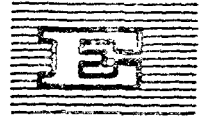


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ISSUES ARISING FROM DECISIONS TAKEN BY THE GENERAL ASSEMBLY  
AND THE ECONOMIC AND SOCIAL COUNCIL

Progress made towards the establishment of the new international  
economic order: the role of transnational corporations

Report of the Secretariat

SUMMARY

In paragraph 3 of General Assembly resolution 33/198 of 29 January 1979, on preparations for the special session of the General Assembly in 1980, the General Assembly invited "the governing bodies of the organs and organizations concerned within the United Nations system to assess, within their respective areas of competence, the progress made towards the establishment of the new international economic order, as well as to indicate the obstacles that impede its establishment, ... with a view to submitting comprehensive reports to the Assembly at its special session in 1980". The present report is submitted to the Commission on Transnational Corporations to assist it in its consideration of this request.

The report first (I) documents the approach of the programme for the new international economic order towards transnational corporations and relates it to the thrust of that programme, to bring about the structural changes that are needed to allow self-sustained development. It then (II) examines progress made in recent years in terms of changing patterns of interactions, in reference to transnational corporations, between the developed and the developing countries (IIA) and in terms of strengthening the capacity of developing host countries to deal with transnational corporations (IIB). In a concluding section (III), some tentative conclusions are drawn regarding the role of transnational corporations in the establishment of the new international economic order.

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## INTRODUCTION

1. In paragraph 3 of General Assembly resolution 33/198 of 29 January 1979, on preparations for the special session of the General Assembly of 1980, the General Assembly invited "the governing bodies of the organs and organizations concerned within the United Nations system to assess, within their respective areas of competence, the progress made towards the establishment of the new international economic order, as well as to indicate the obstacles that impede its establishment, ... with a view to submitting comprehensive reports to the Assembly at its special session in 1980". The present report is submitted to the Commission on Transnational Corporations to assist it in its consideration of this request. 1/

2. The texts that lay down the foundations of the new international economic order and that serve as the starting point of the present report include: (a) the Declaration and the Programme of Action on the Establishment of a New International Economic Order, (b) the Charter of Economic Rights and Duties of States, and (c) the resolution entitled "Development and international economic co-operation". 2/ The fundamental purpose 3/ of these documents, which constitute the programme for the new international economic order, is to redress the economic imbalance between developed and developing countries by creating international economic structures and relations that allow a more equitable sharing, between developed and developing countries, of the benefits of economic activities and the control over them. This purpose, in turn, implies increasing the individual and collective capacity of the developing countries to pursue their development

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1/ In preparing the present document, extensive use has been made, inter alia, of reports prepared by the Centre on Transnational Corporations for the Third General Conference of the United Nations Industrial Development Organization and the preparatory work carried out for the strategy for the third United Nations development decade in the framework of the ACC Task Force on Long-Term Development Objectives, the Committee for Development Planning, and the Preparatory Committee for the New International Development Strategy; see, respectively, "Transnational corporations and the industrialization of developing countries: Report prepared by the United Nations Centre on Transnational Corporations at the request of the Executive Director of UNIDO" (ID/CONF.4/14 of 6 December 1979), "The international development strategy and the transnational corporations" (March 1979), and "Transnational corporations and the long-term development objectives of developing countries: Paper prepared by the United Nations Centre on Transnational Corporations" (February 1979). Except where stated differently, the data used in this report are from these documents or from Transnational Corporations in World Development: A Re-examination (United Nations publication, Sales No. E.78.II.A.5). See also, Salient features of trends in investment and foreign participation (ST/CTC/14).

2/ Contained in General Assembly resolutions 3201 (S-VI) and 3202 (S-VI) of 1 May 1974, 3281 (XXIX) of 12 December 1974 and 3362 (S-VII) of 16 September 1975, respectively.

3/ See General Assembly resolution 3362 (S-VII), preamble.

in a self-sustained manner. <sup>4/</sup> The concept of self-reliance has therefore been used in the present report to assess the role of transnational corporations in the progress towards the establishment of the new international economic order.

3. Transnational corporations, with their capacity to mobilize financial resources and deploy specialized technological and managerial know-how, occupy an important place in the economic interactions between developed and developing countries, especially in the industrialization process of the latter. <sup>5/</sup> Their activities have a significant influence on the pace and pattern of the changes that are being sought. Part of the challenge of advancing the establishment of the new international economic order consists of devising ways and means through which the resources of transnational corporations can be harnessed to contribute to the development goals of the developing countries, consistent with the strengthening of their self-reliant capabilities. The over-all analysis of the progress, problems and prospects in this respect constitutes the subject matter of this document.

4. The present report first (I) documents the approach of the programme for the new international economic order towards transnational corporations and relates it to the thrust of that programme, namely, to bring about the structural changes that are needed to allow self-sustained development. It then (II) examines progress made in recent years in terms of changing patterns of interaction between the developing countries and the transnational corporations (IIA) and in terms of strengthening the capacity of developing countries to deal with transnational corporations (IIB). In the concluding section (III), some tentative conclusions are drawn regarding the role of transnational corporations in the establishment of the new international economic order.

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<sup>4/</sup> Ibid.

<sup>5/</sup> For extensive data on the role of transnational corporations in the world economy, see Transnational Corporations in World Development . . . .

I. TRANSNATIONAL CORPORATIONS AND THE PROGRAMME  
FOR THE NEW INTERNATIONAL ECONOMIC ORDER

5. The programme for the new international economic order states that resources of transnational corporations should be mobilized in support of the development objectives of developing countries. Accordingly, a set of provisions of the programme is directly or indirectly addressed to transnational corporations. However, recognizing that the goals of transnational corporations do not always coincide with those of host countries, another set of provisions of the programme focuses attention on the need for regulation and control over transnational corporations. This two-pronged approach of the programme is reflected in a number of references dealing with transnational corporations.

6. More specifically, the Programme of Action adopted by the General Assembly at its sixth special session, states, among the provisions contained in its section on monetary and financial measures (section II, subsection 2), that:

"All efforts should be made to take the following urgent measures to finance the development of developing countries and to meet the balance-of-payment crises in the developing world:

...

(e) Promotion of foreign investment, both public and private, from developed to developing countries in accordance with the needs and requirements in sectors of their economies and determined by the recipient countries". 6/

And, in its section dealing with industrialization, the Programme of Action continues (section III):

"All efforts should be made by the international community to take measures to encourage the industrialization of the developing countries, and to this end:

...

(b) The developed countries should encourage investors to finance industrial production projects, particularly export-oriented production, in developing countries, in agreement with the latter and within the context of their laws and regulations".

The industrialization section of the resolution adopted by the General Assembly at its seventh special session strongly echoes these statements when it provides that (section IV, paragraph 6):

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6/ The preceding paragraph (2 (d)) suggests that "Wherever possible" the developing countries should be exempted "from all ... capital outflow controls imposed by the developed countries".

/...

"Developed countries should, whenever possible, encourage their enterprises to participate in investment projects within the framework of the development plans and programmes of the developing countries which so desire; such participation should be carried out in accordance with the laws and regulations of the developing countries concerned".

7. Transnational corporations are thus expected to participate in the development process, and especially the industrial expansion, of the developing countries, provided that they act in accordance with the laws and regulations of the Governments of the host countries.

8. This encouragement, however, is balanced by a call for the control and supervision of transnational corporations and their activities. The Declaration of the sixth special session of the General Assembly, in fact, states that the right to control these corporations is one of the fundamental principles of the new order (para. 4):

"The new international economic order should be founded on full respect for the following principles:

...

(g) Regulation and supervision of the activities of transnational corporations by taking measures in the interest of the national economies of the countries where such transnational corporations operate on the basis of the full sovereignty of those countries".

9. Accordingly, the Programme of Action dedicates a whole section (section V) to "Regulation and control over the activities of transnational corporations" and requests that "all efforts should be made to formulate, adopt and implement an international code of conduct for transnational corporations" in order:

"(a) To prevent interference in the internal affairs of the countries where they operate and their collaboration with racist régimes and colonial administrations;

(b) To regulate their activities in host countries, to eliminate restrictive business practices and to conform to the national development plans and objectives of developing countries, and in this context facilitate, as necessary, the review and revision of previously concluded arrangements;

(c) To bring about assistance, transfer of technology and management skills to developing countries on equitable and favourable terms;

(d) To regulate the repatriation of the profits accruing from their operations, taking into account the legitimate interests of all parties concerned;

(e) To promote reinvestment of their profits in developing countries".

/...

In the same vein, the Charter of Economic Rights and Duties of States affirms (chap. II, art. 2, para. 2) that "each State has the right":

"(a) To regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities. No State shall be compelled to grant preferential treatment to foreign investment;

(b) To regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies. Transnational corporations shall not intervene in the internal affairs of a host State. Every State should, with full regard for its sovereign rights, co-operate with other States in the exercise of the right set forth in this subparagraph:

(c) To nationalize, expropriate or transfer ownership of foreign property, in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalizing State and by its tribunals, unless it is freely and mutually agreed by all States concerned that other peaceful means be sought on the basis of the sovereign equality of States and in accordance with the principle of free choice of means".

