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REGULATOR OF PRIVATE ENTERPRISE

by Murray L. Weidenbaum

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An address to a Briefing on International
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Mission to the United Nations, New York City,
December 7, 1983

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REGULATOR OF PRIVATE ENTERPRISE

by Murray L. Weidenbaum, Director
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It is ironic that, just while its peacekeeping activities are experiencing such poor results, the United Nations is in a growth phase in its attempts to control private enterprise. To be sure, international regulation of business is a far cry from the central role of the United Nations -- which is, according to its charter, to "maintain international peace and security." In fact, the UN charter specifically prohibits its intervention in "matters which are essentially within the domestic jurisdiction of any state." Despite that fairly clear prohibition, we are witnessing a rapid proliferation of studies, guidelines, directives, reports, and other actions, all of which are focused on involving the United Nations in what historically have been internal and domestic affairs of the member countries. I note in passing that the public at large is not aware of this development.

To compound the problem, the advocates of this new array of regulation seem to have overlooked -- and certainly have not learned any lessons from -- the shortcomings of existing regulation of business by member states. Study after study has demonstrated that government regulators have so often been oblivious to the burdens that they impose on the private sector and, far more fundamentally, that such rules, regulations, and directives often do little to

advance their stated social objectives. In fact, in practice they are often counterproductive. One key finding permeates virtually all serious analyses of government regulation of business: it is the consumer who ultimately bears the burden that government, wittingly or unwittingly, attempts to impose on business.

Under the circumstances, it is sad to see the United Nations divert its resources from its basic mission of attempting to keep the peace to a host of regulatory activities. Unfortunately, the term "host" turns out, on inspection, to be an understatement. Just look at the array of regulatory activities now under way in various agencies of the UN.

Some of the international agency actions are broad; others are directed at specific business activities. Some of these regulatory efforts are in development or in negotiation stages, in the form of "advisory resolutions" or "voluntary guidelines." But in a growing number of instances, the regulations are legally binding treaties. The form in which they currently exist is often an indication of the "next step" that will be taken in the international regulatory process. For example, yesterday's studies lead to today's "voluntary guidelines" which, in turn, become the basis for the legally binding treaties of tomorrow.

These regulatory activities cover virtually every function of the business firm -- operations, marketing, finance, technology, services, and information. Let us briefly review some of the UN's regulatory efforts in each of these six areas of business decision making.

Regulation of Business Operations

Of the proposals or actions of UN agencies designed to control the day-to-day operations of private companies, the most ambitious is the draft code

of conduct for multinational corporations (or so-called transnational enterprises). The MNC Code is being developed by a commission of the Economic and Social Council. About two-thirds of the Code's 71 provisions have been agreed upon. To begin with, the scope of the Code goes beyond the definition of multinational corporations in the existing scholarly literature. The latter is limited to companies which produce goods and services in more than one country and where there is more than one center of corporate decision-making. Unilever and Royal Dutch Shell are the classic examples. But the Code would apparently cover almost any company that even tries to sell any of its products to people in another country. In the modern world, that includes virtually every large company and many middle-size and smaller firms.

The vague language contained in some sections of the Code is scary enough to make any sensible company think twice before investing overseas, where it might run afoul of the Code when it is promulgated. I have in mind the provision that multinational corporations should "avoid practices, products or services which cause detrimental effects on cultural patterns and socio-cultural objectives as determined by government." Where is the historical perspective of the authors of the Code? Over the centuries, civilization has been advanced by the transnational (to use that deadly term) flow of science, art, music, literature and -- yes -- culture and commerce. Moreover, should the UN encourage the governments of its member nations to set "socio-cultural objectives" and require private enterprise to follow the "cultural patterns" set by government? As a student of government regulation, I can report that this is not a traditional function of government regulation in a free society. However, it is a mechanism used by totalitarian rulers to enforce their power.

