



COMMISSION ON TRANSNATIONAL CORPORATIONS

REPORT ON THE SECOND SESSION

(1-12 March 1976)

ECONOMIC AND SOCIAL COUNCIL

OFFICIAL RECORDS: SIXTY-FIRST SESSION

SUPPLEMENT No. 5

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NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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I. CONCLUSIONS AND RECOMMENDATIONS OF THE COMMISSION

Programme of work on the full range of issues relating to transnational corporations, submitted by the Chairman of the Commission

1. In paragraph 7 of Economic and Social Council resolution 1913 (LVII) of 5 December 1974, the Commission on Transnational Corporations was requested to submit a detailed programme of work concerning the whole range of issues related to transnational corporations to the Council at its sixtieth session. The Commission, taking fully into account General Assembly resolutions 3201 (S-VI) and 3202 (S-VI) of 1 May 1974 containing the Declaration and the Programme of Action for the Establishment of a New International Economic Order, in particular the relevant provisions on transnational corporations, and resolution 3281 (XXIX) of 12 December 1974 containing the Charter of Economic Rights and Duties of States, and giving due regard to the guidelines contained in those resolutions, has now formulated a detailed programme of work and submits it herewith to the Economic and Social Council for its consideration and approval at its sixty-first session.
2. The Commission expressed its satisfaction that the Information and Research Centre on Transnational Corporations had now been established and started its work. In order to enable the Centre to implement its programme of work expeditiously, and in accordance with the needs of the Commission, the Commission expressed the desire that the manpower and financial resources of the Centre be adequate to its tasks.
3. In paragraph 4 of Economic and Social Council resolution 1961 (LIX), of 29 July 1975, the Commission on Transnational Corporations was requested to report to the Council on the progress made on the establishment of joint units between the Information and Research Centre on Transnational Corporations and each of the regional commissions. The Commission noted with satisfaction that agreement had been reached between the Centre and the Economic Commission for Latin America to establish a joint unit, and that agreement was expected to be reached shortly with the Economic and Social Commission for Asia and the Pacific for establishing a similar unit. The Commission also noted that discussions would be initiated in the near future between the Centre and other regional commissions.

A. AREAS OF CONCERN REGARDING THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS

4. It is of the greatest importance that the areas of concern regarding the activities of transnational corporations be clearly enunciated, so that the Commission and the Information and Research Centre on Transnational Corporations may serve the interests of all States concerned with the full range of issues relating to transnational corporations, and in particular the subject of the regulation and supervision of their activities.

5. The Commission took note of areas of concern identified in a preliminary form in annexes I, II and III to the report of the Commission on its first session (reproduced as annexes I, II and III to the present report); in document E/C.10/L.2 (reproduced as annex IV to the present report), and in General Assembly resolution 3514 (XXX) (reproduced as annex V to the present report). The Commission expected that the preliminary identification should lead, through future consultations and revisions, to the identification of areas of concern agreeable to all its members.

B. PROGRAMME OF WORK

Objectives and scope of the programme of work

6. The objectives of the programme of work should be:

(a) To further understanding of the nature and the political, legal, economic and social effects of the activities of transnational corporations in home countries and host countries, and in international relations, particularly between developed and developing countries;

(b) To secure effective international arrangements for the operation of transnational corporations designed to promote their contribution to national developmental goals and world economic growth while controlling and eliminating their negative effects;

(c) To strengthen the negotiating capacity of host countries, in particular the developing countries, in their dealings with transnational corporations.

7. The programme of work of the Commission should be focused on the following five areas:

(a) Work for the purpose of formulating a code of conduct;

(b) Establishment of a comprehensive information system;

(c) Research on the political, economic and social effects of the operations and practices of transnational corporations;

(d) Organization and co-ordination, at the request of Governments, of technical co-operation programmes concerning transnational corporations;

(e) Work leading to a definition of transnational corporations.

8. In accordance with the guidelines given by the Economic and Social Council in paragraph 7 of its resolution 1913 (LVII), which specified that the detailed programme of work should include a statement of proposed priorities, the Commission has selected specific activities for priority attention.

9. The formulation of a code of conduct should be assigned the highest priority among the various tasks proposed by the Commission. These tasks are, however, interrelated and work under 7 (b) and (c) above, and as appropriate 7 (e), should be carried forward as quickly as possible in support of work on the code

of conduct. The Commission should also keep in mind, in work on the code, the feasibility and desirability of separate arrangements or agreements on specific subjects. Finally, the Commission attaches great importance to the organization and co-ordination of a programme of technical co-operation aimed at strengthening the negotiating capacity of the developing countries and considers that work on this should proceed concurrently with work on the code.

(a) Procedure for the formulation of a code of conduct

10. The Commission should establish an intergovernmental working group of the whole on the code of conduct. The intergovernmental working group would meet intersessionally with the participation of at least four members of the Commission from each regional group.

11. The Secretary-General should invite all States ^{1/} to present as quickly as possible their proposals or views for the code of conduct to the intergovernmental working group, through the Information and Research Centre on Transnational Corporations. A deadline should be established by the Economic and Social Council at its sixty-first session for this purpose, as well as the dates for the meetings of the intergovernmental working group and new dates for the third session of the Commission.

12. The Economic and Social Council should request the regional commissions and the Centre to assist, upon request, regional meetings of developing countries in a manner they consider appropriate, in order to complete the identification of areas of concern and prepare proposals or views on a code of conduct.

13. The intergovernmental working group should meet immediately after the deadline for the submission of proposals and prepare an annotated outline of the code of conduct to be submitted to the Commission at its third session.

14. At its third session, the Commission should review the report of the intergovernmental working group, including the annotated outline of the code of conduct, and give guidance to the working group for its future work with a view to finalizing a draft code of conduct to be considered at its fourth session.

15. The intergovernmental working group should be enabled to obtain the views of experts and of persons referred to in paragraph 36 below, as required, to assist it in its work.