10. The last-quoted paragraph of the Charter places the issue of the control of transnational corporations in the context of the principle of permanent sovereignty over natural resources. This principle is also endorsed in the Declaration adopted by the General Assembly at its sixth special session, where it is listed among the founding principles of the new international economic order (para. 4 (e)):

"(e) Full permanent sovereignty of every State over its natural resources and all economic activities. In order to safeguard these resources, each State is entitled to exercise effective control over them and their exploitation with means suitable to its own situation, including the right to nationalization or transfer of ownership to its nationals, this right being an expression of the full permanent sovereignty of the State".

The Programme of Action provides furthermore, in a separate section, for "Assistance in the exercise of permanent sovereignty of States over natural resources". 7/

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7/ Section VIII reads as follows:

"All efforts should be made:

(a) To defeat attempts to prevent the free and effective exercise of the rights of every State to full and permanent sovereignty over its natural resources;

(b) To ensure that competent agencies of the United Nations system meet

/...

11. The importance accorded to transnational corporations (which also found its expression in a number of other documents related to the new international economic order), <sup>8/</sup> as well as denunciations of political interference by some of these corporations in the internal affairs of host countries, led, in 1974, to the establishment of the Commission and the Centre on Transnational Corporations to serve as the focal point within the United Nations system for the full range of issues relating to transnational corporations. <sup>9/</sup> The work programme of the Commission and the Centre reflects the approach of the programme towards transnational corporations: while it is recognized that transnational corporations can make a contribution to national developmental goals and world economic growth, efforts are also required to control and eliminate their negative effects. Accordingly, the Commission decided at its second session that "the formulation of a code of conduct should be assigned the highest priority" <sup>10/</sup> among its work areas. At the same time, information analysis, research, and technical advisory services were designed to further the understanding of the nature and the effects of transnational corporations and their operations and to contribute to a strengthening of the capacity of host countries to deal with these corporations.

12. While the provisions of the programme for the new international economic order take an approach towards transnational corporations that combines a harnessing of the capabilities of these corporations for the development task with efforts to control their undesirable effects, these provisions have also to be seen in the larger framework of the central thrust of the programme: to break the uneven patterns of international economic relations and development of the past, with the inequitable distribution of benefits and control associated with it, and to set in its place structures that not only allow a more equitable and efficient functioning of the international economic system as a whole, but also enhance, to a greater extent than in the past, the capacity of the developing countries for self-sustained development.

13. The pattern of international economic growth in the colonial era resulted from the interaction between, on the one hand, a dynamic centre that underwent (and which continues to undergo) profound scientific and technological changes (including the rise of the modern business enterprise) and, on the other hand, a periphery in which traditional methods of organization continued to prevail. That interaction contributed to an inequitable division of the benefits of the flows of trade and investment between the business enterprises and consumers of the

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(continued)

requests for assistance from developing countries in connexion with the operation of nationalized means of production".

<sup>8/</sup> See, for example, the Lima Declaration and Plan of Action on Industrial Development Co-operation, (A/10112, chap. IV).

<sup>9/</sup> Economic and Social Council resolution 1908 (LVII) of 2 August 1974 and 1913 (LVII) of 5 December 1974.

<sup>10/</sup> Official Records of the Economic and Social Council, Sixty-first Session, Supplement No. 5 (E/5782), para. 9.

/...



developed countries (which generally enjoyed the protection and support of their home Governments) and the economies of the less developed regions (which were mainly under colonial rule). At the same time, dualistic structures tended to develop in the hinterland into which the developed economies penetrated and an externalization of main stimuli of economic growth as well as an externalization of the locus of decision-making concerning major aspects of the peripheral economies tended to take place. As a result, the interaction failed to bring about a transformation of the developing economies that would have given them adequate indigenous impulses towards growth and structural change and, instead, contributed to dependency and a widening gap in welfare.

14. In more recent times, there has been a growing awareness that political independence is not always accompanied by economic independence, and some countries believe that the transnational corporations share the responsibility for continuing inequality in international economic relationships. The increasing recognition of the importance of transnational corporations in the world economy 11/ as well as reports about concrete cases of interference by these corporations in domestic affairs and about instances of undesirable business practices, led, in the context of the increased politicization of the development issues before and after the sixth special session of the General Assembly, to a broad-based movement to strengthen legal mechanisms applicable to transnational corporations on the national and international levels and to re-define their role in the development process. The passages cited from the resolutions of the General Assembly adopted at its sixth special session and from the Charter of Economic Rights and Duties of States reflect this concern.

15. This development, in turn, was embedded in the emergence of the concept of individual and collective self-reliance. The growing disenchantment of many developing countries with the results of the regional and international development efforts of the last two decades gave this concept increased relevance, first in the framework of the non-aligned movement, then in the framework of the Group of 77, and ultimately in the international community as a whole. 12/ The concept of

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11/ See Multinational Corporations in World Development (United Nations publication, Sales No. E.73.II.A.11), The Impact of Multinational Corporations on Development and on International Relations (United Nations publication, Sales No. E.74.II.A.5) and Summary of the Hearings before the Group of Eminent Persons to Study the Impact of Multinational Corporations on Development and on International Relations (United Nations publication, Sales No. E.74.II.A.9).

12/ The concept of individual and collective self-reliance was introduced in the international development discussions at the 1970 Preparatory Conference of Non-Aligned Countries and was subsequently endorsed at several meetings. See Odette Jankowitsch and Karl P. Sauvant, eds., The Third World without Superpowers: The Collected Documents of the Non-Aligned Countries (Dobbs Ferry, N.Y.: Oceana, 1978). The concept was also endorsed by the Group of 77. See Karl P. Sauvant, ed., The Third World without Superpowers, 2nd series, The Collected Documents of the Group of 77 (Dobbs Ferry, N.Y.: Oceana, 1980).

self-reliance is, of course, broader than the concepts of technical and economic co-operation 13/ in that it aims at strengthening autonomous capacities for goal-setting, decision-making and decision-implementation in all areas of a developing society. To break the structure of unequal international exchanges, self-reliance seeks to de-emphasize (within the framework of increasing global interdependence) the predominant reliance of developing countries on linkages with the developed countries in favour of a greater mobilization of indigenous resources (and those of other developing countries) and a greater selectivity in traditional linkages.

16. Furthermore, the concept encompasses efforts to strengthen the bargaining power of the developing countries, individually and as a group, vis-à-vis the developed countries and their institutions.

17. The concept of self-reliance also suggests a common approach to transnational corporations, 14/ both in terms of changing the patterns of interactions between host countries and transnational corporations as well as strengthening the capacity of the former to deal effectively with the latter. The self-reliance discussions therefore gave impetus to the forces that sought to define more clearly the role of transnational corporations, and they gave them a direction in which to proceed. It should be emphasized, however, that there is no inherent incompatibility between increased self-reliant development and enlisting the participation of transnational corporations. A Government that is clear in the definition of its needs and realistic in the evaluation of its own potential should be able to harness the activities of transnational corporations in conformity with national development goals and objectives.

18. In the case of southern Africa, progress towards the implementation of the programme for the new international economic order also requires, apart from political changes, the prevention of collaboration of transnational corporations with racist minority régimes in that area. In this context, the Commission on Transnational Corporations, at its second, third, fourth and fifth sessions, adopted four resolutions 15/ dealing with the activities of transnational

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13/ See, for instance, the "Arusha programme for collective self-reliance and framework for negotiations", adopted at Arusha in February 1979 by the Fourth Ministerial Meeting of the Group of 77 (TD/236): "Mindful ... that economic co-operation among developing countries is a key element in a collective self-reliance strategy ..." (emphasis added).

14/ Accordingly, the non-aligned countries pledged themselves, when endorsing the concept of self-reliance in their "Declaration on non-alignment and economic progress", adopted by the Third Conference of Heads of State or Government, "to adopt so far as practicable a common approach to problems and possibilities of investment of private capital in developing countries", p. 86.

15/ See Official Records of the Economic and Social Council, Sixty-first Session, Supplement No. 5 (E/5782); ibid., Sixty-third Session, Supplement No. 5 (E/5986); ibid., 1978, Supplement No. 12 (E/1978/52 and Corr.1-4) and ibid., 1979, Supplement No. 8 (E/1979/38/Rev.1).

corporations in southern Africa. Reports 16/ of the Centre on Transnational Corporations on this issue have shown that transnational corporations still play an important role in the economy of southern Africa and that some are involved in industries that are critical for maintaining or strengthening military capacities. The reports have also shown that, while some home countries have taken measures to discourage foreign direct investment in the area and some others have adopted voluntary codes focusing on employment practices, the role of transnational corporations does not seem to have diminished on the whole.

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16/ See Activities of Transnational Corporations in Southern Africa: Impact on Financial and Social Structures (United Nations publication, Sales No. E.78.II.A.6), "The Activities of transnational corporations in the industrial, mining and military sectors of southern Africa (E/C.10/51) and the supporting technical paper (United Nations publication, Sales No. E.80.II.A.3), and "Transnational corporations in the industrial, military and nuclear sectors of South Africa" (E/C.10/66).

