

INTAF 597
**GLOBALIZATION AND THE MULTINATIONAL
CORPORATION**
LARRY CATÁ BACKER
SPRING 2020

MEETING ROOM:	KATZ 232
MEETING TIMES:	Monday, Wednesday 11.15 A.M. – 12.30 P.M.
OFFICE HOURS:	Monday, Wednesday, 2:00 P.M. – 4:00 P.M.
GRADE:	Presentations PLUS FINAL PAPER Minimum 15 Pages.
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COURSE INFORMATION

Course Description:

Since the early 1970s, multinational or transnational enterprises (MNEs), have become critical elements of the functioning global economy. With their huge market power and advanced R&D capabilities, MNEs have been seen by some as purveyors of global efficiency. At the same time, others have focused on the challenges posed by MNEs to the integrity of states and national control of economic policy. Economic globalization has substantially challenged the traditional basis for the organization and regulation of society. The MNE has substantially challenged the understanding of the relationship between law and politics, and between public and private institutions. Where states were once the apex regulators within their respective national territories, networks of enterprises now exercise substantial authority over economic activity. Globalization is central to the study of the regulatory and policy framework of multinational corporations, and their relationships with states and other non-state actors, and MNEs are central to the understanding of contemporary economic globalization.

MNEs have been praised by some for their leadership in human rights and sustainability drives and at the same time have been accused by others of using their transnational leverage and largesse to foster economic and technological dependency, especially among the developing nations. MNEs

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have been viewed with suspicion—as agents of foreign states, or as the representatives of foreign “capital” whose sole object is exploitation of local conditions. Sometimes virtually any foreign sourced economic activity is tied to some shadowy notion of an MNE whose tentacles can appear out of nowhere. At other times, the MNE is understood as severely constrained by the formal ownership and control relationship among legally constituted entities.

Legal and policy measures to respond to the potential benefits and the dangers posed by MNEs have floundered on a number of challenges that derive from the sometimes-large gulf that separates the political, economic, cultural, and legal definition of the MNE. Moreover, the very character of the MNE has been changing over the course of the last century. Where once there was a consensus that MNEs were institutions, recent developments have refocused consideration on both the interconnections between institutional economic actors (the MNE as interlinkages) and on the system of production itself (MNE as an element of the systems of global production). These factors have complicated the study of the MNE, as well as the approaches by economics, political, societal, and legal forces to their regulation or management.

This course examines the development and operation of contemporary economic globalization from the perspective of the modern MNE.

Part I of the course introduces the principal actors and processes. It situates the MNE as an object of study within the conceptual framework of globalization. From globalization, the student is invited to consider the role of the principal actors within it—the state, the enterprise, and the institutions that might frame the transnational process of production.

Part II then provides a conceptual framework for the study of the MNE. It introduces students to the forms of economic organization and production. It looks to the differences between ideological principals for economic organization and their effects on the legal framework within which MNEs may be conceived, created and managed.

Part III then focuses on the traditional, national, efforts to regulate or manage the MNE (understood here as a set of institutional actors) from an economic, political, and legal perspective. Students will examine the relationship of national efforts to regulate enterprises and thus engage with globalization.

Part IV then turns to the more recent efforts at international regulation and management of MNEs. It considers those efforts within the very different conceptual lenses of the MNE as entity, as interlinkages among production centers, and as the production chain itself.

Lastly, *Part V* examines emerging regulatory and policy trends. These refocus the examination from the state to societal, market, and other forces. These include the elaboration of non-state and non-public regulatory and policy initiatives, including the “business and human rights” movement, the move toward sustainability development goals (SDGs), the connection between public and private governance (corruption, development,

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and the like), and the governmentalization of the MNE and systems of MNE self-regulation.

Statement of Learning Outcomes and Assessment

Learning Outcomes:

Students are expected to acquire a working knowledge of the following.

1. *Globalization*: the organization of production; basics of globalization; identification of the principle actors of distinct ideologies of globalization and governance.
2. *Conceptual framework for MNE governance*: the forms of economic organization and production in the formation and governance of MNEs; the history of its governance.
3. *National Regulation*: extraterritoriality; inbound investment rules; outbound investment rules; taxation regimes; taxation; enterprise liability; corporate governance reforms; competition law frameworks, technology transfer rules.
4. *International Regulation*: bilateral agreements; multilateral agreements; legal internationalization; the settlement of international investment disputes.
5. *Societal Regulation*: emerging regulatory and policy trends: labor relations; human rights; soft law frameworks, MNE self regulation.

Learning Outcomes Assessment:

Student achievement in all learning outcomes will be measured in four group presentations and a minimum 15-page final paper. Student achievement will be monitored through student engagement in class discussion.

READING ASSIGNMENTS:

Required Course Text:

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Peter Muchlinski, *Multinational Enterprises and the Law* (2nd Ed.; Oxford: Oxford University Press, 2007). ISBN-10: 0199227969; ISBN-13: 978-0199227969 (paperback).

Supplemental readings will be assigned from time to time; they will be available either online or through Canvas.

