICC guidelines were developed by representatives of business organizations. The ILO declaration was published by representatives of business organizations, employee organizations, and governments. The OECD guidelines and UN/CTC code were both promulgated by representatives of governments. MNEs, therefore, were directly involved in writing only two of the four codes, and may not consider themselves bound by the others. Many MNEs may not even consider themselves obligated by the ICC guidelines and/or the ILO declaration, unless their own representatives participated in drafting the codes.

Nonetheless, MNEs are bound by *all* of these codes. For those MNEs that hold membership in the ICC (and the vast majority of them do), an obligation to adhere to the guidelines derives from voluntary membership in the organization. MNEs' duty to comply with the OECD guidelines, UN/CTC code, and ILO declaration is based upon their status as legal persons subject to the jurisdiction of their governments. They are bound to observe all agreements made by those governments.

The second comment is that these four codes are only a small sample of documents that focus on rights and duties of various parties. Many other international agreements, for example, the ICC Draft Report on Ethical Practices in Commercial Transactions (1977), and the World Health Organization's International Code on the Marketing of Breastmilk Substitutes (1981), address issues that provide guidance for MNE behavior. Further, there are a number of unilateral, bilateral, and regional agreements that also provide guidelines for moral behavior. These include the United States Foreign Corrupt Practices Act (1977), the Sullivan Principles (1977), and the European Community's Code of Conduct for Companies with Interests in South Africa (1977). Finally, some agreements focus on issues of rights and duties without explicitly addressing MNEs. These accords, which include the UN Universal Declaration of Human Rights (1948), the European Convention on Human Rights (1950), and the Helsinki Final Act (1975), provide some guidelines for MNE behavior, as well as the basis for other

international agreements concerned with human rights. An analysis of these agreements would provide a much richer basis on which to assess the moral duties of MNEs.

The purposes of this paper have been to demonstrate that normative prescription for the conduct of business has entered the international sphere; and to analyze and evaluate the forms that it has taken in that sphere. There can be no doubt that the international codes of conduct discussed here provide normative prescriptions and proscriptions for MNEs. The extent to which the codes have been (or will be) implemented by MNEs remains uncertain. Nonetheless, MNEs are morally bound to recognize the codes and to take them into account when engaging in international business. The incentive to do so is both moral and economic.<sup>4</sup> As international organizations and institutions (including MNEs themselves) continue to refine the codes, the underlying moral issues will be better identified and appropriate MNE behavior will be more readily apparent.

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### Notes

<sup>1</sup> For another interpretation, see William C. Frederick's current paper, *Multilateral Compacts as a Source of Normative Corporate Guidelines: The Emergence of a Transcultural Corporate Ethic*.

<sup>2</sup> Most of the principles logically apply to domestic corporations as well. However, since the codes address MNEs, the statements here are also directed toward MNEs.

<sup>3</sup> This apparent anomaly is understandable. Since the ILO is an independent agency of the United Nations, the inclusion of explicit principles regarding employment practices in the UN/CTC Code may be unnecessary.

<sup>4</sup> McGuire, Sundgren, and Schneeweis (1988), among others, have found positive correlations between responsible moral behavior and profitability.

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Katz Graduate School of Business,  
University of Pittsburgh  
247 Mervis Hall,  
Pittsburgh, Pennsylvania,  
U.S.A.