## II. TRANSNATIONAL CORPORATIONS AND SELF-RELIANCE: PROGRESS AND PROBLEMS

A. Changing patterns of interaction

19. Although the programme for the new international economic order takes an integrated approach to development, it distinguishes, for analytical purposes, main dimensions of North-South relations in reference to which the provisions of the programme are formulated: finance for development, industrialization, trade and commodities, science and technology, and food and agriculture. Industrialization is the central objective towards which the reorganization of the other dimensions is geared. These areas are used in the following to structure the analysis of the role of transnational corporations in bringing about changes in the patterns of interaction between developed and developing countries. In so doing, only those provisions (which are summarized at the beginning of each subsection) are addressed that have implications for transnational corporations and hence are within the area of competence of the Commission and the Centre on Transnational Corporations.

1. Finance for development

20. The programme for the new international economic order envisages an expansion in the flows of foreign direct investment to developing countries. In the context of finance for development, the need to increase the flow of private resources to developing countries is reiterated. In addition, the programme points towards the need for developing countries to gain increased access to international capital markets on favourable terms.

21. Foreign direct investment, channelled mostly through transnational corporations, has constituted an important source of foreign finance for many developing countries. The annual flow of foreign direct investment (net) to developing countries from DAC countries has shown a continual increase during the 1970s. <sup>17/</sup> From an annual average of \$2.6 billion in 1967-1969 and \$3.7 billion in 1970, it rose to \$7.8 billion in 1976, \$9.5 billion in 1977 and \$11.4 billion in 1978. Since 1970 the flows have grown on average by 15 per cent annually in nominal terms and by 4 per cent in real terms - faster than Official Development Assistance (ODA), but considerably slower than non-concessional lending. It is estimated that the direct investment flows are about equally divided between the three sectors of manufacturing, petroleum and other extractive, and others, including the services sector. Despite the growth in the volume of foreign direct investment, its relative share in the flows of foreign finance to developing countries declined between 1970 and 1978 because of the sharp increase in private international bank lending to developing countries.

22. A striking feature of the flows of foreign finance to developing countries in the 1970s was the much larger growth of private international bank lending. This

<sup>17/</sup> The data in this section are from Development Co-operation Review, 1979 (Paris: OECD, 1979); Investing in Developing Countries (Paris: OECD, 1978), "Borrowing in international capital markets", (Washington, The World Bank, 1979), and Industry 2000: New perspectives. Collected Background Papers, vol. 1, International Financial Flows (Vienna: United Nations Industrial Development Organization, 1979).

took place mainly in the form of syndicated Euro-currency loans arranged by transnational banks. The total borrowing of developing countries in international capital markets in the form of foreign bonds, international bonds and Euro-currency credit in 1974 amounted to \$10.6 billion of which the share of Euro-currency credit was \$9.7 billion. By 1978, the total borrowing had risen to \$43.7 billion of which Euro-currency credit amounted to \$37.6 billion. A substantial part of those borrowings were for balance-of-payment support and rolling over of maturing debt. However, an estimated 40 per cent of the Euro-credit borrowing of the developing countries appears to have moved into the manufacturing and oil and natural gas sectors, as well as to industrial finance institutions, and utilized for industrial investment in the period 1976-1978. In terms of absolute values, therefore, this has emerged as a significant source of industrial finance for developing countries. It is, however, important to note that the bulk of the borrowing from international capital markets has been concentrated in a relatively small number of higher income developing countries.

23. The flow of foreign finance, both in the form of direct investment as well as of bank lending, has entailed increasing costs to developing countries. The servicing of the debt and the outflow of profits are placing an onerous burden on the developing countries. According to one assessment of the "reverse-cost" of the resource inflows, the estimated total outflow in 1976 amounted to \$49.3 billion (comprising \$25 billion in amortization, \$11.7 billion in interest and \$12.6 billion in profits), as compared to a total inflow of \$59 billion; in other words, the net transfer in that year was of the order of \$9.7 billion only. <sup>18/</sup> The debt-servicing burden of the developing countries has grown more rapidly than their debt mainly because of the increasing proportion of non-concessional flows with shorter maturities and higher interest rates. The problems of debt management and the adequacy of existing financial mechanisms and arrangements require continuing consideration at the international level in the context of recycling of much needed resources to developing countries, especially those in the low-income category.

24. Transnational corporation investments as well as international capital market operations have been characterized by a preference for developing countries with relatively high income levels. Thus, at the end of 1977, nearly 57 per cent of direct investment stock of transnational corporations was concentrated in 34 developing countries with a per capita income of over \$1,000, while another 18 per cent was distributed in 23 developing countries with a per capita income of over \$500. By contrast, 25 developing countries with a per capita income of less than \$200 had a stock of about 7 per cent only. Similarly, the flow of Euro-currency credit is limited to a relatively small number of higher-income developing countries with higher credit ratings. Thus, the share of the poorest countries in the flow of these resources has been extremely low.

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<sup>18/</sup> See World Industry Since 1960: Progress and prospects. Special issue of the Industrial Development Survey for the Third General Conference of UNIDO (United Nations publication, Sales No. E.79.II.B.3), p. 301.

25. In summary, the volume of resources flowing into developing countries - both in terms of foreign direct investment and through transnational bank lending - has increased substantially. However, as they are at market terms, their cost implications have been serious; the mounting debt-servicing problems of the developing countries are particularly noteworthy in this context. Furthermore, the distribution of flows has been uneven, with the poorest countries receiving a disproportionately low share of the total resources.

## 2. Industrialization

26. For most developing countries, industrialization remains an essential aspect of development. The restructuring of the international finance, commodity, trade, technology, and food and agriculture systems is meant to serve this purpose. Since transnational corporations are important actors in each of these individual dimensions of international economic relations, and since they possess a special ability to combine the activities carried out in each of them efficiently, transnational corporations also play an important role in the industrialization process of many developing countries. As the passages cited in section I indicate, this role has been explicitly recognized and encouraged by the programme for the new international economic order.

27. The considerations underlying the growing investment of transnational corporations in the manufacturing sector of developing countries usually include good prospects for the growth of demand, the protection of the positions of transnational corporations in particular markets, and the availability of suitable labour on advantageous terms. Additional factors in some cases have been special governmental incentives or concessions or the erection of import barriers designed to pre-empt domestic markets for local producers. A certain proportion of the manufacturing activities of transnational corporations consists of standard technology products, including non-durable consumer goods, in which advantage is taken of local preference for foreign brand-names, a preference which is cultivated or encouraged by intensive advertising and the use of special marketing techniques. <sup>19/</sup> Increasingly, however, especially the newly-industrialized countries offer a greater scope for the manufacture of high-technology products in the chemical, electronic and engineering industries, a development frequently encouraged by Governments through measures to raise the degree of local manufacture of various types of final products.

28. In some countries, foreign affiliates have come to account for substantial proportions of the domestic output of certain manufacturing and service industries, partly as a result of the increasing emphasis of a number of developing countries on transnational corporation investment in them. The extent of the involvement of these corporations is often particularly important in those countries in which domestic technological and industrial capacities are least developed and where investment has not been forthcoming from domestic enterprises to any appreciable extent.

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<sup>19/</sup> See, in this context, "Transnational corporations in advertising: A summary" (E/C.10/54), and the supporting technical paper, Transnational corporations in advertising: Technical paper (United Nations publication, Sales No. E.79.II.A.2).

29. A fairly common feature of transnational corporation manufacture has been a high degree of dependence on supply of intermediate products from parent corporations and other foreign affiliates. A part of this dependence follows from the non-availability of requisite inputs in the developing countries. In engineering-goods production, including consumer durables and capital goods, the extent of domestic content, or value-added, continues to be relatively small for most products and transnational corporation investments have often been limited to the final stages of assembly or semi-assembly. Similar dependence on foreign intermediate products and inputs prevails in other manufacturing sectors such as drugs and pharmaceuticals, 20/ chemicals and petrochemicals, and processing industries.

30. This feature may be partly a result of a divergence in approach between the Governments of host countries and transnational corporations in respect of the structure of production and associated investments, both in resource-based industries and in other manufacturing activities. Some of the issues involved relate principally to the role sometimes envisaged by transnational corporations for their affiliates. In the interest of maximizing global efficiency, transnational corporations often give priority to the integration of their affiliates into their international production networks, while host countries, in the interest of maximizing the national share of the benefits, usually prefer a close integration of the same affiliates into the local economy. To achieve greater forward and backward linkages (to the extent that these are technically and economically viable) and to increase the local content of transnational corporation production, some host countries have employed a variety of incentives and regulations. 21/

31. The possible divergence of interests regarding the structure of production is one of the main reasons that host countries, especially those with growing domestic industrial and technological capabilities, increasingly seek more effective participation in and control over foreign affiliates. Apart from attaining the greatest possible integration of these affiliates into the domestic economy, autonomy in operations is also intended to ensure that the possibility for undesirable financial practices, particularly in intra-company transactions (for example, transfer pricing), are minimized. Accordingly, a number of developing countries have adopted policies designed to bring about greater domestic participation in equity and decision-making.