I understand that the organizations representing the business community on these matters have asked that the MNC Code be made voluntary and that, if passed, it apply also to state-owned firms. That is a sad response. The Code is a misguided instrument and its basic rationale needs to be reconsidered in a fundamental way. After all, the private corporation has been the key to the successful development of Taiwan, South Korea, Singapore, Japan, and other developing societies that have prospered in our own time. In fact, Japan has succeeded in moving from the developing to the developed category in this century.

The most sweeping UN regulation of private enterprise is in the area of natural resources and mining. The most important example is the Law of the Sea Treaty, adopted in April 1982. The United States is not a signatory.

To receive approval for sea mining, a private firm must agree to transfer any technology it uses to the Enterprise (which is a governmental agency) or to developing countries for "fair and reasonable commercial terms." Also, the company must provide, for each site mined, information on a second seabed site to be reserved for the Enterprise or developing countries. Private firms are, therefore, forced to subsidize and build the Enterprise, the government agency which competes with private enterprise.

A redistributive scheme similar to this one is contained in the UN's 1980 Moon Treaty. That is another attempt by other nations to "free ride" on Western technological innovation. Since the treaty declares that "the moon and its natural resources are the common heritage of mankind," any benefits accruing from those resources must be shared, and an international regime will be established to oversee extraction of those resources. Financial incentives to private industry for space exploration are greatly reduced, since

developing countries share in the benefits but not the costs of commercial activity in space.

Regulation of Marketing Activities

Companies involved in international marketing of products face a variety of regulatory measures. In recent years, the most well known of these actions has been the Infant Formula Code, developed and adopted in 1981 by the UN's World Health Organization. This Code calls for a wide variety of restrictions on the marketing and distribution of breast milk substitutes, applying not only to advertising of the product and distribution of samples, but also to labeling requirements and even the activities and compensation of marketing personnel. The Infant Formula Code is not legally binding, but governments are encouraged to enact legislation for its implementation.

It turns out that the Infant Formula Code is not the exception, but the entering wedge for broader UN regulation of private enterprise. The World Health Organization is now considering formulating a code on the marketing of pharmaceuticals. It would create an international drug approval program, and possibly include international rules on drug labeling and advertising. Such action would be in addition to WHO's existing Essential Drug Program, which lists 250 "essential" generic drugs necessary for adequate health care that must be made available to developing countries. Other suggestions for UN supervision include chemicals and related products.

The UN's Economic and Social Council is considering a sweeping consumer protection code that would create new obstacles to international trade via controls on product advertising, safety, quality, and pricing. The proposed guidelines advocate replacing the present reliance on market competition reflective of consumer choices with a system of government regulation. I have

explained in detail the shortcoming of the proposed consumer protection code in my testimony before the Senate Foreign Relations Committee earlier this year. The testimony has been published by the Center for the Study of American Business at Washington University under the title, "Is the UN Becoming a Global Nanny?" Let me cite from it a few examples of the many shortcomings of the guidelines.

When we look beyond their label, it is apparent that the Guidelines are a model of vagueness and over-blown phraseology. Grand goals are set forth in sweeping language that is, at best, highly generalized and unclear. The Guidelines would interfere with the goal of open international trade by establishing a new set of non-tariff barriers.

The Draft Guidelines contain seven objectives which are supposedly written "with special emphasis on the needs of developing nations." But one objective is "to facilitate production patterns geared to meeting the most important needs of consumers." In economies organized along private enterprise lines, the needs of consumers are always the strongest influence on "production patterns"; the pressures of the marketplace dictate that. But the Guidelines suggest the need for a controlled, highly centralized economy in which consumer choices are in practice limited by the decisions of an all-wise government. This objective strongly implies that a central government must identify, and then control, the means of achieving the "most important needs" of consumers. We need only consult the dismal record of any of the world's centrally planned economies in feeding their citizens to know that promulgating this objective would severely hurt the developing nations.

Moreover, this objective overlooks the importance of world trade in meeting the needs of consumers. Most growing economies gear production for

international markets rather than only for the so-called "more important needs" of their own consumers. The case of Japan is instructive. If its post-war economy had been limited to meeting the needs of its own population, it surely would not enjoy the strong position in world markets and the high standard of living that it has today.