16. The Centre should give its full support and assistance to the intergovernmental working group in its work. In order to expedite and facilitate the work of the intergovernmental working group, the Centre should undertake the following work:

^{1/} It is the understanding of the Commission on Transnational Corporations that the Secretary-General, in discharging his functions under para. 11, will follow the practice of the General Assembly in implementing an "all States" clause and, in all cases when it is advisable, the Secretary-General will request the opinion of the General Assembly before taking appropriate decisions. All other references to "all States" in the programme of work should be interpreted in the same way.

(a) Incorporate into a single document proposals or views received from Governments in accordance with paragraph 11 above;

(b) Prepare an action-oriented paper on all issues involved, including corrupt practices of transnational corporations in the light of the discussions of the Commission, and make it available to all States by July 1976;

(c) Prepare a separate paper containing the views of non-governmental interests, particularly trade unions, business groups, and consumer groups;

(d) Prior to the first meeting of the intergovernmental working group, collect, analyse and make available material relevant to the formulation of a code of conduct. This should be done with a view to identifying possible structural alternatives and their implications.

17. The intergovernmental working group should, in carrying out its work, take into account the related work being undertaken by United Nations bodies, in particular the United Nations Conference on Trade and Development, regarding transfer of technology, restrictive business practices, etc., and the International Labour Organisation, regarding employment questions. It should also bear in mind the related work undertaken by the non-aligned countries, the Organization of American States, the Organisation for Economic Co-operation and Development, the European Economic Community and other forums.

(b) Establishment of a comprehensive information system

18. To meet the objectives set out in paragraph 6 above, the Information and Research Centre on Transnational Corporations should concentrate its efforts on the following.

19. The surveys of information on transnational corporations, including relevant national, regional and international regulations, should be continuously updated and harmonized by the Centre.

20. A directory of types and sources of information should be issued periodically by the Centre.

21. For these purposes, the Centre would require, at the earliest possible time, computer and other facilities. The Commission therefore recommends that the Centre examine the possibility of utilizing the existing computer facilities in the United Nations system and submit the financial implications of such participation to the General Assembly, through the Economic and Social Council, for approval.

22. Bearing in mind the terms of reference and objectives of the Commission as set out in Economic and Social Council resolution 1913 (LVII), and the tasks that the Commission has set out for itself under the present programme of work, the Centre should give urgent consideration to the preparation of profiles on individual transnational corporations as well as to the collection of data on contracts and agreements between transnational corporations and government agencies and local enterprises. However, major constraints, especially existing national legislation and regulations, as well as the requirements of business confidentiality, may present obstacles to the fulfilment of these tasks. The

Commission, therefore, decided that, so that Member States may have a clearer basis on which to decide the issues, the Centre should undertake a feasibility study, consulting the Expert Group on International Standards of Accounting and Reporting as the Centre may deem necessary, on the subject of availability of information, in order to determine:

- (a) The scope that such a system of information should have;
- (b) Whether contracts and agreements could be included in such a system and, if so, what types;
- (c) The scope and nature of information which is now publicly available and that which may not be available because of its confidential nature;
- (d) The various disclosure problems and restrictions existing both at the private and governmental levels, including business confidentiality;
- (e) The need for and feasibility of advancing towards a harmonization of national disclosure requirements;
- (f) The need for and usefulness of consolidated information on the operations of transnational corporations in different countries;
- (g) Conclusions and recommendations for the achievement of the over-all objectives of the information system.

This study would be considered by the Commission at its third session, which would then formulate the precise guidelines and procedures for the collection of the appropriate information by the Centre and the purposes that such information will serve. The Centre should prepare for the Commission draft proposals for such guidelines and procedures.

23. In the initial period of its operation, the Centre should concentrate its efforts in two directions:

- (a) Development of a classification system of information relevant to concerns of Governments, in particular, but not exclusively, those of the developing countries;
- (b) Collection of publicly available information of a general or specific nature at the aggregate and enterprise levels, by country, on the following priority areas, where information gaps are most pressing:
 - (i) Transfer pricing, including its relation to taxation;
 - (ii) Short-term capital movements by transnational corporations;
 - (iii) Restrictive business practices;
 - (iv) Corporate ownership and alternative forms of business participation; alternative forms of management and control;
 - (v) Market concentration both at national and international levels, as well

as mechanisms used to achieve such concentration, including acquisition of participation and mergers;

- (vi) Relative use by transnational corporations of home country, international and host country financial markets in their operations and investments;
- (vii) Political activities of transnational corporations;
- (viii) Social impact of transnational corporations;
- (ix) Corrupt practices of transnational corporations;
- (x) Impact of transnational corporations on freedom of labour organizations, trade union rights, labour standards, employment, wages and working conditions;
- (xi) Transfer of technology and its cost implications;
- (xii) Contribution by transnational corporations to the research and development programmes of developing countries;
- (xiii) Trends in investment by transnational corporations.

24. The information should be obtained, in the first instance, from relevant bodies of the United Nations system wherever available. Whenever the United Nations system as such is not itself collecting any of the information, the Centre should collect it directly from the appropriate sources.

25. In order to ensure that the information system should be as comprehensive as possible, the Economic and Social Council should invite all States to co-operate with the Centre in its task of collecting information. For this purpose, home and host countries may find it useful to examine the adequacy of their domestic legislative and regulatory powers to obtain and make available to the Centre relevant information from transnational corporations about their operations and activities.

(c) Research on the political, legal, economic and social effects of the operations and practices of transnational corporations

26. In view of the interrelationship of the political, legal, economic and social effects of the operations and practices of transnational corporations, the Commission decides that an integrated study of these effects should be undertaken by the Centre, on a priority basis, as a sequel to the study published in 1973 (ST/ECA/190 and Corr.1). ^{2/} In the preparation of this study, the Centre should draw upon special case studies on specific corporations, industries, countries and regions, carried out by other United Nations bodies.