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20/ See, in this context, "Transnational corporations and the pharmaceutical industry: Introduction and summary of findings" (E/C.10/53 and Corr.1) and the supporting technical paper, Transnational corporations and the pharmaceutical industry (United Nations publication, Sales No. E.79.II.A.3).

21/ See, in this context, "Transnational corporation linkages in developing countries: The case of backward linkages via subcontracting" (E/C.10/71) and the supporting technical paper (ST/CTC/17).

32. Traditionally, transnational corporations have preferred to operate through wholly or majority owned affiliates in order to exercise better control over their activities, including the selection of sources of inputs and the marketing of outputs, and to retain a relatively greater share of the profits. Decisions regarding investment and production tended to be centralized, with affiliates functioning as components of a global manufacturing operation rather than as independent enterprises. Although most foreign affiliates continue to remain majority or wholly foreign-owned, there has been a change in the patterns of ownership during the 1970s, largely in response to policies of host developing countries. The growing local participation in the petroleum, mineral and agricultural sectors of developing countries will be discussed separately below. In the manufacturing sector, the trend in new investments is increasingly towards the establishment of joint ventures. This has been made possible by the growing availability and active participation of national partners.

33. An important alternative to wholly-owned and joint ventures is the acquisition by national enterprises of foreign technology and know-how and the utilization of foreign technological services under contractual arrangements. <sup>22/</sup> The growing importance of such arrangements is reflected in the fact that payments of technology fees and royalties by developing countries are projected to increase from about \$1 billion in 1975 to \$6 billion in 1985. <sup>23/</sup> Particularly in sectors of swift technological change such as drugs, scientific instruments and electronics, up-to-date technology may be obtainable from transnational corporations only. Moreover, even where a particular technology is available from other sources, transnational corporations may offer the advantage of providing a package effectively combining capital investment, technological processes, and services.

34. However, domestic participation, even in the form of majority national holdings, may not in itself ensure the desired degree of autonomy for foreign affiliates. In the case of majority foreign holdings, ultimate control generally rests with the transnational corporation, though national guidelines regarding such issues as local borrowing, employment of foreign nationals, purchase of local inputs and materials, and the like may be enforced through specific policy instruments. But even in the case of minority holdings of transnational corporations, effective control may be exercised by the corporation if national shareholding is dispersed; if the holdings of the principal domestic partner are smaller than those of the transnational corporation, or if special provisions are applied to separate effective control by management from participation in equity. Finally, even in the absence of any equity holdings, of contractual provisions, or of the control of transnational corporations of technology, external sources of supply or downstream activities located abroad can vest de facto control in a given transnational corporation. Thus, while the concepts of joint ventures and non-equity forms of

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<sup>22/</sup> The latter is especially the case in service industries; see, for instance, "Transnational corporations in international tourism" (E/C.10/67) and the supporting technical paper (ST/CTC/18).

<sup>23/</sup> See R. K. D. Singh, "Selection and acquisition of foreign technology" (UNCTC/RTN/8).



participation have become increasingly popular, and the need for domestic participation is generally accepted by transnational corporations, it has to be recognized that greater equity participation by host countries and even the switch to non-equity forms are not always synonymous with increased national control.

35. Considerations of the above kind may also be important for host countries that want to assure that they receive an equitable share of the income generated by transnational corporations within their territories. A growing number of developing countries are becoming aware of the interaction between the various financial factors involved in the overall assessment of financial costs and benefits of a particular foreign investment project, such as tax, tariff and other incentives, local borrowing facilities, locally declared profits, royalties, commissions and other service incomes, the pricing of intra-firm transactions, the distribution of income within joint ventures, and the levying of various forms of taxation on income arising. Governments are therefore increasingly conscious of the need to avoid inconsistent policies that would result in gains in revenues or other benefits under one heading being offset by unforeseen or excessive losses under another.

36. In summary, transnational corporations have the potential to perform a valuable function in the expansion and diversification of industrial production through the mobilization of financial resources, the development of export markets, the provision of access to technology and innovation, the direct location of production facilities in developing countries, and so forth. In all of these areas, many transnational corporations have made a contribution and many have shown a willingness to adapt, to a certain degree, to the requirements of Governments of host countries. At the same time, the pattern of industrialization associated with the corporate strategies of transnational corporations frequently entails greater dependency on access to world markets and on inputs from abroad.

### 3. Commodities and trade

37. In this section, the programme for the new international economic order aims at, inter alia, securing stable, remunerative and equitable prices for commodities of export interest to developing countries and greater participation of the developing countries in the processing of raw materials and the production of finished manufactured goods as well as their transport, marketing and distribution. In this context, the programme also affirms the principle of permanent sovereignty over natural resources (including the right to nationalization) and the importance of strengthening the role of producers' associations. Since many of the commodity-related measures are undertaken in the framework of interdependence, an acceleration and diversification of the exports of the developing countries is being sought and obstacles impeding the attainment of these objectives, including restrictive business practices, are to be removed.

38. The commodity part of the programme for the new international economic order is of particular relevance to transnational corporations because, historically, the investments of these corporations in developing countries were concentrated in the extractive and primary commodity sectors, particularly petroleum, non-fuel

minerals <sup>24/</sup> and plantation industries. It appears that changes in the pattern of ownership and the reactions of transnational corporations to their perception of unstable investment conditions (particularly in the mineral sector), as well as cyclical factors, have led to a considerable decline in transnational corporation investments in certain minerals. This decline has continued, despite considerable new investments in the petroleum sector in some developing countries. New transnational corporation investments in other primary commodities and plantation industries have also shown a declining trend, although former investments continue to afford a major role to transnational corporations in countries where government policies have not significantly affected the structure of foreign ownership and control.

39. In petroleum and certain non-fuel minerals, the integrated nature of transnational corporation activities and the concentration of control by a few corporations over various stages of production, processing and marketing has been a principal feature of transnational corporation operations. Eight major transnational corporations accounted for 80 per cent of the oil production of the market economies in 1963; the percentage fell to 30 per cent by 1975, with national enterprises in OPEC countries assuming the role of major producers. Production-sharing and long-term purchase agreements, however, enabled transnational corporations to retain their access to oil produced in OPEC countries. The major oil companies accounted for 47 per cent of refining activities in 1975 and marketed 47 per cent of petroleum products. They still have a major role in these areas, though their share in refining and marketing is decreasing. Some of the major oil companies have recently made major investments in non-fuel minerals, including copper, bauxite and nickel. Another example of declining transnational corporation investments is provided by copper. In copper, the share of production of the seven principal transnational corporations fell from 70 per cent in 1948 to 25 per cent in 1978. In the processing stages, however, the share of copper-producing developing countries continues to be low: while their share of all copper mined in the market economies was 39 per cent in 1976, their share in refining was 20 per cent and in fabricated copper products only 6 per cent.

40. In the export-oriented plantation and food commodities, once dominated by transnational corporations, ownership patterns have also changed in the last two decades. <sup>25/</sup> Increased domestic ownership and control is most notable in sugar, meats and vegetable oils where local consumption has markedly increased and exports play a diminished role. But transnational corporations are still highly influential in export plantation crops such as bananas and tea. Even in these lines, however,

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<sup>24/</sup> For an examination of trends in transnational corporation operations in petroleum and minerals, see "Transnational corporations and the processing of raw materials: Impact on developing countries. Report by the United Nations Centre on Transnational Corporations" (United Nations Industrial Development Organization, ID/B.209, February 1978), and forthcoming reports of the Centre on Transnational Corporations on the role of transnational corporations in the aluminium and copper industries.

<sup>25/</sup> See, in this context, "Transnational corporations in food and beverage processing" (E/C.10/70) and the supporting technical paper ST/CTC/19.

national enterprises have grown in importance in response to both policies of host countries and changes in procurement and investment strategies of the leading transnational corporations. At the same time, there has been little change in the effective control by transnational corporations of international marketing and trading for most of these commodities. Transnational corporation investments in fisheries in developing countries increased generally in the 1960s and 1970s. During the latter period, and especially when the coastal States strengthened control over bordering economic zones, the terms and conditions under which these investments were made improved substantially.

41. Although the share of the developing countries in downstream activities is increasing only slowly, the data show that the role of transnational corporations at the raw-material level has undergone significant changes. The pattern of involvement of transnational corporations at that level is now increasingly characterized by minority ownership or non-equity interest, including contractual relationship (such as long-term purchasing agreements) with the developing countries. In some sectors, like petroleum, in fact, foreign majority ownership is now the exception rather than the rule - a reversal of the situation as it prevailed during the first years of the 1970s.

42. The changes in ownership patterns were paralleled, at least for a number of commodity-exporting countries, by substantial increases in their share in the immediate financial benefits associated with the utilization of raw materials. While petroleum remained an exception as to both the magnitude of additional revenues accruing to the exporting countries as well as the ability of countries to protect their gains, a number of other raw materials also registered substantial gains, for example, bauxite. The persisting volatility of the commodity markets (which also had repercussions on the bargaining power of Governments of host countries) underlines, however, the continuing need for broader stabilizing intergovernmental measures.