RECOMMENDED (PURCHASE OPTIONAL NOT ASSIGNED) These books contain a series of additional readings for those who would like to pursue the respective topics in greater depth:

1. JOHN DANIELS, LEE RADEBAUGH & DANIEL SULLIVAN, *INTERNATIONAL BUSINESS, ENVIRONMENTS AND OPERATIONS* 14th edition (Prentice Hall, 2012)
ISBN-10: 0132668661
ISBN-13: 978-0132668668
2. Geoffrey Jones, *Multinationals and Global Capitalism: From the 19th to the Twentyfirst Centuries* (Oxford U Press, Paperback, 2005)
SBN13:9780199272105
ISBN10:0199272107
3. KARL SAUVANT, ED., *THE RISE OF TRANSNATIONAL CORPORATIONS FROM EMERGING MARKETS* (Edward Elgar Publishers, 2009)
ISBN-10: 184844348X
ISBN-13: 978-1848443488
4. Sharon Beder, *Suiting Themselves: How Corporations Drive the Global Agenda*, Earthscan, London 2006
ISBN-13: 978-1-84407-331-3
ISBN-10: 1-84407-331-9

Additional readings that may be of interest:

1. PETER J. BUCKLEY, *THE MULTINATIONAL ENTERPRISE REVISITED*, Palgrave, 2010
2. STEPHEN COHEN, *MULTINATIONAL CORPORATIONS AND FOREIGN DIRECT INVESTMENT*, Oxford U Press, 2007
3. LUDO CUYVERS, ED. *TRANSNATIONAL CORPORATIONS AND ECONOMIC DEVELOPMENT*, Palgrave, 2005

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4. EDWARD GRAHAM, GLOBAL CORPORATIONS AND NATIONAL GOVERNMENTS, Institute for International Economics, 1996
5. GLENN MORGAN, ED. THE MULTINATIONAL FIRM, Oxford U Press, 2003
6. NIRMALYA KUMAR, INDIA'S GLOBAL POWERHOUSES (HBS Press, 2009)
7. WARREN LIU, KFC IN CHINA: SECRET RECIPE FOR SUCCESS_(Wiley and Sons, 2008)

COURSE INFORMATION AND RULES

Course meetings time are set out above. I am generally available to talk with you during office hours on Mondays and Wednesdays, or, otherwise, by appointment. I am also available via e-conferencing (e.g., Skype and Zoom).

ATTENDANCE, SEATING, AND CLASS PARTICIPATION

Administrative practice requires me to notify students of my attendance policy. **Class attendance is required.** I take attendance seriously. The Law School also has in place an Honor System. I will take advantage of the Honor System for purposes of recording attendance. **All students will be assumed to be present unless they send me an email indicating that they are absent. Students are honor bound to report all absences, and failure to report absences will be treated as an honor code violation.**

You are responsible for marking your attendance.

THERE WILL BE SEVERAL GROUP PROJECTS. EACH OF YOU WILL BE ASSIGNED TO A GROUP AND EACH GROUP WILL BE REQUIRED TO MAKE CLASS PRESENTATIONS (WITH POWERPOINT). THE GROUP PROJECTS BE GRADED AND EACH CONSTITUTES 15% OF YOUR GRADE.

Class participation is required. All students are expected to be prepared for each class session (that is, to have carefully read the material assigned). All of you will find yourselves participating in at least some of the discussion. At the end of each class I may designate one or more students as class participation leaders for the next class. I reserve the right to call on students at random. Outstanding participation may result in an increase in your grade, again at my discretion.

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Seating is assigned. You will be asked to fill out a seating chart during the second day of class.

My approach to class: The principal object of the class is to develop knowledge through discussion in class. That discussion will be framed by the problems and informed by the readings. There is no expectation that one has the correct answer. The expectation is that students will contribute to a discussion that I will guide as necessary to achieve our learning outcome objectives. That means that sometimes you will have an opinion or produce an insight with respect to which there may be objection or disagreement. Disagreement is not disrespect. I expect that through lively discourse the class will be able to learn better. Please let me know if you have questions.

CLASS NOTES AND RECORDING OF CLASS

Class Notes and Recording of Class. Take notes as you like. Please feel free to get together with your classmates for studying and sharing notes. Please remember that the purpose of the course is NOT to provide experience in stenographic techniques. Participation rather than the taking of dictation is encouraged. To that end, *all of my classes are recorded and you are encouraged to review those recordings at your convenience.*

No personal recording of class.

[Policy Regarding Creation of, and Access to, Recordings by the Law School of Class Sessions](#)

All law school courses occur in classrooms equipped with audiovisual telecommunications equipment that is capable of making an audiovisual recording of each class session as it occurs. In order to provide the potential educational benefits of recorded classes to our students, the law school has decided to automatically record, and to archive for a limited period of time, all class sessions occurring in law school classrooms. The purpose of the recordings is to permit students enrolled in each recorded course to access the recordings outside of the regularly scheduled class period, according to rules established by the professor.

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Access to recorded classes will be controlled via a secure course management platform, such as CANVAS, and will be restricted to students enrolled in the recorded course, the professor, and those University IIT personnel necessary to maintain the system. All recordings will be deleted following the conclusion of the semester in which the recorded course occurs (unless all identifying student images are edited out of the recording, in which case the professor and law school jointly may decide to retain the edited recording for other purposes).