27. The Commission, in conformity with operative paragraph 6 of General Assembly resolution 3514 (XXX) (see annex V to the present report), decides that the Centre

^{2/} Multinational Corporations in World Development (United Nations publication, Sales No. E.73.II.A.11).

should undertake studies on corrupt practices of transnational corporations, with a view to assisting the Commission in making recommendations on ways and means whereby such corrupt practices can be effectively prevented.

28. The Centre should carry on a continuing review of existing and ongoing research on the activities of transnational corporations, including national, regional and international regulations. The bibliography (E/C.10/12 and Add.1) prepared by the Centre should be annotated.

29. The Centre should carry out and promote in-depth studies on the following specific subjects in all their aspects:

(a) The impact of activities of transnational corporations on the balance of payments of developing and other countries;

(b) The service sector, including banking, insurance, shipping and tourism;

(c) The implications of investment by transnational corporations for employment in both home and host countries;

(d) The extent to which investment and production by transnational corporations affect investment and production by domestic enterprises which are their competitors, suppliers or customers;

(e) Extractive, food and beverages and pharmaceutical industries (case studies);

(f) Obstacles to strengthening the negotiating capacity of Governments in their relations with transnational corporations;

(g) Measures adopted by Governments nationally and regionally to strengthen their negotiating capacity in their relations with transnational corporations, and lessons to be learned therefrom;

(h) Measures adopted by host countries to strengthen the competitive position of national enterprises vis-à-vis transnational corporations;

(i) The activities of transnational corporations in southern Africa and the extent of their collaboration with the illegal régimes in that area, taking fully into account work done by the relevant bodies of the United Nations, which should be made available to the Commission at its next session.

In the undertaking and promoting of these studies, the Centre should take into account related work undertaken by other United Nations bodies, such as the United Nations Conference on Trade and Development, the United Nations Industrial Development Organization and the International Labour Organisation, so as to ensure co-ordination and avoid duplication of effort.

30. The Centre should also report to the Commission at its third session whether further research is required on other subjects in the light of the information collected under paragraphs 19, 22 and 23 above.

(d) Technical co-operation

31. The Commission attaches considerable importance to the programme of technical co-operation and endorses the general approach outlined in paragraphs 5 to 21 of the report of the Secretariat (E/C.10/13), as well as information and advisory services outlined in paragraphs 23 to 28 of that report.

32. In particular, the Centre, in conformity with paragraph 4 (c) of Economic and Social Council resolution 1913 (LVII), should organize and co-ordinate, at the request of Governments, training programmes and advisory services to strengthen the negotiating capacity of Governments of developing countries in their dealings with transnational corporations. It is of the utmost importance that experts with knowledge and experience in negotiating with transnational corporations, particularly those from developing countries, should be recruited for conducting training programmes and advisory services.

(e) Definition of transnational corporations

33. The Centre, bearing in mind the related discussions in the Commission, should collect available definitions on transnational corporations to enable the Commission at the appropriate time to define more accurately the areas affected by measures envisaged under the various headings of the present programme of work.

34. While such work is being conducted, the Centre should concentrate on identifying, according to various criteria, common characteristics of transnational corporations which play a significant role in internationalization of the world economy, without prejudice to such definition as might eventually be proposed. Such a study should cover at least five representative transnational corporations in each sector of economic activity.

Action taken by the Commission

35. The Commission, in addition to the decision contained in paragraphs 15 and 16 (c) of the present programme, discussed at length the question of participation of persons with profound knowledge of issues relating to transnational corporations, and decided that consultations should be undertaken immediately with the Secretary-General, for the selection of those persons envisaged in paragraph 1 (d) of Economic and Social Council resolution 1913 (LVII), in order to assist the Commission at its third session.

36. The Commission proposes for this purpose that the Secretary-General should, in consultation with all member States of the Commission, submit the names of 12 to 15 persons for approval by the Commission at a resumed second session convened for this purpose and in time for the meeting of the intergovernmental working group. These persons should be available for consultations up to the fourth session of the Commission. They would be selected in a balanced way on the basis of their practical experience, particularly from trade unions, business, public interest groups and universities, from both developed and developing countries, taking into account the need for balanced geographical representation. They will assist the Commission in its work in their private consultative capacity. They should have access to documents prepared for the Commission and the opportunity to comment on these orally or in writing.

37. Pursuant to General Assembly resolution 3514 (XXX) in which the Assembly, inter alia, calls on the Commission to include in its programme of work the question of corrupt practices of transnational corporations and to make recommendations on ways and means whereby such corrupt practices may be effectively prevented, the Commission included the issue in its programme of work. It also took note of the proposal for an international agreement and a plan of action submitted by the delegation of the United States of America (see annex VI to the present report). The Commission decided to forward this proposal to the Economic and Social Council. It recommends, further, that the Council consider the matter of corrupt practices on a priority basis and take appropriate action at its sixty-first session.

II. CONSIDERATION OF AGENDA ITEMS 4 AND 5

A. DRAFT PROGRAMME OF WORK ON THE FULL RANGE OF ISSUES RELATING TO TRANSNATIONAL CORPORATIONS

38. The Commission began its substantive work with a general discussion on agenda items 4 and 5 which corresponded to the responsibilities given it by the Economic and Social Council in its resolution 1913 (LVII) of 5 December 1974. The Commission noted with satisfaction the establishment of the Information and Research Centre on Transnational Corporations and expressed its appreciation of the reports prepared within the limited time available to it (E/C.10/8 and Add.1, E/C.10/9 and Add.1, E/C.10/10, E/C.10/11 and Add.1, E/C.10/12 and Add.1 and E/C.10/13).