43. These changes reflect, first of all, an increased desire on the part of host countries to assume ownership and control of their natural resources and especially the improved bargaining position of the oil-producing countries. Through the application of the principle of permanent sovereignty over natural resources, the developing countries established greater control over their commodity sector. Some producers' associations played an important role in improving the bargaining position of the raw material exporting countries, thereby achieving better terms and conditions; other producers' associations were, however, less successful. <sup>26/</sup> A wave of nationalizations and renegotiations of contracts also led to improved terms and conditions <sup>27/</sup> and, in many instances, established the pre-condition for a greater integration of the production of natural resources into the local economy.

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<sup>26/</sup> See, for example, Helge Hveem, The Political Economy of Third World Producer Associations (Oslo: Universitetsforlaget, 1978).

<sup>27/</sup> For data and a discussion, see Transnational corporations in world development ..., and Samuel K. B. Asante, "Restructuring transnational mineral agreements", American Journal of International Law, vol. 73, No. 3 (July 1979), pp. 335-371.

44. These efforts were facilitated by the increasing availability of technology and capital from alternative sources (which include, increasingly, the socialist countries and often take the form of tripartite ventures), as a result of which it has become easier for state-owned and local private corporations in developing countries to enter into direct competition with established transnational corporations.

45. The developing countries, however, still face major obstacles, mainly due to restricted market outlets because of the vertically-integrated structure of most resource-based industries. Since key firms in a number of industries tend to control every stage in the exploration-to-consumer chain (for instance in the bauxite-aluminium industry), a relatively small proportion of raw and processed minerals is traded on the open market. Although vertical integration has been modified by the participation of producing countries in ownership at the extractive stage, developing countries are, on the whole, still quite dependent on transnational corporations for access to markets in developed countries. Developing countries also rely on transnational corporations for access to more advanced technology, especially technology utilized in off-shore exploration activities. Although the equity stake of transnational corporations has decreased considerably in the raw materials sector, their role as suppliers of markets and finance as well as technology and management capabilities is still significant in most developing countries. 28/

46. Additional factors impede an increasing participation of host developing countries in downstream activities in general and processing in particular. Although, apart from the availability of raw materials, several cost factors - such as labour and transport costs and in some cases energy costs - often tend to favour a greater degree of mineral processing and downstream industries in developing countries, most transnational corporations are committed to existing large-scale downstream facilities in their home markets or other large consumption centres. From the standpoint of transnational corporations, such a distribution of processing facilities may offer the highest rate of return, especially where large amounts of capital have been sunk in processing plants. In that respect, medium-term corporate goals may not always coincide with the long-term policy objectives of those developing countries wishing to increase the local value-added of their natural resource sector.

47. Increasing processing and the expansion of production of finished manufactured goods also requires substantial changes in the international trade system. The prevailing tariff structure in most developed countries, which involves higher duties on processed than on unprocessed goods, places developing countries at a disadvantage. The elimination of such escalation through a reduction of duties on processed goods is therefore a key element in any international development strategy. This, however, may involve conflict with production and employment objectives in a number of developed countries, where protectionist pressures have recently been much in evidence.

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28/ This decline in majority ownership is not necessarily disadvantageous to transnational corporations, to the extent that they can maintain earnings. Because the capital involvement of transnational corporations is lessened, their risk is also reduced. At the same time, transnational corporations can influence management policies through control over downstream activities and marketing.

48. In summary, the progress made in the area of natural resources and trade has been selective, manifesting itself in particular in the petroleum sector and in the newly-industrialized countries. How far, outside the petroleum sector, the substantial changes in ownership patterns of transnational corporation affiliates in the natural resource industries have also resulted in corresponding changes in control still remains to be seen; it appears that in many instances equity control has merely been replaced by other forms of control and that even where domestic control is genuine, it is restrained by the international structure of a given industry. It also remains to be seen to what extent the export-oriented development strategy of the newly-industrialized countries and its reliance on transnational corporations can be emulated on a similarly broad scale by other developing countries. In the face of growing protectionism, limited markets, vested corporate interests in existing production facilities, the interests in maintaining a cascading tariff structure, and consideration of political risk, increased efforts are required to keep this particular growth-path open and to achieve a mutually satisfactory reconciliation of all objectives involved.

#### 4. Science and technology

49. The science and technology provisions of the programme for the new international economic order aim at facilitating access to technology, generating a greater flow of appropriate technology to developing countries, at reasonable terms and conditions, and at assisting these countries in rapidly developing technological capabilities for the absorption, adaptation and generation of technology. An international code of conduct for the transfer of technology is to set the framework for efforts in this direction, including the establishment of indigenous research and development capacities.

50. The subsidiaries of transnational corporations have in the past constituted the principal channel for the inflow of foreign technology to developing countries. But with the growing emphasis in developing countries on domestic technological development, joint ventures with host-country majority participation and contractual arrangements for the acquisition of technology and services are assuming much greater significance, although, in many instances, the supplying (and even controlling) partner remains a transnational corporation. While this has led to a considerable diffusion of technological skills, it also has resulted in dependence on foreign technology, the import of capital goods and intermediate products and components, and the use of foreign services. Many countries have, therefore, undertaken efforts to ensure a better consistency of technology inflows through transnational corporations with host-country policies relating to domestic technological and industrial development. Such policies require an increasing use of domestic supplies and capabilities, the regulation of the terms and conditions under which technology is being made available, and the development of absorptive and innovative capacities in domestic enterprises.

51. The selection of suitable technology has been found to be of particular importance. There is a growing perception that technology tends to be developed by transnational corporations in response to the factor endowments and income levels of the industrialized countries and hence is not always appropriate to the conditions in developing countries and that such technology is also generally

geared to production of goods for consumption by a small section of the population. Many countries that do not wish to import inappropriate technologies and wish to avoid technological over-dependence have found it necessary to set guiding parameters for technology imports in certain branches. The achievement of self-reliant capabilities in technology does not, of course, mean that transnational corporation involvement has to be ruled out. The development of such capabilities may well be promoted with the assistance of transnational corporations, provided that a genuine transfer, absorption and adaptation of technology is ensured, and the establishment of local research and development capacities is not impeded.

52. Some countries have found it useful to "unpackage" technology by separating it from other elements of foreign investment such as finance, management and marketing which - although usually offered for sale as a bundle - may be bought separately. The objective of such policies is to take advantage of competitive sources of supply, including available domestic sources. If successful, and not accompanied by losses in efficiency, such measures may not only represent a saving in costs and in foreign exchange but may also foster local capabilities for supplying financial, managerial and marketing services, for manufacturing equipment and components required, and for strengthening national know-how and consultancy services.

53. Opportunities for unpackaging may be limited in sectors where a transnational corporation can ensure that its technology is used only by an affiliate under its control or is sold only in the form of a complete system, and not as separate components. Similarly, where foreign engineering contractors with the skills to combine various inputs are themselves dependent on the technology supplier, the scope to unpackage may be limited or lacking; in that event, much depends on the technical and managerial expertise and contracting skills available in the host country. Some countries have, accordingly, emphasized the development of domestic capabilities in consultancy services.

54. A number of developing countries have prescribed guidelines regarding conditions imposed by technology suppliers or licensors and have sought in various ways to ensure that the price paid for technology is reasonable. In addition, regulatory or screening mechanisms have been set up for the import of technology. The policy approach adopted varies from country to country and ranges from the setting of general guidelines to case-by-case scrutiny of individual contracts. Successful intervention also depends on the host country's bargaining power which, in turn, hinges, inter alia, on the size and potential of its market.

55. One of the objectives of regulating foreign technology is to avoid undue technological dependence on transnational corporations and to develop the technological capacity of domestic enterprises as rapidly as possible. This is particularly important because the research and development activities of most transnational corporations are centralized in their home countries, in which cases foreign affiliates have largely been limited to the adaptation of products to local tastes and conditions. Regulation is therefore no substitute for the efforts of domestic enterprises to absorb technology and know-how, to keep abreast of innovations in their respective fields, and to develop their own research and development capabilities. The programme for the new international economic order

emphasizes therefore the need for financial incentives and programmes at the national level, supplemented by international assistance, for building the science and technology potential of developing countries; a number of efforts have already been initiated in this direction.

56. In summary, there has been considerable progress in recognizing the importance of the technology factor for the development process and many countries have established legal frameworks to deal with this issue. But since the importance of transnational corporations in research and development is overwhelming and the scientific-technological infrastructure (including research and development capacities) of most developing countries remains weak, the future role of transnational corporations in this field will continue to be significant. This holds both in respect of firm-specific technologies and in providing access to technological innovations, together with managerial and marketing techniques - all of which are necessary to compete in international markets.

#### 5. Food and agriculture

57. The solution to world food problems, the programme for the new international economic order states, lies primarily in achieving rapid increases in food production in the developing countries. At the same time, the agricultural sector remains an important source of foreign exchange for many developing countries; increased market opportunities for agricultural exports are therefore sought.