By registering for or attending law school courses, a student consents to the law school's making and display of class recordings within the scope of this policy.

The office of the Associate Dean for Academic Affairs has provided you with this statement; please familiarize yourself with all of its terms. In case of doubt about meaning, please contact the Office of the Associate Dean:

A. Student Access to Class Recordings; Open Access:

All Class/Open Access. All class recordings will be posted on the course CANVAS site for access by any student enrolled in this course. Access will end the last day of the final exam period. Your Professor may not consent to or authorize access to or distribution of class recordings beyond the students enrolled in that course.

B. Student Use of Recordings and Materials:

A student may not record any part of a class by any means without prior express authorization of the faculty member. If a student receives faculty authorization to record a class, the student may not copy or download such recording to a computer or other device, distribute it to any other person, or use the recording for any purpose other than personal education and study except with the prior express authorization of the faculty member. Unauthorized recording, distribution, or use of a class recording is a violation of the Honor Code.

A student may not use course materials such as slides or other documents posted on CANVAS for any purpose other than personal education and study and may not disseminate, publish, or alter course materials without

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prior express authorization of the faculty member. Unauthorized use of course materials is a violation of the Honor Code.

Penn State Law Honor Code, Violation 2.1(1) covers unauthorized recording and unauthorized use of class recordings or course materials. It prohibits "Taking, using . . . or otherwise abusing the property of another, including, without limitation, books, briefs, class notes, outlines, or any other academic items, without authorization."

C. Questions, Special Requests. You should direct any questions, concerns or requests regarding classroom recordings or any classroom technology to the AV Team at av@law.psu.edu.

GRADING

The course grade will be based on assessment of four group presentations (40%) and a **minimum 15 page final paper (60%)**. The course is built around the application of the materials by the student to the MNE as a living contemporary entity. To that end, it is necessary for the student to examine the contemporary MNE for the better understanding of the way that law and policy works on and through the MNE. Each student will be assigned to a group. Each group will be assigned an MNE—that assigned entity, in turn, will be the vehicle through which each group is to apply the learning from each part of the course. There will be four class presentations that correspond to the principal sections of the materials studied:

Group Presentations No. 1: The Business and Legal Forms of Assigned MNEs

Group Presentations No. 2: MNE National Governance and Policy

Group Presentations No. 3: MNE in International Regulatory Frameworks (BITS, etc.).

Group Presentations No. 4: MNE and emerging regulatory forms; self-regulation.

The materials developed for these four presentations will then serve as the basis for the production of a final paper, which constitutes the major source of a student's grade. The paper will focus on the MNE assigned and its operation of its production chain in the context of national, international and emerging regulatory forms, with a focus on an analysis of the challenges and opportunities each faces along with the decisions made by the MNE to meet these challenges and take advantage of the opportunities identified.

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ACADEMIC HONESTY AND INTEGRITY

ACADEMIC HONESTY AND INTEGRITY

Both Penn State Law (PSL) and the School of International Affairs (SIA) safeguard and promote the ideals of honor and integrity by prohibiting lying, cheating, stealing, and other dishonorable conduct. Accordingly, all students should act with personal integrity, respect other students' dignity, rights and property, and help create and maintain an environment in which all can succeed through the fruits of their efforts.

Dishonesty of any kind will not be tolerated in this course. Dishonesty includes, but is not limited to, cheating, plagiarizing, fabricating information or citations, facilitating acts of academic dishonesty by others, having unauthorized possession of examinations, submitting work of another person or work previously used without informing the instructor, or tampering with the academic work of other students. Students who are found to be dishonest will receive academic sanctions and will be reported to the relevant authorities for possible further disciplinary sanction. For further details on Academic Integrity please visit: <http://studentaffairs.psu.edu/conduct/AcademicIntegrity.shtml>

All acts of academic dishonesty will be dealt with and punished in accordance with applicable Penn State University, SIA and Graduate School policies.

See also
<http://istudy.psu.edu/FirstYearModule/CopyrightPlagiarism/StudentGuide.html> and <http://its.psu.edu/turnitin/TurnitinHandout.rtf>.

All acts of academic dishonesty will be dealt with and punished in accordance with applicable Penn State University, Penn State Law, SIA and Graduate School policies, as applicable.

The [HONOR CODE MAY BE ACCESSED HERE](#).

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CONFERENCES

I try to maintain an open-door policy. I encourage you to see if me with your questions or should you want to speak about thing on your mind. While face time is important, students should not consider it necessarily the best or exclusive means for communicating with me, especially if the student only has a brief question or simple issue to bring to my attention. For these and most communications of that sort I highly recommend the student contact me via e-mail. I will respond promptly, all circumstances considered. Skype and Zoom are also available as necessary.

Technology has made it easy to communicate.
please take advantage of it.

You are encouraged to contact me by e-mail. I will respond promptly.

<lcb911@me.com>

I am also available via Skype and Zoom for other communications, should the student think that would work better for them. Otherwise I am available for personal meetings during office hours or otherwise by appointment.