39. In discussing the role and impact of transnational corporations in general, some delegations emphasized the positive role of transnational corporations while other delegations stressed the negative aspects of their activities. A number of delegations stated that transnational corporations have both positive and negative effects. The view was expressed by some delegations that transnational corporations were efficient sources of technology, capital and managerial skills, and effective organizers of productive and distributive systems. Many of the delegations pointed out that transnational corporations, because of their enormous economic power, had also been able to wield political power and indeed had, on occasion, interfered in the internal affairs of sovereign host countries, and that such actions were a denial of national sovereignty and independence in the host countries and affected negatively the control of developing countries over their natural resources and economic development. Some delegations also felt that the role of transnational corporations in supporting colonialist, racist and apartheid policies of certain countries, constituted a threat to peace, security and détente. They felt, further, that the transnational corporations obstructed the full exercise of trade union rights. If such action persisted, the activities of transnational corporations could remain a source of misunderstanding and tension between home and host countries. On the other hand, it was recognized that the transnational corporations had a positive role to play on the international scene and could become a very significant factor in the establishment of the new international economic order, and should demonstrate concern for the fundamental interests of the countries in which they operated. For those reasons it was felt that there was an urgent need to formulate a code of conduct to regulate and supervise the activities of transnational corporations in an atmosphere of constructive co-operation.

40. A few delegations expressed the view that the task before the Commission at the current session was to finalize the programme of work of the Commission and the Centre, since the work programme adopted at the first session was of the nature of a first draft.

41. As a result of those deliberations, a consensus emerged in the Commission that the formulation of a code of conduct should be given the highest priority in the Commission's programme of work. One delegation noted that while accepting that assignment of priority, one should recognize that the necessity for adequate

preparatory work as well as the co-ordination of national views meant that the process of formulating a code would require time. It was agreed that work on the other areas outlined in the report of the Commission on its first session should proceed concurrently.

(a) Preliminary work with the objective of formulating a code of conduct

42. The Commission agreed that the highest priority should be assigned to the work leading to the formulation of a code of conduct. In that connexion, the Commission considered various points brought out in documents E/C.10/8 and E/C.10/9 and, in particular, discussed at length the procedure for the formulation of a code of conduct.

43. During the discussion, some delegations expressed the view that a code of conduct should be mandatory in nature, while others supported a voluntary code. Some delegations felt that it would be premature to consider the matter at that stage.

44. Those in favour of a mandatory code stated that such a code should be more than a simple declaration of principles and should be binding in nature and ensure that transnational corporations made a positive contribution to the implementation of the Declaration and the Programme of Action on the Establishment of a New International Economic Order and the Charter of Economic Rights and Duties of States. However, others felt that such a code would require the creation of an international machinery to ensure compliance by the transnational corporations which would take a long time to evolve and would require the concurrence of all Governments involved. At least one delegation felt that a non-mandatory code would also require some sort of procedure for the application of the code. Those delegates who favoured the formulation of a voluntary code of conduct stated that such a formulation should be seen, taking account of the urgency of the work and the diversities in national legislations and policy objectives, as an evolutionary process. Some delegations did not agree in any case with a mandatory code, and others which favoured a mandatory code also contemplated an evolutionary approach.

45. It was suggested that the Commission could proceed without delay to draft a code containing a declaration of political will, and that the Centre should carry out studies in areas where separate arrangements or agreements on specific matters might be desirable, such as taxation, accounting standards, disclosure of information and corrupt practices.

46. Certain delegations emphasized that the code of conduct should be applicable to both States and transnational corporations. Other delegations stated that the code should be applicable only to transnational corporations. Discussion on the issue reflected various points of view, but no specific decision was taken on the nature of the code. However, there was a consensus to the effect that the code of conduct, whatever its nature, should be effective.

Intergovernmental working group

47. The suggestion that an intergovernmental working group should be established to consider the various aspects relating to the formulation of a code of conduct found broad acceptance in the Commission.

48. Regarding that proposal, some delegations suggested that it should be composed of a limited number of members, representing approximately half the members of the Commission. It was, however, agreed that whatever the composition of the group, it would be open-ended. It was felt that the working group should have the benefit, as it considered necessary, not only of the technical knowledge and experience but also of the views of persons with practical experience, particularly from trade unions, business, and consumer and other relevant groups. Many delegations suggested that such participation should be on an ad hoc basis; others thought that there should be more permanent arrangements in line with their suggestions on the Commission's modalities of work.

49. It was agreed that the Centre should provide necessary assistance to the intergovernmental working group in its work. Some delegations emphasized the importance of regional meetings of developing countries, assisted by the regional commissions and the Centre. It was agreed that the Economic and Social Council should request the Centre and the regional commissions to assist, upon request, developing countries in organizing regional meetings in order to complete the identification of areas of concern and to formulate proposals for the code of conduct.

50. Some delegations stated that the intergovernmental working group should take into account similar work on the preparation of a code of conduct on the transfer of technology being undertaken by the United Nations Conference on Trade and Development and other international organizations.

51. The Commission decided that an intergovernmental working group of the whole on the code of conduct should be established.

(b) Possible arrangements or agreements on specific aspects relating to transnational corporations

52. It was noted by the Commission that the Expert Group on International Standards of Accounting and Reporting, to be established in accordance with the report of the Commission on its first session, would meet in 1976. Delegations thought that the work of the Expert Group would be useful and could eventually lead to an international agreement on the subject.