58. As indicated earlier, foreign investors have traditionally been involved in export-oriented plantation commodities. Because of their changing role in these commodities, the contribution of transnational corporations to increased agricultural exports has been mixed. In some industries, such as fish, fruits and vegetables, over-all exports (and the share of transnational corporations in them) have increased; in other industries, especially those in which, as reported earlier, national capacities have been established, such as meats and sugar, their contribution has declined.

59. In the last two decades, transnational corporations have also expanded into the production, processing and marketing of food for national markets. But this involvement has not been directed towards the local production of basic foods for mass consumption. Rather, it has focused mainly on building agricultural forward and backward linkages, on foods of limited nutritional contribution or it has been directed towards specialized markets, and products with a high import content. 29/

60. Transnational corporation producers of agricultural inputs, for example, chemicals and pharmaceuticals, fertilizers, tractors, genetic stock, have sharply expanded their local processing and marketing activities (albeit frequently with a strong import component) to build on the growing demand for improved technologies. Although competition from state and private national firms is increasing in several of the larger developing countries, large-scale transnational corporations are

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29/ See "Transnational corporations in food and beverage processing ...".

still dominant in these industries. Transnational corporation production involvement in the food-processing industries has increased as well. Major transnational corporations, especially those engaged in the processing of fruit, vegetables and poultry, are often supplied by local farmers operating under production contracts.

61. Much higher transnational corporation investment is found in the food-processing industry itself. Since the early 1950s, all but a few of the leading producers of branded foods have extended their processing and marketing into developing countries, a trend that has accelerated in recent years. Their major interests have been in highly promoted products (for example, soft drinks, beer, crackers, breakfast cereals, confectioneries, canned and dried soups, fruit and vegetables).

62. Significant transnational corporation growth has also taken place in a number of products of wide popular consumption. But in many of these cases, expansion is not based on local production but rather, relies heavily on imported raw materials, especially milk, wheat, corn, and feed grains.

63. In summary, transnational corporations continue to make a contribution to the export of agricultural products. Where they increased their activities in the food and food-related sectors, they may not always have done this in line with the priorities of host countries. But their role in providing agricultural inputs has undoubtedly contributed to increased agricultural capabilities, including the production of staple foods.

64. The preceding record of developments in the main areas of relations between developed and developing countries indicates that while interactions are changing - and the position of some developing countries has clearly improved - it is still too early to assess whether they have changed sufficiently, both in terms of volume and direction, to begin to modify appreciably the over-all structures of North-South relations. It therefore becomes all the more important that the detectable positive trends be encouraged and accelerated. This, in turn, requires that the second dimension of self-reliance receive proper attention, that is, that the capacity of the developing countries to deal with transnational corporations be strengthened. This issue is discussed in the following subsection.

B. Strengthening the capacity of developing countries  
to deal with transnational corporations

65. Many developing countries that desire to change their patterns of external interactions have found it necessary to improve their position from which they deal



with transnational corporations. 30/ First, this involves the strengthening of screening, regulatory, monitoring, and incentives frameworks to prevent, as far as possible, potential negative effects associated with the activities of transnational corporations as well as to channel these activities into areas of particular interest to host countries. Second, it is necessary to strengthen the capacities of host countries to bargain with transnational corporations and to ensure that the results of the bargaining are implemented properly.

1. Strengthening screening, regulatory, monitoring, and incentives frameworks

(a) National action

66. The last decade has witnessed a considerable expansion of regulatory efforts regarding transnational corporations at the national and international levels. 31/ The areas that have become the subject of regulation have been extended and the regulations themselves have become more elaborate, most notably concerning technology, sectoral limitations for foreign direct investment and ownership. Most foreign direct investment legislation deals now with such questions as the administration of foreign direct investment (including co-ordination, evaluation and registration), questions pertaining to the establishment of foreign affiliates (including criteria of selection, incentive schemes and terms of establishment), investment guarantees (including concerning nationalization, compensation and dispute settlement), ownership and managerial control, finance (including debt financing and repatriation), corporate taxation and income allocation, technology transfer (including the administration of technology transfer, and screening outlines), employment, competition, and information and monitoring (including supervision and disclosure).

67. In addition, a number of countries have given special attention to particular aspects of the legal framework for foreign direct investment. Thus, as pointed out earlier, special institutions have been set up in a number of developing countries to regulate the transfer of technology, either in conjunction with foreign investment or as a separate activity. 32/ In some countries, this function is

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30/ See, in this context, "Strengthening the negotiating capacity of developing countries: Report on a round table convened by the Centre on Transnational Corporations" (E/C.10/50) and Measures strengthening the negotiation capacity of Governments in their relations with transnational corporations: Technology transfer through transnational corporations. Technical paper (United Nations publication, Sales No. E.79.II.A.6).

31/ National legislation and regulations relating to transnational corporations (United Nations publication, Sales No. E.78.II.A.3), "Transnational corporations: Material relevant to the formulation of a code of conduct" (E/C.10/18 and Corr.1), and International Centre for Settlement of Investment Disputes, Investment Laws of the World (Dobbs Ferry, N.Y.: Oceana, various years).

32/ This is, for instance, one of the outstanding features of the foreign direct investment régime adopted by the Andean Common Market; see decision No. 24 adopted by the Commission of the Cartagena Agreement, "Common system of treatment for foreign capital and on trademarks, patents, licenses and royalties" (as amended), Cartagena, 31 December 1969.

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performed by government departments while in others semi-autonomous institutions have been set up. Control measures for the acquisition of foreign technology have been taken especially to ensure that foreign technology flow takes place in identified sectors, is appropriate to domestic factor conditions, is consistent with and complementary to domestic technological development, and is acquired on acceptable terms and conditions. Guidelines concerning terms and conditions, which have often received special attention, deal not only with restrictive provisions such as tie-in clauses, territorial sales restrictions, grant-backs, and so forth, but also with the duration of agreements, principles for computation of royalties and fees, use of patents, trademarks and trade secrets, training, the use of domestic inputs, including technical services, and other contractual provisions. While an adequate evaluation of the success of these institutions has yet to be made, indications are that they have contributed significantly to the improvement of the terms and conditions of technology contracts.

68. It is also common practice for many Governments to reserve certain production and service sectors for domestic enterprises. These may include such strategic industries as certain resource-based industries, particularly petroleum and certain minerals and related downstream activities; electric-power generation and distribution; and other basic industries and services. In addition, protection may be given to domestic industrial enterprises against takeovers by transnational corporations and even against competition from foreign affiliates. This may be particularly relevant in the case of medium- and small-scale manufacturing activities which have considerable potential for growth and where transnational corporation investments and technologies may not be necessary or even appropriate. In some countries, investment by transnational corporation affiliates in the production of certain types of luxury consumer goods is discouraged for social reasons and to avoid the distortion of growth priorities.

69. Screening and monitoring is another area that has received considerable attention and a number of Governments have set up separate committees to advise them in these matters. Some countries apply relatively complex criteria to the screening and monitoring of investments by transnational corporations, including an evaluation of the relationship to domestic priorities, the suitability and terms of technology inflows, the pattern of employment and training, the utilization of domestic inputs, the export potential, the impact on domestic enterprise in related fields, the expected profitability and outflow of dividends, fees and royalties, and the development of local research and development capabilities.

70. Some Governments go beyond the adoption of rules of the above type and positively encourage transnational corporations to participate in particular sectors or projects. The identification of needs, which is essentially an exercise in national industrial planning, may range from the setting of indicative priorities to the elaboration of detailed sectoral programmes defining physical targets and investment requirements. These constitute a framework for the development of specific industries in accordance with an over-all industrial strategy and facilitate the determination of the respective roles of domestic and foreign investment and technology in each sector. They also provide the basis for consciously directed efforts to achieve a suitable combination of foreign and domestic enterprises, instead of reacting passively to initiatives of transnational corporations.

71. Countries with limited industrial capacity are by no means precluded from the exercise of such selectivity, even though they may not be in a position to achieve close complementarity between the domestic and the foreign sectors. The definition of priorities and the drawing up of sectoral programmes are feasible for countries at all levels of development and may indicate to transnational corporations the areas in which their activities are welcome. That does not, of course, ensure that investment by one or more transnational corporation will actually be forthcoming in these sectors, particularly if the level of income of a country is low and the opportunities for growth are limited. The question is then to determine what additional inducements may be needed and whether the associated costs can be justified in the light of prospective benefits. Countries that prefer to avoid equity investment by transnational corporations have nevertheless enlisted the management, technological and other services of transnational corporations on a contractual basis, the capital being supplied from other resources available to the government or the private sector.

(b) International action

72. Efforts at the national level to regulate the activities of transnational corporations can be significantly underpinned by international action. In fact, the global nature of transnational corporation operations necessitates a comprehensive programme at the international level, that is, the development of international norms and guidelines, a need that has been recognized in a number of fora, both within and outside of the United Nations. One of the most important efforts outside the United Nations is the "Declaration on International Investment and Multinational Enterprises", adopted by the members of the Organisation for Economic Co-operation and Development in June 1976. It consists of the "Guidelines for multinational enterprises" and decisions on "Inter-governmental consultation procedures on the guidelines for multinational enterprises", "National treatment", and "International investment incentives and disincentives". <sup>33/</sup> The guidelines, which were revised and further strengthened in 1979, <sup>34/</sup> constitute the first set of international rules addressed to transnational corporations and they reflect the recognition of the major home countries that international action is necessary in this field.