CANVAS

I will be relying on PSU's CANVAS system for communication with you. I will post all class materials to the CANVAS class site and send e-mails via that site. Please check the modules for all necessary materials—the CANVAS homepage will have links to the appropriate modules. Please check in regularly for information about the course. It will be your responsibility to keep apprised of the information posted there.

Additional University Policies and Statements

UNIVERSITY DISABILITIES POLICY STATEMENT

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To comply with University policy regarding persons with disabilities, this statement is included in this course syllabus:

Penn State welcomes students with disabilities into the University's educational programs. Every Penn State campus has an office for students with disabilities. The Student Disability Resources Web site provides [contact information for every Penn State campus: http://equity.psu.edu/sdr/disability-coordinator](http://equity.psu.edu/sdr/disability-coordinator). For further information, please visit the [Student Disability Resources Web site:http://equity.psu.edu/sdr](http://equity.psu.edu/sdr).

In order to receive consideration for reasonable accommodations, you must contact the appropriate disability services office at the campus where you are officially enrolled, [participate in an intake interview, and provide documentation: http://equity.psu.edu/sdr/applying-for-services](http://equity.psu.edu/sdr/applying-for-services). If the documentation supports your request for reasonable accommodations, your [campus's disability services office](#) will provide you with an accommodation letter. Please share this letter with your instructors and discuss the accommodations with them as early in your courses as possible. You must follow this process for every semester that you request accommodations.

COUNSELING & PSYCHOLOGICAL SERVICES (CAPS)
<http://studentaffairs.psu.edu/counseling/>

CAPS staff work with thousands of Penn State students per year in group therapy, individual counseling, crisis intervention, and psychiatric services as well as providing prevention, outreach, and consultation services for the University community. Services at CAPS are designed to enhance students' ability to fully benefit from the University environment and academic experience.

As specialists in working with undergraduate and graduate students, staff at CAPS can help you address your concerns in a caring and supportive environment. CAPS can help students resolve personal concerns that may interfere with their academic progress, social development, and satisfaction at Penn State. Some of the more common concerns include anxiety, depression, difficulties in relationships (friends, roommates, or family); sexual identity; lack of motivation or difficulty relaxing, concentrating or studying; eating disorders; sexual assault and sexual abuse recovery; and uncertainties about personal values and beliefs.

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PROTOCOL FOR RESPONDING TO BIAS MOTIVATED INCIDENTS

Penn State University has adopted a “Protocol for Responding to Bias Motivated Incidents.” It may be accessed [HERE](#). It is grounded in the policy that the “University is committed to creating an educational environment which is free from intolerance directed toward individuals or groups and strives to create and maintain an environment that fosters respect for others.” That policy is embedded within an institution traditionally committed to academic freedom (the policy may be accessed [here](#)) and free and open discussion. Bias motivated incidents include conduct that is defined in University Policy AD 91 (accessed [here](#)). Students who experience a possible bias motivated incident, as well as students, faculty or staff who are witnesses of the same, are urged to report the incident immediately by doing one of the following:

* Contact your County Emergency Dispatch by dialing 911 in cases where physical injury has occurred or is imminent;

* File a report on the Report Bias website: <http://equity.psu.edu/reportbias/statement>;

* Contact one of the following offices:

University Police Services, University Park	814-863-1111
MRC Counselor/Diversity Advocate for Students	814-865-1773
Office of the Vice Provost for Educational Equity	814-865-5906
Office of the Vice President for Student Affairs	814-865-0909
Affirmative Action Office	814-863-0471

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SYLLABUS

Half a century ago, multinational enterprises (MNE) were understood as something of great interest to business scholars but were of little interest to the legal academic. There was no “law” about multinationals. Corporations and other business forms were governed by the states that either chartered them or in which they operated. The problem of the MNE, then, tended to be reduced to issues of coordination (in the sphere of comparative law), or issues of corporate groups (for corporate lawyers), or issues of contractual relations in joint ventures across borders (for transnational lawyers and policymakers), or as an important side issues in international trade (for lawyers and trade or foreign ministries). None of this had any resonance for economists, who tended to view these amalgamations of coordinated capital and networks of relationships as means to economic ends. They might focus on the internal economics of these amalgamations, or their external effects (as macro-economic policy). Political scientists, anthropologists, and sociologists would of course see in the same clusters of organized economic activities some things that were, in their turn, also quite distinct.

Globalization, however, has changed the conceptual framework within which MNEs are understood, as well as the regulatory environment in which MNEs are governed. That change was quite direct and self-conscious. It involved, at its core, a series of quite fundamental transformations aimed at reducing, or in some cases, eliminating the traditional role of national borders in managing economic activities within states. Elaborated through a series of treaties, conventions, practices, political decisions, and overseen by specially constituted organs of international governance or oversight, it became possible to organize economic production without substantial regard to national borders—with respect to the movement of goods (eliminating tariff and similar barriers, and creating an international architecture for its management), capital (substantially liberating flows of capital between states, with substantial exceptions of course), investment (through a proliferation of investment and similar treaties); and people (through the transformation of cultural and political lenses through which migration was managed).