(c) Establishment of a comprehensive information system

53. The Commission took note of the suggestions for the establishment of a comprehensive information system contained in document E/C.10/11. It was pointed out by one of the delegations that information relating to transnational corporations was available only in a few countries, and that only a few countries had collected specific information on transnational corporations, per se; furthermore, the differing criteria applied to the collection of such data made comparisons difficult. What was necessary, therefore, was to formulate criteria for the collection of comparable information by both home and host countries; it was also suggested that the Expert Group on International Standards of Accounting and Reporting, should establish such criteria for the disclosure of information by transnational corporations. Some delegations felt, and wished, that the Centre, in undertaking the appropriate study, should include in it an examination of the extent to which limitations on the scope of the information available to the Commission would hinder the ability of the Commission to carry out the tasks it had

set for itself. Other delegations felt, and wished, that the Centre, in undertaking the appropriate study, should examine the effects that the absence of harmonized disclosure requirements applicable to all enterprises and harmonized national accounting standards would have on the competitive position of transnational corporations which might be required to disclose greater information on their operations than their local competitors. In the course of discussions the Commission noted the following points made by some of the delegations:

(a) Information, both consolidated and a breakdown by country, should be collected on transnational corporations since information of a general nature was not very useful;

(b) The Information and Research Centre on Transnational Corporations should make an inventory of existing information and cover comparable data in all countries, recognizing the legitimate requirements for business confidentiality;

(c) Information should cover the financial structures of the corporations as well as profiles of the major companies;

(d) The Centre should collect comprehensive information on relevant national, regional and international legislation and regulations and make it available to all States;

(e) Use should be made of the information available in other United Nations organizations and other agencies and duplication of efforts should be avoided;

(f) The request of the Centre to make full use of computer facilities in establishing a comprehensive information system should be favourably considered.

54. With regard to the collection of information by the Centre, the Commission understood that it was not contemplated at that stage that requests for information, other than information publicly available, would be made directly to transnational corporations. That would not, however, prejudice the Centre's ability to hold consultations with interested parties.

55. The Commission considered that paragraph 23 (b) (xiii) of the programme of work (see chap. I above), could imply an examination of the causes of such trends, including investment opportunities and incentives. In the view of a few delegations that would imply consideration of the investment climate.

56. The Commission agreed that the collection of confidential information by the Centre would be contingent upon the completion of the study called for in paragraph 22 above and the establishment of guidelines by the Commission pursuant to that paragraph.

(d) Studies on the political, legal, economic and social effects of the operations and practices of transnational corporations

57. The Commission took note of the suggestions relating to research on transnational corporations contained in document E/C.10/12. Some of the delegations commented that the research, so far, on economic and political aspects of the operations of transnational corporations, though impressive, remained incomplete as it was not sufficiently problem-oriented and did not focus on the impact which activities of transnational corporations had on the developing countries.

58. In the course of the discussion, some of the delegations expressed the view that, given the interrelationship of the political, legal, economic and social effects of the operations and practices of transnational corporations, it was essential that an integrated study should be undertaken on a priority basis as a sequel to the study published in 1973 (ST/ECA/190 and Corr.1). In the preparation of such a study, the Centre should draw upon case studies on specific corporations, including companies or agencies, conducted by other United Nations bodies. The following were some of the major points made by other delegations in that connexion:

(a) That the Centre, in addition to conducting its own research, should also promote suitable subjects for research to be carried out by other bodies, including academic institutions;

(b) That the research should be related to the areas of concern and that special attention should be paid to the social impact of transnational corporations and, in particular, issues concerning labour, freedom of trade unionism and working standards, consumer protection and the social and cultural identity of the host countries;

(c) That the Centre should publish a quarterly periodical in which a summary would be given of the work of the Commission and the Centre, as well as an annotated bibliography of publications on the subject of transnational corporations and other relevant developments in the area;

(d) Because of the paucity of research conducted in some regions, the Centre should complete the establishment of joint units with all the regional commissions at an early date.

59. It was also stated by some of the delegations that the Centre should continue its ongoing research work and study in depth the role and effects of transnational corporations in sectors such as shipping, banking, insurance and tourism, and should also undertake particular case studies relating to food, extractive and pharmaceutical industries.

(e) Technical co-operation

60. All delegations generally attached importance to the role of the Centre in regard to technical co-operation.

61. Most of the delegations underlined the direct benefits which requesting Governments would derive from advisory services and training programmes, thereby increasing their ability and knowledge in the matter of dealing and negotiating with transnational corporations, which was the most important need of developing countries. A few delegations suggested that it might not be possible for the Centre to undertake the entire programme within the limited resources available. It was also felt that, while undertaking its programme of technical co-operation, the Centre should make full use of the existing facilities and services available within the United Nations system.

(f) Work leading to a definition of transnational corporations

62. It was recognized that the topic posed one of the most difficult tasks facing the Commission, since any formulation of a definition would have to take into

consideration the different aspects of the scope, characteristics and impact of the activities of transnational corporations. It was suggested that the Centre, in its work on a definition, should take note of the work currently being carried out in the area by the Organisation for Economic Co-operation and Development.

63. Some of the delegations felt that the widest possible definition should be formulated, while others felt that a more specific definition should be attempted. Some delegations suggested that all transnational business enterprises, whether public or private, mixed or joint ventures and State-owned enterprises which operated in more than one territory, should be covered by the definition. Some delegations felt that a distinction should be made between "foreign investment" and "transnational corporations".

64. One delegation stated that it preferred the term "multinational enterprises", which implied that at least three nationalities were involved. Other delegations were not in favour of a definition which would include State-owned enterprises. Some delegations stated that such a definition would apply only to private enterprises.

(g) Measures against corrupt practices of transnational and other corporations, their intermediaries and others involved

65. The Commission took note of General Assembly resolution 3514 (XXX) (see annex V to the present report), on the corrupt practices of transnational and other corporations, their intermediaries and others involved. The Commission also took note of the request by the General Assembly to the Economic and Social Council to direct the Commission to include in its programme of work the question of corrupt practices of transnational corporations and to make recommendations on ways and means whereby such corrupt practices could be effectively prevented. Many delegations condemned corrupt practices of transnational corporations and called for immediate action to put an end to such practices. One delegation emphasized that while enough information existed to initiate action, the challenge lay in identifying the offenders and formulating effective recommendations. That delegation urged that all Governments take necessary measures, including legislative action, to prohibit and penalize the illegal acts of transnational corporations taking place within their jurisdictions. Concurrent legislation in several countries could result in relatively uniform legal standards. The home countries should assume a special responsibility and should adopt strict measures, including requirements for the disclosure of all payments. Publicity clearly inhibited the corporations' freedom to pursue harmful policies, and the Centre could play a significant role in collecting and disseminating information on their activities. The concern regarding corrupt practices was shared by many other delegations.