73. In addition, a number of instruments dealing with specific aspects of the activities of transnational corporations have been negotiated or are under negotiation in the framework of the United Nations system. Foremost among them is the "Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy", which was adopted by the International Labour Organisation in November 1977. As the title indicates, the Declaration deals with employment and labour matters and it invites Governments of States members of the ILO, the employers' and workers' organizations concerned and the transnational corporations operating in their territories to observe the principles embodied therein. Still

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<sup>33/</sup> OECD, International Investment and Multinational Enterprises (Paris: OECD, 1976).

<sup>34/</sup> OECD, International Investment and Multinational Enterprises: Review of the 1976 Declaration and Decisions (Paris: OECD, 1979).

under negotiation, but nearing completion, are, within the framework of the United Nations Conference on Trade and Development (UNCTAD) codes of conduct on transfer of technology and on restrictive business practices. 35/ An "International Agreement to Prevent and Eliminate Illicit Payments in Connexion with International Commercial Transactions" is being negotiated under the aegis of the Economic and Social Council. 36/ Moreover, the Economic and Social Council has set up an Ad Hoc Intergovernmental Working Group to discuss international standards of accounting and reporting. 37/ While the coverage of some of these instruments extends beyond transnational corporations, they are, in all instances, among the most important addressees and they, together with trade unions, have also an important role to play in their implementation.

74. A comprehensive endeavour is being undertaken by the United Nations Commission on Transnational Corporations. As indicated earlier, the Commission is charged with negotiating a code of conduct which is expected to contain comprehensive and generally acceptable standards regarding the behaviour of transnational corporations and the treatment of transnational corporations by the Governments of home and host countries. 38/ These standards would require transnational corporations, inter alia, to respect national sovereignty, adhere to economic and social objectives, respect human rights, and abstain from interference in internal political affairs and intergovernmental relations. In addition to these general principles, specific standards would deal with the behaviour of transnational corporations regarding ownership and control, balance of payments and financing, transfer pricing, consumer and environmental protection. In the matter of employment and labour, the standards would refer to the ILO Tripartite Declaration

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35/ See "Draft international code of conduct on the transfer of technology as of 16 November 1979", (UNCTAD, TD/CODE TOT/20 of 5 December 1979), and "Draft set of multilaterally agreed equitable principles and rules for the control of restrictive business practices having adverse effects on international trade, particularly that of developing countries, and on the economic development of these countries" (UNCTAD, TD/RBP/CONF/1 of 26 June 1979).

36/ See "Report of the Committee on an International Agreement on Illicit Payments on its first and second sessions" (E/1979/104 of 25 May 1979).

37/ See "Interim report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting" (E/C.10/64). See also Technical Papers: International Standards of Accounting and Reporting for Transnational Corporations (United Nations publication, Sales No. E.77.II.A.15), and International Standards of Accounting and Reporting for Transnational Corporations: Report of the Secretary-General and Report of the Group of Experts on International Standards of Accounting and Reporting (United Nations publication, Sales No. E.77.II.A.17).

38/ See "Report of the Intergovernmental Working Group on a Code of Conduct on its eighth, ninth and tenth sessions" (E/C.10/62). See also Transnational corporations: Issues involved in the formulation of a code of conduct (United Nations publication, Sales No. E.77.II.A.5).

cited above, while on the issues of transfer of technology and restrictive business practices, the Commission's Working Group on a Code of Conduct is awaiting further developments in UNCTAD. The Working Group is also developing standards regarding disclosure of information by transnational corporations to the public, Governments and trade unions and other representatives of employees. With respect to the treatment of transnational corporations by Governments, the Code can be expected to set out appropriate norms in such areas as nationalization and compensation, jurisdiction, non-discrimination and national treatment. Although the legal character of the Code is still under discussion, the negotiating Governments have expressed their determination that the resulting instrument should be effective. This has a bearing on the modalities for the application of the Code: there is increasing recognition that the effectiveness of the Code will depend on the extent to which all Governments undertake a commitment towards its application at the national and international levels, and particularly towards the establishment of an international implementation machinery, including measures for intergovernmental co-operation. A system of periodic reviews of the application of the Code and of consultations among Governments for all issues related to transnational corporations could contribute to the resolution of difficulties and to the maintenance of the consistency of the rules while, at the same time, permitting a degree of evolution of these rules. 39/

75. The strengthening of the legal framework of host countries in reference to transnational corporations is also an important objective of this work. Progress towards it can be achieved by establishing generally acceptable rules which can provide a yardstick to evaluate the performance of transnational corporations and which can serve as an inspiration for national legislation.

76. Regardless of whether the purpose of a given instrument is primarily to prevent negative effects or to channel foreign direct investment into desired directions, and regardless of whether the level of control and encouragement is national or international, it has been found important that the legal and regulatory frameworks are kept reasonably clear and stable. Reasonable stability does not, of course, mean an indefinite freezing of laws and rules, rather a conscious effort to avoid abrupt discontinuities to the extent feasible. 40/

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39/ See "Transnational corporations: Code of conduct. Formulations by the Chairman" (E/C.10/AC.2/8), "Transnational corporations: A code of conduct. Formulations by the Chairman on the implementation of the code of conduct" (E/C.10/AC.2/14) and "Transnational corporations: Certain modalities for implementation of a code of conduct in relation to its possible legal nature" (E/C.10/AC.2/9).

40/ The mining industry for the period 1966-1975 provides an example of a situation in which transnational corporations, partly in reaction to what they perceived to be uncertainties in the environment, shifted a substantial share of their exploration expenditures from developing to developed countries: during 1966-1970, the share of the former in total exploration expenditures was 30 per cent, during 1971-1975 it had fallen to 14 per cent; see Transnational corporations in world development ...

77. In summary, progress has been made both on the national and international levels in evolving suitable frameworks applicable to transnational corporations. Developing host countries have, in particular, enacted a widening range of detailed regulations addressing an increasing set of subject-matters, without however losing sight of the inherent interests of the transnational corporations. Some of the most important behavioural changes that have already resulted from these efforts were described earlier. At the same time it is clear that national policies and regulations have not been implemented everywhere to the fullest extent possible. Partly this can be explained by the lack of an appropriate administrative infrastructure, imprecise regulatory formulations and other imperfections. But partly it is also the result of the incompleteness of the international framework - which has to play an important complementary role in supporting national efforts. And, finally, the success of dealing with transnational corporations is also a function of the capacity of each host country - or group of countries - to bargain effectively with transnational corporations.

## 2. Strengthening bargaining capacities

78. Governments of host countries usually have many objectives when dealing with transnational corporations. To the extent that these objectives conflict, they may have to be traded off against one another in the course of actual negotiations. In such cases, a priority order of the various objectives becomes a pre-condition for successful interactions. The setting of priorities requires, as a rule, co-ordination at a high decision-making level and, possibly, the establishment of an administrative focal point to ensure the implementation of national policies. Accordingly, many countries have established or strengthened, over the last few years, special national institutions, including interministerial committees, foreign direct investment boards and development corporations.

79. Many Governments have involved themselves in negotiations with transnational corporations by setting parameters and guidelines and by reserving themselves the right of the final approving authority, leaving it to local enterprises (whether privately or publicly owned) to engage in the detailed bargaining. Such an approach is not always feasible, for domestic enterprises may not be sufficiently developed to be able to negotiate effectively with transnational corporations even when the Government sets strict parameters. Hence, some Governments of host countries - particularly those of the smaller or less developed countries - have chosen to participate fully in actual negotiations.

80. Regardless of the nature of governmental involvement with transnational corporations, a critical ingredient in strengthening the capabilities of host countries in this area is the ability of host-country institutions to evolve and implement appropriate policies, legislation and regulations on foreign direct investment and the acquisition of foreign technology and services; to select transnational corporations as investors and/or suppliers of technology and services in various sectors; to prepare and conduct actual negotiations with transnational corporations and to monitor the activities of transnational corporations in different sectors and in specific ongoing projects.

81. The rendering of assistance to host countries, and especially developing areas, wishing to improve their capacities in any of those areas of relations

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with transnational corporations is one of the main tasks of the United Nations Centre on Transnational Corporations and its Joint Units. 41/ This is done through the Centre's comprehensive information system, its research programme and its technical co-operation activities.