Effectively, then, globalization has provided the structures within which it was possible to reorder the architecture of governance, de-centering the state from its position as the sole and authoritative source of regulation, and territorial borders as an effective means of ensuring the primacy of national law. In its place new systems of governance have risen—these do not substitute for national law, but they have effectively supplemented national systems, and sometimes in important ways. In such a legal-policy environment, it became possible for economic activity to operate across borders in new ways. The process of economic production could be divided and portions assigned to entities without regard to borders—a sort of early version blockchain of production organized around disaggregated systems of moving from raw materials to finished product offered to final end user. This could be managed through a new form of organization—one that was not just focused

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on production and profit, narrowly understood, but rather one that increasingly managed production among aligned networks of producers in ways that increasingly had the feel of government.

Corporations exercise substantially more autonomous governance within their supply and distribution chains. Indeed, MNEs defy categorization and management by any single state, they defy domestication into any single legal form. International public and private organizations have asserted more important regulatory roles as sources of rules and as places for the resolution of conflict. As these changes began to become more prominent, states also sought to reassert their authority within their territories (and beyond them to the extent they had the power to project their authority outward). But at the same time, the value (to states) of participation in global production made such reassertions of national authority less effectively reactionary. There are heated contests now among these regulatory actors for roles in the governance of enterprises that cross borders and that not be reduced to a single legal form. For the law student, the rise of the modern MNE within newly emerging systems of global organization, including governance organization, represents both a challenge and a distinct way of understanding law and governance.

These materials are meant to provide an introduction to the new legal and governance contexts in which lawyers must understand and work with MNEs. Note that two distinct regulatory realms are emphasized. The first is the one in which lawyers are most comfortable. Here the student will be introduced to law and legal issues around which a legal regulatory environment is being created around the concept—MNE. The second is fairly new to the lawyer—this is the sphere of societal regulation, of governance and of the application of norms and regulatory contract to the management of relations between enterprises in global production chains. Here the law student will be introduced to a variety of emerging mechanisms of governance that are not explicitly “law” in the sense of legislative or administrative command derived from the lawful exercise of authority by nation-states.

The materials are organized around five (5) sections.

Part I serves as a short introduction. It identifies the “problem” of the MNE within its national, international, legal, political, social, cultural, and economic contexts. It introduces students to the forms and characteristics of globalization, especially as it touches on the forms and management of productive forces. It focuses on how globalization has changed the character and nature of the regulatory power of key actors, including states, enterprises, civil society, and international public and private organizations.

Part II provides the student with a conceptual framework for the study of MNEs. It starts with an examination of the forms through which humans organize economic activity—including legal and political forms (proprietorships, corporations, partnerships, joint ventures, contractual relationships, state owned enterprises and the like). It sketches the history of MNE and suggests definitional issues that continue to plague a lawyer’s approach to these entities. It provides the student with a brief history of the MNE, suggests some of the most important forms (in law) that MNEs take, and theories of their regulation through states.

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Part III then turns to the context of state-based regulation and its limitations. It focuses on the arc of legal and policy approaches to national regulation from the origins of contemporary approaches in the 1970s to current trends. This Part III also introduces students to the fundamental limits of business enterprise law for the regulation of MNEs and points to indirect methods of MNE regulation. These include by limiting cross border investing, taxation policies, technology transfer limits, and efforts at reform of national enterprise law. It also explores efforts at imposing disclosure regimes on MNEs.

Part IV builds on the prior materials to introduce students to the emerging international initiatives for the management of MNEs. These center on the rapidly evolving transnational systems of investment represented by bilateral and multilateral investment treaty regimes, the codification of international standards and the development of mechanisms for dispute resolution at the transnational level. The evolution of private international law standards through litigation is also explored.

Part V examines key emerging regulatory and policy trends and initiatives. These approaches merge transnational public law, national and private governance structures in polycentric systems. The student starts with the development of international labor standards and then considers the development of an architecture for the regulation of the human rights effects of business activity. It then turns to the possibility of MNE self regulation within the context of national law and international standards. The examination introduces students to MNE management in the context of the “business and human rights” movement, the move toward sustainability development goals (SDGs), the connection between public and private governance (corruption, development, and the like), and the governmentalization of the MNE and systems of MNE self-regulation.

GROUP PRESENTATIONS AND FINAL PAPER

The course is built around the application of the materials by the student to the MNE as a living contemporary entity. To that end, it is necessary for the student to examine the contemporary MNE for the better understanding of the way that law and policy works on and through the MNE. Each student will be assigned to a group. Each group will be assigned an MNE—that assigned entity, in turn, will be the vehicle through which each group is to apply the learning from each part of the course. There will be four class presentations that correspond to the principal sections of the materials studied:

Group Presentations No. 1: The Business and Legal Forms of Assigned MNEs

Group Presentations No. 2: MNE National Governance and Policy

Group Presentations No. 3: MNE and the International Regulatory Framework (BITS, etc.).

Group Presentations No. 4: MNE and emerging regulatory forms; self-regulation.

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The materials developed for these four presentations will then serve as the basis for the production of a final paper, which constitutes the major source of a student's grade. The paper will focus on the MNE assigned and its operation of its production chain in the context of national, international and emerging regulatory forms, with a focus on an analysis of the challenges and opportunities each faces along with the decisions made by the MNE to meet these challenges and take advantage of the opportunities identified.