One general principle in the Guidelines raises grave concerns:

the right to economic safety from offenses or malpractices which deny consumers optimum benefit within their economic resources.

Taken at face value, this is merely gibberish. But given the frequency with which people in communist countries are thrown in jail for so-called "economic offenses" against the state, this provision is potentially very dangerous. Is "Big Brother" to determine what are "offenses and malpractices" and the point at which consumers have derived "optimum benefit" from resources?

Here's another provision:

Business practices affecting the processing and distribution of food products and especially the marketing of highly refined and expensive food products should be regulated in order to ensure that such practices do not conflict with consumers' interest or government aims in the area of food policy.

Who is going to judge the so-called "conflict" between consumers' interests and business practices? In free societies with market economies, if there is any "conflict," consumers protect their interests by not buying the product. Resorting to regulation may simply project "government aims" in food policy -- and that is probably the true purpose of this provision. Moreover, why are "highly refined and expensive food products" singled out here? What all-wise power in a nation is going to determine that a specific category of food products presents a "conflict" with the interests of consumers, while another category does not? When we recall that meeting safety and nutritional standards will increase the price of these products, it is apparent that this

focus on expensive products may be the closest thing to a perpetual motion machine guaranteed to result in even more regulation.

Regulation of the Finance Function

The finance functions of international firms are also becoming increasingly subject to the watchful eye of the UN. For example, information disclosure and accounting practices have come under the scrutiny of a variety of organizations. The proposed MNC Code calls for public disclosure of a wide range of company financial data and would give national governments the justification for extending those data requirements to cover many other aspects of a company's international operations. Again, there seems to be little awareness of the benefits and costs -- and advantages and limitations -- of the existing national regulations of such paperwork. One result is readily assured: governmental regulation of paperwork generates more paperwork.

The UN Center on Transnational Corporations is collecting data on direct foreign investment by multinational corporations. Supposedly, such information will be furnished to developing countries to help them gain greater influence over private business. The very selective interest of this new form of business regulation is intriguing.

Regulation of Technology

Companies that sell or license highly technical products or services to developing countries may be affected by the Transfer of Technology Code (or TOT Code) being negotiated by the UN Conference on Trade and Development. The TOT Code attempts to define the contractual responsibilities of parties involved in the transfer of technology. It sets forth rules for negotiating, contracting, and post-contract activities.

For example, the technology-supplying country, upon request of the receiving party, is to provide specific information on various elements of the technology as required for "technical and financial" evaluation of the technology. The extent to which this is required is not clear. But if a company selling a microcomputer could be required to deliver specific information on the components of the microprocessor, it would be giving away competitively sensitive and valuable information.

What the guidelines overlook is the extent to which such regulations would impede the flow of technology. That certainly has been the experience in more developed nations: regulation dampens the incentive to develop and utilize new technology.

Regulation of Services

As worldwide trade in services has expanded, so have attempts by international bodies to regulate it, including banking, insurance, and even tourism. The UN has become particularly involved in measures to closely regulate the shipping industry. These activities are aimed at promoting companies in developing nations at the expense of existing enterprises in the developed nations. The centerpiece of these efforts is the Liner Code, developed by UNCTAD, which has just now become effective. In essence, this Code sets up a government allotment of participation in an industry by strict allocation of shipping tonnage.

Regulation of Information

The value of information in the world today is apparent from the increasing efforts to control it. One effort to do so has been spearheaded by the UN's Educational, Scientific, and Cultural Organization in its notion of a

New World Information Order. The stated aim of the Information Order is to correct the "imbalance of information flow" between developed and developing nations.

In 1980, a General Conference of UNESCO embraced a set of recommendations which would downgrade the role of the free press and enhance the position of government-controlled news agencies. The recommendations are quite ambitious.