82. Adequate and reliable data on transnational corporations and their activities are the basis for informed decision-making regarding the activities of transnational corporations. To this end, the Centre is developing a comprehensive information system that eventually will be linked with national information systems. The main components of this system are legal information, which includes policies, laws, regulations and contracts and agreements relating to transnational corporations; trends in the activities of such corporations, especially in respect of stock, flow and patterns of investment in different sectors; industry studies that analyse the role and pattern of activities of transnational corporations in sectors of special significance to developing countries; information on individual corporations, both in terms of general information on a large number of transnational corporations and more detailed information on some of the principal corporations in particular sectors; information on such specific aspects as market structure, financial practices, supply of technology, and the like; and information on various data and information sources. The information collected and analysed under these categories is co-ordinated and integrated so as to meet the information needs of the principal users of the system. 42/

83. Since much of the information on transnational corporations is not available, a full understanding of the role of transnational corporations requires in-depth research into the nature and effects of their activities and their relevance to the goals and objective of developing countries. This research is undertaken by the Centre with the aim of developing concrete policy recommendations for strengthening the individual and collective self-reliance of developing host countries. The main areas of research are linkages of transnational corporations with host economies, socio-cultural impacts of transnational corporations, financial management of transnational corporations, transfer pricing and balance-of-payments effects, competition and transnational corporate strategies, and the implementation of various policies and measures aimed directly at strengthening the negotiating capacity of developing countries. 43/ Together with the Joint Units, furthermore, the Centre is implementing an interregional project on primary commodity exports which aims at increasing the gains of developing countries and strengthening their negotiating capacity vis-à-vis transnational corporations in this area. Finally, in order to gain further appreciation of over-all trends, the Centre prepares, at regular intervals, integrated studies regarding the salient features of the role of transnational corporations in the world economy.

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41/ See "Activities of the Centre on Transnational Corporations" (E/C.10/61).

42/ See "The information system on transnational corporations: Progress report prepared by the Secretariat" (E/C.10/63) and "Users guide to the information system on transnational corporations" (ST/CTC/13).

43/ See "Research: Ongoing and future work" (E/C.10/72).

84. Finally, a major function of the Centre is to provide technical co-operation to developing countries through advisory and training services, to assist them in strengthening their capability of dealing with matters related to transnational corporations. Through advisory services, the Centre provides assistance to developing countries in the formulation or revision of laws and regulations relating to transnational corporations and the examination of policy options on issues such as foreign ownership and control, acquisition of foreign technology, and fiscal and financial questions. Such assistance pertains also to the evaluation of the merits of alternative types of corporate and contractual arrangements such as joint ventures, licensing or management contracts, and production-sharing arrangements. Other areas of assistance include the strengthening of national screening, monitoring, regulatory and incentive mechanisms, the analysis and review of draft agreements and contracts involving equity or non-equity participation of transnational corporations, and staff support to Governments in preparation for negotiations with transnational corporations. Through its training services, the Centre organizes and conducts workshops on the regulation of and negotiation with transnational corporations, focusing on both general and specific issues, as well as on problems arising in particular sectors. 44/

85. A developing country's position to deal with transnational corporations is strengthened significantly if it has a strong domestic capability both in the private and public sector. Its capacity to be increasingly selective in seeking foreign direct investment and technology and to unpackage the foreign input on terms more favourable to it is enhanced to the extent that the domestic sector is in a position to provide a countervailing force. In this context, many developing countries have assigned a special role to public-sector enterprises. They have at times been found to be a stabilizing factor that can provide a better balance in the relationship with transnational corporations, especially in resource-based capital-intensive and strategic industries. Such enterprises can also play a part in transmitting the impulses of their involvement with transnational corporations through the entire domestic industrial sector in areas such as transfer of technology, design and engineering, subcontracting, and so forth. But public-sector enterprises will have to pay even greater attention to the absorption of foreign technology and the assimilation of the production techniques than their counterparts in the private sector, if the advantages envisaged are to be fully realized. Unless they do so, there may be no tangible mitigation of a country's dependence on transnational corporations in critical production and technological sectors.

86. There is also considerable scope for greater co-operation and co-ordination among host countries in their dealings with transnational corporations. Apart from exchange of information and experience regarding their activities in various production and service sectors, policies and guidelines on certain aspects of investment and technological participation of transnational corporations can be determined jointly at regional or subregional levels in order to avoid unnecessary competition and excessive concessions in obtaining the participation

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44/ See "Programme of technical co-operation on matters related to transnational corporations" (E/C.10/63).



of transnational corporations. It may also be possible for groups of developing countries to negotiate for industrial programmes and projects involving transnational corporations and having regional or subregional significance. Progress in this area has been achieved mostly in the framework of regional integration schemes, producers' associations and various economic and technological co-operation endeavours among developing countries. The non-aligned countries have assumed a leading role in this respect, including through the activities carried out in the framework of the Action Programme for Economic Co-operation by the various co-ordinator countries designated by the non-aligned movement. 45/

87. Finally, trade unions and other interested groups can also help to ensure that transnational corporations make a full contribution to the development objectives of the Governments of host countries. In this respect, efforts have increasingly been made to establish information and consultation arrangements among trade unions in the various entities of a transnational corporation as well as among trade union organizations in different countries.

88. In summary, the formulation of clearly defined priority objectives, the development of a capable administrative infrastructure, access to a broad range of relevant information, the development of the domestic private and public sector, and increased co-operation among host countries can contribute significantly to the strengthening of national capacities to deal with transnational corporations. Some progress has been made regarding all of these components, but compared to the resources, facilities and strategies available to transnational corporations, there is a continued and urgent need for further improvements.

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45/ The non-aligned countries also agreed to establish an information centre of non-aligned countries on transnational corporations.

### III. TOWARDS GREATER SELF-RELIANCE: TENTATIVE CONCLUSIONS

89. The strengthening of the capacities of developing host countries to deal effectively with transnational corporations makes a direct contribution to increasing the self-reliance of the developing countries, both in its individual and collective dimensions. And, since such strengthening is the basis for successful bargaining with transnational corporations, it is also a pre-condition for bringing about changes in the pattern of interactions in the main areas of North-South relations and hence for advancing the establishment of the new international economic order.

90. On the whole, developing countries have made some advances in recent years in harnessing the resources of transnational corporations for their goals. A number of countries have shown that it is possible to limit the negative effects of transnational corporations and to channel their activities in the directions indicated by governmental priorities. Moreover, the improvement of the legal framework applicable to transnational corporations and the strengthening of the bargaining capacity of the Governments of host countries have made a contribution to the process of selecting the types of transnational corporation activity that best conforms to national objectives. It is also apparent that countries have more options than in the past in choosing among alternative forms of participation by transnational corporations. But not all of the options are always available to all countries and the range of alternatives is particularly narrow for the countries in the lowest income group. Moreover, the degree of responsiveness of transnational corporations to government requirements depends to a considerable extent on their perception of the attractiveness of the country concerned. Not all transnational corporations behave in the same way: some are much more advanced in their understanding of the development problems than others. Furthermore, many of those that occupy a strong bargaining position are naturally inclined to make the most of the advantage that they have and are least amenable to modifications of their policies. In a wide range of industries, however, alternative sources are becoming available, and developing countries can often secure the kind of arrangement that suits them best from among such alternatives.

91. Nevertheless, it must be recognized that the advances during the last years have been uneven in terms of host countries, sectors and dimensions of North-South relations. Some countries, particularly those with attractive markets and scarce natural resources, have been successful in harnessing transnational corporations for their development objectives. Others, with less bargaining power, have had more difficulty in improving the terms and conditions of interactions, and in some cases their dependence on transnational corporations has even increased. Furthermore, to the extent that changes in the pattern of interactions require changes in the rules and institutions established by Governments - for example, code of conduct, transfer of technology, integrated programme, tariff structure - the slow process in their negotiation and modification has hampered progress towards the realization of the objectives of developing countries.

92. In summary, the experiences of recent years suggest that it is possible for developing countries, given the appropriate policies, strategies and institutions,

to benefit from the activities of transnational corporations and to harness them for their development efforts. To what extent the advances in the recent years have, however, resulted in appreciable progress towards a redressing of the economic imbalances between developed and developing countries and towards enhancing the capacity of most developing countries for self-sustained development, is still a matter for debate, pending further evidence. Partly, the time that has elapsed since the enunciation of the programme for the new international economic order has been too short to allow an assessment of structural changes; partly, some of the necessary conditions for progress have not yet been created by Governments. It is, however, certain that continued, determined and substantial efforts are needed to assure that the activities of transnational corporations are made fully compatible with the development policies of developing host countries.

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ISSUES ARISING FROM DECISIONS TAKEN BY THE GENERAL ASSEMBLY  
AND THE ECONOMIC AND SOCIAL COUNCIL

Progress made towards the establishment of the new international  
economic order: the role of transnational corporations

Corrigendum

Page 13, para. 23, first three sentences and foot-note<sup>18/</sup>

The first three sentences and foot-note<sup>18/</sup> should read

23. The inflow of foreign finance, both in the form of direct investment as well as bank lending, has been accompanied by an increasing outflow of debt service and investment-income payments from developing countries in subsequent periods. The estimated gross outflow in 1978 amounted to \$66 billion (comprising \$48 billion in amortization and interest payments, and \$18 billion in direct-investment-income payments and repatriation), as compared to a total gross non-concessional inflow of \$83 billion; in other words, the net transfer in that year was in the order of \$17 billion only. <sup>18/</sup>

18/ See, Salient Features and Trends in Foreign Direct Investment (ST/CTC/14), p. 3.