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I. Introduction: The Problem of the MNE in Globalization

Class 1: Course Overview and Global Context

Readings:

-- *Regulating Multinational Corporations — Trends, Challenges and Opportunities*, 22(1)
BROWN JOURNAL OF WORLD AFFAIRS 153-173 (2015).  [Backer.pdf](#)

Class 2: The Global Context

Readings:

--Backer, Larry Catá, Economic Globalization Ascendant: Four Perspectives on the
Emerging Ideology of the State in the New Global Order. BERKELEY LA RAZA LAW
JOURNAL, Vol. 17, No. 1, 2006. Available at SSRN: <http://ssrn.com/abstract=917417>

II. Conceptual Framework

Class 3: Organizing the Business Enterprise—The Basic Building Blocks (Corporations,
LLC, Partnerships, Joint Ventures, Contractual Relations; franchises, etc.)

Readings

--Hand Out: Organizing the Business Enterprise—Conceptual Building Blocks
--G20/OECD [Principles of Corporate Governance](#)
--OECD [Guidelines on Corporate Governance of State Owned Enterprises](#)

Class 4: Evolution of the MNE (Definition; History; Growth Factors; Legal Basis)

Readings:

--Muchlinski Chapter 1
--Optional: Aurélie Catel Duet, *The governance of corporate groups. Coordination and
cooperation across organisational boundaries*, Apr 2006, Milan, Italy. <halshs-
00167840>

Class 5: Business and Legal Forms of MNEs

Readings:

--Muchlinski Chapter 2
--Optional: JOHN H. DUNNING, SARIANNA M. LUNDAN, MULTINATIONAL ENTERPRISES AND
THE GLOBAL ECONOMY (2nd ed., Edward Elgar, 2008); 1-17 (Definitions): pp. 201-289 (the
organization of MNE activity)

Class 6: Group Presentations No. 1: The Business and Legal Forms of Assigned MNEs

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 SPRING 2020

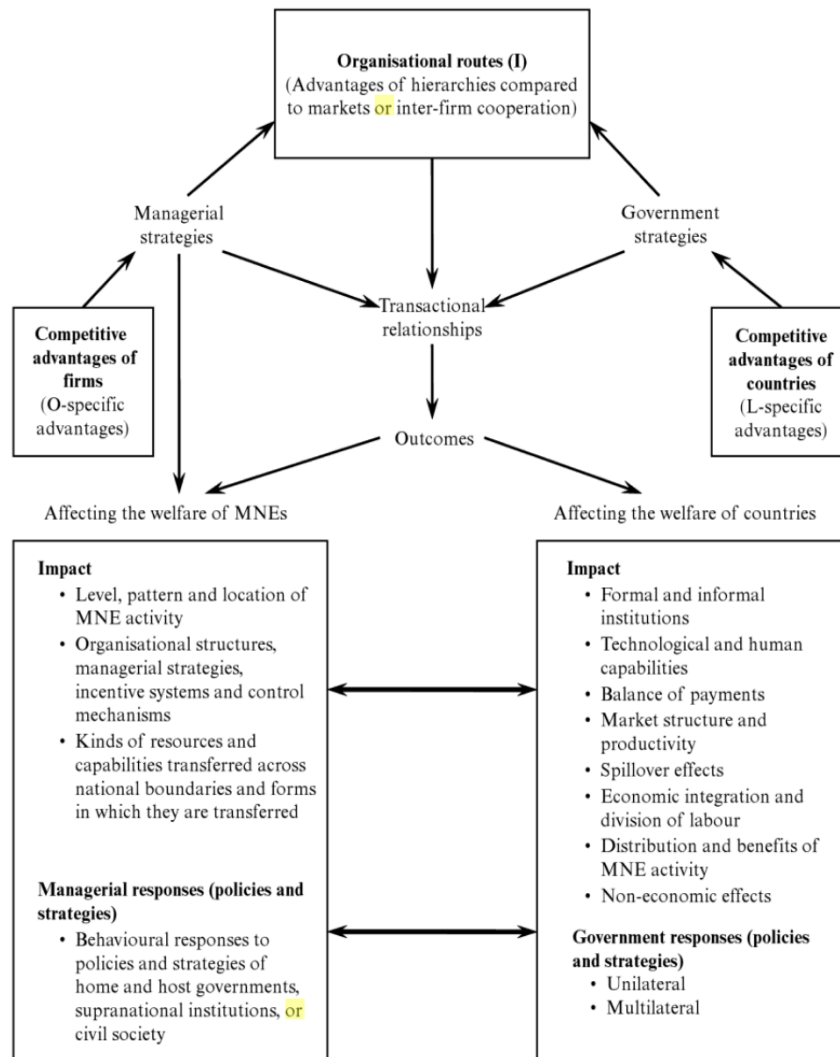


Figure 0.1 Analysing the role of MNEs in the global economy: a conceptual outline

Graphic from JOHN H. DUNNING, SARIANNA M. LUNDAN, MULTINATIONAL ENTERPRISES AND THE GLOBAL ECONOMY (2nd ed., Edward Elgar, 2008); pp. xxiv (introduction to 2nd edition)

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III. Current State Based Regulation and Its Limits

Class 7: Regulating Multinationals

Readings

--Muchlinski Chapter 3

--Optional, John Dunning, *Governments and Multinational Enterprises: From Confrontation to Co-operation?* MILLENNIUM JOURNAL OF INTERNATIONAL STUDIES 20(2):225-244 (1991).