66. One delegation strongly condemned corrupt practices of transnational corporations everywhere and proposed the urgent establishment of a working group with the mandate of negotiating a multilateral agreement to deal with corrupt practices. It considered that the most appropriate way of encouraging Governments to co-operate with one another in preventing corrupt practices was to negotiate a multilateral agreement. In the view of that delegation, an international agreement would be applicable to the activities of all those who participated in such practices and would be based on the principles, inter alia, of co-operation and exchange of information between all Governments to help eradicate corrupt practices, to agree upon uniform provisions for the disclosure of information by enterprises, etc. It called upon other delegations to support that proposal.

67. The initiative was generally appreciated and welcomed by many delegations. Some representatives expressed support for the basic approach and for the establishment of the working group. Most delegations, however, indicated that more time was needed to consider that specific proposal as well as other possible methods of dealing with the problem. There was general agreement on the need for action in the area of corrupt practices on a priority basis.

B. MODALITIES OF WORK OF THE COMMISSION

68. Discussions on the subject centred on the status and mode of selection of persons with experience from trade unions, business, and public interest groups and other relevant groups in accordance with paragraph 1 (d) of Economic and Social Council resolution 1913 (LVII). It was agreed that the Commission would benefit from the practical experience of those persons, who should be enabled to assist the Commission at its third session and the intergovernmental working group. It was also agreed that the Commission could meet in a resumed second session in order to select those persons.

69. The Commission agreed that its proposal to hold a resumed session was based on the exceptional circumstances which required the selection of persons from interested groups so as to enable them to assist the intergovernmental working group.

70. During the general debate, the Commission also heard the views of observers for the International Chamber of Commerce, the World Federation of Trade Unions, the International Organization of Consumers Unions, the International Confederation of Free Trade Unions and the World Confederation of Labour.

71. Following the general debate, the Commission decided to continue its work in informal consultations in order to negotiate and draft the programme of work of the Commission (see chap. I).

III. CONSIDERATION OF THE DRAFT PROVISIONAL AGENDA FOR THE THIRD SESSION OF THE COMMISSION

72. At its 20th meeting on 12 March 1976, the Commission considered item 6 on its agenda. It had before it a note by the Secretariat on the subject (E/C.10/15).

73. Two delegations, supported by others, proposed the addition of two new items to be included in the draft provisional agenda for the third session, namely, "Report of the Executive Director on the activities of the Information and Research Centre on Transnational Corporations" and "Disclosure of information regarding the activities of transnational corporations".

74. The Commission adopted the proposal unanimously, on the understanding that the report of the Executive Director would not be the subject of a general debate.

75. The Commission agreed to delete the mention of documentation under the different agenda items, except for that listed under items 4 and 8 on the draft agenda (see E/C.10/15).

76. The Commission discussed the reformulation of item 4 on the draft agenda. Some delegations were of the opinion that the formulation should include specific reference to transnational corporations. Others preferred to leave the formulation as it was in the draft provisional agenda, since the proposed formulation left untouched the substantive question of the scope of application of a code. After a lengthy discussion, the Commission agreed that the formulation of item 4 on the draft agenda, as contained in document E/C.10/15, should remain unchanged.

77. The Commission also agreed to add the words "of transnational corporations" after the words "Corrupt practices" in item 7 on the draft agenda.

78. The Commission then adopted, without a vote, the following provisional agenda for its third session:

1. Opening of the session
2. Election of officers
3. Adoption of the agenda and organization of work
4. Report of the Executive Director on the activities of the Information and Research Centre on Transnational Corporations
5. Work related to the formulation of a code of conduct: report of the intergovernmental working group on the code of conduct
6. Technical co-operation
7. Studies on the effects of the operations and practices of transnational corporations
8. Corrupt practices of transnational corporations

9. International standards of accounting and reporting: report of the Group of Experts on its first session
10. Disclosure of information regarding the activities of transnational corporations
11. Comprehensive information system
12. Work leading to a definition of transnational corporations
13. Issues arising from decisions taken by the General Assembly or the Economic and Social Council
14. Draft provisional agenda for the fourth session of the Commission
15. Adoption of the report of the Commission

IV. ADOPTION OF THE REPORT OF THE COMMISSION

79. The Commission considered its draft report to the Economic and Social Council at its 20th and 21st meetings, on 12 March 1976. The report, as amended during the discussions, was adopted unanimously at the 21st meeting.

80. One delegation stated that its endorsement of the report in no way altered the position it had taken in the General Assembly vis-à-vis the Charter of Economic Rights and Duties of States and the Declaration and the Programme of Action on the Establishment of a New International Economic Order.

81. Another delegation held the view that the formulation of the programme of work (see chap. I above) did not satisfy expectations of establishing, at least, some needed guidelines for the elaboration of the code of conduct.

82. With regard to paragraph 29 of the programme of work (*ibid.*), one delegation expressed its pleasure at the reference to the need for the Centre to secure co-ordination and avoid duplication in its research programme, and its concern that the Commission should have a clear sense of its own priorities, bearing in mind that its resources were limited. In that connexion, the same delegation had reservations with regard to paragraph 29 (i), in view of the considerable volume of work that had already been done by the committees of the United Nations. It doubted that the Commission could decide at the current stage, before the available information had been evaluated, whether an in-depth study was necessary.

V. ORGANIZATION OF THE SESSION

83. The Commission on Transnational Corporations held its second session at Lima, Peru, from 1 to 12 March 1976. The session was opened by the Chairman of the first session, R. S. Bhatt (India). The Commission held 10 meetings.