They include the following:

- Restriction on news-gathering by "multinational" communications agencies.
- Developing a code of ethics for journalists.
- Exploring by the UN and the media of a means for international "right of reply" to news accounts. Proposals include a UN news service and censoring the release to the Western press of information about the developing countries.
- A requirement that multinational corporations supply governments of the nations in which they operate with information for "legislative and administrative purposes" relevant to their activities. This information is intended to evaluate and monitor the companies -- at the same time that news on the developing countries themselves would be controlled by governments.
- Reducing "the influence of market and commercial considerations" on communications flows -- thus emphasizing government-run, rather than privately financed, news media.
- Developing guidelines "with respect to advertising content and the values and attitudes it fosters."

In late November 1983, the UNESCO general conference in Paris approved a two-year study to determine the impact of news organizations on international relations and on developing countries. This was a compromise in lieu of the demands of Third World delegations for moving toward an international code for journalists. The general conference also approved continued UNESCO studies of the basis on which a New World Information and Communications Order might be established.

Summary and Conclusions

I emphasize that the examples that I have presented are just that, a small sample of a large and rapidly growing phenomenon. Our Center for the Study of American Business at Washington University has just published a compendium of Regulation of Business by International Agencies, requiring 98 pages of fine print merely to report each of these activities.

I need to emphasize the point that the public at large still thinks of the UN as an organization devoted to peacekeeping -- the function with which it is most explicitly charged in its charter. There is little awareness of the extent to which the UN is becoming an economic body involved in radically changing the performance and character of private economies throughout the world. The UN's regulatory efforts focus on controlling the operations of private enterprise by pejoratively labeling every company that tries to do business in any other country as a "multinational" corporation or "transnational" enterprise.

The proposals of the various units of the UN are alien to consumers in Western nations that thrive on private markets and the principle of competition. Large private companies (the so-called multinational corporations) are given special attention -- and penalized -- in the UN's proposals. Is it because they are the major alternative to direct government control and operation of the economic development process? More basically, I suggest that the business firm is singled out because it poses a real threat to the establishment and maintenance of concentrated economic power in government -- which is the hallmark of totalitarian societies.

What should be done? First of all, an educational effort is essential. The public needs to be made aware of this pervasive and little known

development. But the uncritical supporters of this new style of regulation must themselves be put on guard so that they understand the implications of these measures. After all, how could anyone initially oppose guidelines labeled as protecting the consumer? It takes a hard heart to question the proposed UN promulgation of such good things as product safety and international cooperation. The content of these regulatory packages, however, is far less attractive than their labels. It is ironic that so many of these proposed regulations that are supposedly consumer-oriented would themselves flunk any truth-in-labeling test.

Regardless of the motivation of their sponsors, many of these regulatory activities would increase costs to firms and ultimately to consumers, and create new barriers to the flow of trade and investment among nations. At a time when many of the developing nations are hard-pressed to earn the foreign exchange to service their existing debts, such regulation would be counterproductive to their own needs. It is clear that the rush to regulate by the UN is misguided. We should not be intimidated by the strong rhetoric contained in the justification for these activities.

A modest step toward educating the American public is the bill recently introduced by Senator Larry Pressler, "The International Organizations Public Procedures Act of 1983" (S. 1910). Despite its forbidding title, Senator Pressler's bill would simply require publication in the Federal Register of any proposal being considered by an international organization that may affect the commerce of the United States. Such action would let private citizens, including business executives, comment on the proposal so that their views could be taken into account in preparing the official U.S. position on the matter. That would seem to be a useful step forward.

Some Final Thoughts

For the UN to focus on the alleged problem of the private company doing business in world markets at a time of the Iraq-Iran War, the fighting in Lebanon and Afghanistan, and the strategic rivalry between the USSR and the US reminds me, sadly, of the ostrich with its head in the sand. Or perhaps, it is a means for diverting attention from the shortcomings of its basic activity.

In any event, I believe that the role of the UN as peacekeeper deserves renewed emphasis in the dangerous world in which we live. The member nations must face the major threats to peace and try to deal with them. They should not be diverted from this fundamental responsibility by assuming the role of global "nanny" or international business "cop," functions which the UN is not geared to handle and which are inconsistent with its basic and still unfulfilled mission.