Class 8: The limits of national regulation of MNCs

Readings:

--Muchlinski Chapter 4

--[Daimler AG v. Bauman](#), 517 U.S. --- (2014).

Class 9: Indirect Regulation: The Control of Inward Investment

Readings:

--Muchlinski Chapter 5

--Amanda Rosenberg, [Scrutiny for Inbound Foreign Investments](#), Norton, Rose Fulbright (October 2019).

--Optional: essays in [TRANSNATIONAL CORPORATIONS: INVESTMENT AND DEVELOPMENT \(SPECIAL ISSUE ON INVESTMENT AND INTERNATIONAL TAXATION\)](#) (UNCTAD, 2018)

Class 10: Legal and Policy Structures for Encouraging Inward FDI

Readings:

--Muchlinski Chapter 6

--Optional: Bevan, Estrin, and Meyer, *Foreign Investment Location and Institutional Development in Transition Economies*, INTERNATIONAL BUSINESS REVIEW 13:43-64 (2004).

Class 11: Taxation across borders

Readings:

--Muchlinski Chapter 7

-- [The EU list of non-cooperative jurisdictions for tax purposes](#) (15429/17; FISC 345; ECOFIN 1088)

Optional: Lorraine Eden, *Taxes, Transfer Pricing, and the Multinational Enterprise*, Chapter 21 in THE OXFORD HANDBOOK IN INTERNATIONAL BUSINESS (Oxford 2001).

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Class 12: Alternative Bases for National Control of MNCs (I): Enterprise Regulation

Readings:

--Muchlinski Chapter 8

--Optional: Philip Blumberg, *The Transformation of Modern Corporate Law, The Law of Corporate Groups*, 37 CONN. L. REV. 605 (2004-2005)

Class 13: Alternative Bases (II): Internal Governance, Accountability and Disclosure

Readings:

--Muchlinski Chapter 9

--*Recent Cases First Amendment—Compelled Commercial Disclosures—D.C. Circuit Limits Compelled Commercial Disclosures To Voluntary Advertising.* — National Ass'n of Manufacturers v. SEC, 800 F.3d 518 (D.C. Cir. 2015), reh'g en banc denied, No. 13-5252 (D.C. Cir. Nov. 9, 2015) Harvard Law Review 129:819 (2015) (explaining U.S. Conflict Minerals Rule, 17 C.F.R. 240.13p-1 and National Ass'n of Mfrs. v. SEC, 800 F.3d 518, 530 (D.C. Cir. 2014).

-- [U.K. Modern Slavery Act of 2015](#) (c.30; the transparency in supply chains Act § 54)

-- French Supply Chain Due Diligence Law of 2017([TEXTE ADOPTÉ n° 924](#) «Petite loi» Assemblée Nationale Constitution Du 4 Octobre 1958 Quatorzième Législature Session Ordinaire De 2016-2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre)

--[The French Duty of Vigilance Law: What You Need to Know](#)

-- [Frequently Asked Questions about the new Dutch Child Labour Due Diligence Law](#)

--Australia, Modern Slavery Act (2018) No. 153 An Act to require some entities to report on the risks of modern slavery in their operations and supply chains and actions to address those risks, and for related purposes

Class 14: Alternative Bases (III): Regulation Through Competition Law

Readings:

--Muchlinski Chapter 10

-- [Competition law and responsible business conduct](#), OECD (2015)

Class 15: Alternative Bases (IV): Technology Transfers

Readings:

--Muchlinski Chapter 11

--Optional: Buckley, Peter J;Carter, Martin J, *Managing cross-border complementary knowledge*, INTERNATIONAL STUDIES OF MANAGEMENT & ORGANIZATION; Spring 1999; 29(1):80

Class 16: Group Presentations No. 2: National Regulation and MNE Governance

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IV. International Regulation—Systems, Process, and Institutions

Class 17: Control of Investment Risks (I)—International Agreements

Readings

--Muchlinski Chapter 15 (only pp. 662-702)

--US Model Bilateral Investment Treaty (2012)

<https://ustr.gov/sites/default/files/BIT%20text%20for%20ACIEP%20Meeting.pdf>

--Optional: Jeongho Nam, *Model BIT: An Ideal Prototype or a Tool for Efficient Breach?*; GEORGETOWN JOURNAL OF INTERNATIONAL LAW 48:1275-1308 (2017).



[Bilateral Investment Treaties and Related Agreements](#)

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Class 18: Control of Investment Risks (II)—Non-Discrimination, Fair Treatment

Readings

--Muchlinski Chapter 16

--OECD Negotiating Group on the Multilateral Agreement on Investment (MAI) [The Multilateral Agreement on Investment, Consolidated Declaration of Texts](#) (Commentary at <http://www.oecd.org/daf/mai/pdf/ng/ng988r1e.pdf>).