84. The following States are members of the Commission: Algeria, Argentina, Australia, Bangladesh, Barbados, Brazil, Bulgaria, Canada, Colombia, Democratic Yemen, Ecuador, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Guinea, India, Indonesia, Iran, Iraq, Italy, Ivory Coast, Jamaica, Japan,

Kenya, Kuwait, Mexico, Netherlands, Nigeria, Pakistan, Peru, Philippines, Senegal, Sierra Leone, Spain, Sweden, Thailand, Trinidad and Tobago, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yugoslavia, Zaire and Zambia.

85. All members of the Commission were represented at the session with the exception of Bangladesh, Barbados, Democratic Yemen, Gabon, Guinea, Ivory Coast, Kuwait, Pakistan, Senegal, Sierra Leone, Tunisia and Zambia.

86. The following States Members of the United Nations were represented by observers: Austria, Belgium, Chile, Cuba and Finland.

87. The following non-member State was represented by an observer: Switzerland.

88. The United Nations Conference on Trade and Development and the United Nations Industrial Development Organization were represented.

89. The following specialized agencies were represented: International Labour Organisation, Food and Agriculture Organization of the United Nations and United Nations Educational, Scientific and Cultural Organization.

90. The following other intergovernmental organizations were represented: European Economic Community, Organization of American States, Organisation for Economic Co-operation and Development. The Commission decided to accord observer status, on an ad hoc basis, to the International Bauxite Association, an intergovernmental organization.

91. The following non-governmental organizations were represented:

Category I: International Chamber of Commerce, International Confederation of Free Trade Unions, International Co-operative Alliance, International Organisation of Employers, World Confederation of Labour and World Federation of Trade Unions;

Category II: International Organization of Consumers Unions.

92. At its 12th and 13th meetings, on 1 and 2 March 1976, the Commission elected the following officers by acclamation: Eduardo Valdez (Peru), Chairman; Evgeni Mateev (Bulgaria), Abdelmadjid Fasla (Algeria) and Pieter Sanders (Netherlands), Vice-Chairmen; Saroj Chavanaviraj (Thailand), Rapporteur.

93. The agenda (E/C.10/14), as adopted by the Commission at its 12th meeting, was as follows:

1. Opening of the session
2. Election of officers
3. Adoption of the agenda and organization of work
4. Draft programme of work on the full range of issues relating to transnational corporations

5. Modalities of work of the Commission
6. Draft provisional agenda for the third session of the Commission
7. Adoption of the report of the Commission
94. The documents before the Commission at its second session are listed in annex VII to the present report.

Annex I

LIST OF AREAS OF CONCERN REGARDING THE OPERATIONS AND ACTIVITIES
OF TRANSNATIONAL CORPORATIONS

Note submitted by the Group of 77

1. Preferential treatment demanded by transnational corporations (TNCs) in relation to national enterprises.
2. Lack of adjustments by TNCs to the legislation of the host countries in the matters, inter alia, of foreign investment and policies concerning credits exchange, fiscal matter, prices and commercial matters, industrial property, and labour policies.
3. The negative attitudes by TNCs towards the renegotiations of original concessions if such exist and if this should be considered necessary by the Government of the host country.
4. The refusal of TNCs to accept exclusive jurisdiction of domestic law in cases of litigation.
5. Direct or indirect interference in the internal affairs of host countries by TNCs.
6. Requests by TNCs to Governments of the country of origin to intercede with the host Government, with actions of a political or economic nature in support of their private interests.
7. The refusal of TNCs to accept the exclusive jurisdiction of domestic law in the question of compensation on nationalization.
8. Extension by TNCs of laws and regulations of the country of origin to the host country.
9. The activities of TNCs as instruments of foreign policy, including for intelligence purposes, contrary to the interests of the host country.
10. The contribution of TNCs in the maintenance of racist and colonial régimes and support of policies of apartheid and foreign occupation.
11. The role of TNCs in the illegal traffic of arms.
12. Obstruction by TNCs of the efforts of the host country to assume its rightful responsibility and exercise effective control over the development and management of its resources, in contravention of the accepted principle of permanent sovereignty of countries over their natural resources.
13. Tendency of TNCs not to conform to the national policies, objectives and priorities for development set forth by the Governments of host countries.

14. Withholding of information of their activities by TNCs, making host countries unable to carry out effective supervision and regulation of those activities.
15. Excessive outflow of financial resources from host countries due to practices of TNCs and failure to generate expected foreign exchange earnings in the host country.
16. Acquisition and control by TNCs of national, locally capitalized enterprises through controlled provision of technology among other means.
17. Superimposition of imported technology without any adaptation to local conditions, creating various types of distortions.
18. Failure by TNCs to promote research and development in host countries.
19. Obstruction or limitation by TNCs of access by host countries to world technology.
20. Imposition of restrictive business practices, inter alia, on affiliates in developing countries as a price for technical know-how. a/
21. Lack of respect of the socio-cultural identity of host countries.

a/ See Conference room paper No. 2, para. 21.

Annex II

AREAS OF CONCERN WHICH RELATE TO RELATIONS BETWEEN TRANSNATIONAL CORPORATIONS AND GOVERNMENTS

Note submitted by the delegations of France, the Federal Republic of
Germany, Italy, the United Kingdom of Great Britain and Northern
Ireland and the United States of America

Preamble

1. The following is a selection of areas of concern which, in the opinion of the delegations having prepared this document, deserve particular consideration, although not all of these delegations necessarily share all the concerns mentioned herein. These cover broadly effects on economic and social development of the activities and operations of transnational corporations (TNCs) within the framework set by Governments, including positive and negative impacts.

List of areas of concern

2. Areas of concern of particular importance are set out below. The list is non-exhaustive and may be added to or modified in the light of experience.