Class 19: Codification of International Standards

Readings

--Muchlinski Chapter 17

--Optional: Mark Feldman, *Multinational Enterprises and Investment Treaties* (January 8, 2017). YEARBOOK ON INTERNATIONAL INVESTMENT LAW AND POLICY (L. Sachs and L. Johnson, eds.) (OUP) (2017 Forthcoming); Peking University School of Transnational Law Research Paper No. 17-2. Available at SSRN: <https://ssrn.com/abstract=2895680> or <http://dx.doi.org/10.2139/ssrn.2895680>

Class 20: The Settlement of Disputes

Readings

--Muchlinski Chapter 18

--Optional: Joseph Stiglitz, *Regulating Multinational Corporations: Towards Principles of Cross-Border Legal Frameworks in a Globalized World Balancing Rights with Responsibilities*, AMERICAN UNIVERSITY INTERNATIONAL LAW REVIEW 23, no.3 (2007): 451-558.

Class 21: From Veil Piercing to Contract, Negligence, and Duty of Oversight

Readings

-- [Lubbe v. Cape PLC](#)

--Dooh v. Royal Dutch Shell, [ECLI:NL:GHDHA:2015:3586](#)

--[Chevron Corp. v. Yaiguage, 2015 SCC 42](#)

--[Choc v. Hudbay Minerals Inc., 2013 ONSC 1414](#)

--[Chandler v Cape Plc \[2012\] 1 WLR 3111](#)

--[Doe v. Walmart](#) (9th Cir., 2005)

--Bowoto v. Chevron (2004)

--Optional: George L. Priest, *The Invention of Enterprise Liability: A Critical History of the Intellectual Foundations of Modern Tort Law*, THE JOURNAL OF LEGAL STUDIES 14(3):461-527 (Critical Issues in Tort Law Reform: A Search for Principles (Dec., 1985)).

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Class 22: *Group Presentations No. 3:* International Regulation and MNE Governance

V. The Emerging System of International Regulation

Class 23: Social Issues and MNE's (I): Labor Relations—Domestic and International Issues

Readings:

--Muchlinski Chapter 12; 13

--U.N. Guiding Principles for Business and Human Rights (download from http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.)

-- Federal Judicial Center, *International Litigation Guide, International Human Rights Litigation: A Guide for Judges* (2016).

Chapter 24: Human Rights and MNEs (II)—The OECD Approach

Readings

----OECD [Guidelines for Multinational Enterprises](#)

-- Case Note: *Rights And Accountability In Development (Raid) V Das Air (21 July 2008) And Global Witness V Afrimex (28 August 2008); Small Steps Toward an Autonomous Transnational Legal System for the Regulation of Multinational Corporations*, 10(1) MELBOURNE JOURNAL OF INTERNATIONAL LAW 258-307 (2009).

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1427883

Chapter 25: The possibilities of Self-Regulation? / The MNE as Law Maker

Readings

-- Backer, Larry Catá, Economic Globalization and the Rise of Efficient Systems of Global Private Lawmaking: Wal-Mart as Global Legislator. University of Connecticut Law Review, Vol. 39, No. 4, 2007. Available at SSRN: <http://ssrn.com/abstract=953216>

-- Backer, Larry Catá, Multinational Corporations as Objects and Sources of Transnational Regulation. ILSA JOURNAL OF INTERNATIONAL & COMPARATIVE LAW, Vol. 14, No. 2, 2008. Available at SSRN: <http://ssrn.com/abstract=1092167>

-- Backer, Larry Catá, The Concept of Constitutionalization and the Multi-Corporate Enterprise in the 21st Century (June 25, 2014). CPE Working Paper 6/1 . Available at SSRN: <http://ssrn.com/abstract=2458965> or <http://dx.doi.org/10.2139/ssrn.2458965>

Class 26: Sustainability including Environmental Issues

Readings

--Muchlinski Chapter 14

-- John H. Knox, **Mapping Report (A/HRC/25/53): [A C E F R S](#)**

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--John Knox, [Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment \(A/HRC/34/49\)](#) (19 Jan 2017)

--U.N. Sustainable Development Goals; (1) [Progress towards the Sustainable Development Goals](#) (2017); and (2) [Transforming our world: the 2030 Agenda for Sustainable Development](#).

--Van Geelen, Tess (2017) [A healthy environment for human rights: An overview of international jurisprudence](#). In *Conference of the Law, Literature and Humanities Association of Australasia*, 11-14 December 2017, Melbourne, Vic. (Unpublished)

Class 27: Group Presentations No. 4: MNE and emerging regulatory forms; self-regulation
Report on MNE Corporate Self-Regulation Social Responsibility

Class 28; Putting it all Together: Supply Chains Regulation
Readings

-- Backer, Larry Catá, [Are Supply Chains Transnational Legal Orders? What We Can Learn from the Rana Plaza Factory Building Collapse](#), UC IRVINE J. INT'L, TRANSNATIONAL, / COMP. L. 1:11 (2016)