(1) The extent to which host country legislation and regulations may discriminate, either in favour of TNCs or against TNCs as compared to domestic enterprises, in the treatment of enterprises on the basis of whether or not such enterprises are under foreign control; the extent to which any such discriminatory treatment affects the activities of TNCs as well as the contributions of TNCs to the development objectives of host countries.

(2) The extent to which expropriation of properties undertaken for public purposes related to internal requirements of the countries concerned are non-discriminatory in application and are accompanied by prompt, adequate and effective compensation.

(3) The extent to which recourse to international arbitration, including that provided by the International Centre for Settlement of Investment Disputes, or other dispute settlement organizations or procedures play a role in the settlement of disputes arising out of the activities of TNCs.

(4) The effect of the presence or absence of a stable investment climate as a factor affecting the ability of TNCs to contribute effectively to development.

(5) The observance and non-observance of contracts and agreements between TNCs and Governments, the consequential issues which arise in the case of non-observance by either party, and the role which contracts may play in the creation of a stable investment climate.

(6) The role which freedom or restriction of establishment by TNCs in countries may have in assisting or hampering economic and industrial development.

- (7) The extent to which domestic laws, regulations and practices on social policies help or hinder development of labour relations activities in TNCs.
- (8) The extent to which the social policies practised by TNCs help or hinder development of labour relations activities in countries in which they operate.
- (9) The effects of TNC operations and activities on employment possibilities and whether these give rise to benefits, e.g., job creation or non-benefits, e.g., strain on indigenous resources of host countries.
- (10) The extent to which the presence or absence of declared points of contact within both TNCs and host Governments have assisted or hindered development of an effective and continuing dialogue between the parties concerned.
- (11) The effect of TNC operations and activities on the social and cultural identities of host countries, the positive or negative impacts which these may have on such countries and the extent to which host countries make their expectations known in these respects.
- (12) The extent to which existing codes of conduct and guidelines concerned with any aspect of the range of issues relating to the activities of TNCs may already exist, including the study of the materials underlying such codes and guidelines, commentaries thereon and the implementation and/or effects of such codes and guidelines upon TNCs and Governments.
- (13) Issues relating to co-operation between host Governments and TNCs to ensure the fullest possible attainment of their respective objectives when TNCs invest in host countries, including the extent to which TNCs and host countries state their needs and objectives in a sufficiently clear manner and how such co-operation may be improved for their mutual benefit.
- (14) The need to define more clearly the areas of acceptable and unacceptable political activities on the part of TNCs.
- (15) The role played by TNCs and Governments in the transfer of technology to host countries, including the types of technology involved, conditions imposed by TNCs and Governments in connexion with such transfers, and the positive and negative effects on technology transfers and the framework within which they are made on host country development objectives and the viability of the investment concerned.
- (16) The role played by TNCs in fostering development and growth of related industries in host countries and the positive or negative effects of the activities of TNCs on the existing patterns of indigenous supply and production.
- (17) The extent to which TNCs endeavour to participate in or ignore local business and regional organizations of host countries, host country regulation of such participation where these exist, and the consequences of TNC and host country actions in this area.
- (18) The extent to which TNCs seek to promote indigenization of their operations and activities in host countries, including appointment of staff at all levels, and the extent to which policies adopted by host Governments help or hinder this process.

(19) The extent to which TNCs may help to improve or make worse the working conditions of employees, including workers' health and safety, and the extent to which host Governments make clear their requirements and/or expectations in these respects.

(20) Identification of those countries which have declared policies on conservation and protection of the environment, and the extent to which these may or may not be observed by TNCs operating therein.

(21) The appropriateness or otherwise of the forms in which TNCs allow for participation in the equity of their operations in host countries, and relevant host country policies and the extent to which these are made known.

(22) The extent to which TNCs take host countries' interests into account in the repatriation of capital, remittance of profits, payments of dividends, royalties and management fees, the extent to which the levels at which these are made are constrained by Governments and the effect this may have on the development process.

(23) The extent to which domestic commercial policies, e.g., in relation to restrictive business practices have been developed by host Governments, whether appropriate machinery has been set up by them within which TNCs and Governments may discuss problems of mutual interest and, if so, the extent to which TNCs and/or Governments use these facilities when it would be appropriate for them to do so.

Annex III

ISSUES REQUIRING THE ATTENTION OF THE COMMISSION AND THE INFORMATION
AND RESEARCH CENTRE ON TRANSNATIONAL CORPORATIONS

Note submitted by the People's Republic of Bulgaria, the German
Democratic Republic, the Ukrainian Soviet Socialist Republic
and the Union of Soviet Socialist Republics

Supporting the list of areas of concern regarding the activities of transnational corporations (TNCs) contained in annex I, the aforementioned socialist countries propose the following issues requiring the attention of the Commission and the Information Research Centre:

1. The negative attitude of TNCs towards the freedom of organization of workers, labour conditions and the full exercise of trade union rights.
2. The negative impact of TNCs on economic relations between States, particularly by short-term massive capital movements and price policy, aggravating inflation, the monetary and the raw material situation.

Annex IV

AREAS OF CONCERN WHICH COULD BE USED AS A BASIS FOR PRELIMINARY WORK FOR A CODE OF CONDUCT TO BE OBSERVED BY TRANSNATIONAL CORPORATIONS

Paper submitted by the delegations of Argentina, Barbados,
Brazil, Colombia, Ecuador, Jamaica, Mexico, Peru, Trinidad
and Tobago and Venezuela

A. The transnational corporations shall be subject to the laws and
regulations of the host country and, in case of litigation,
they should be subject to the exclusive jurisdiction of the
courts of the country in which they operate

1. This statement is the reflection of an old Latin American concern which has its origin in the claim of the transnational corporations to a status, or to be beneficiaries of a privileged treatment, in the country where they operate. To validate this claim would signify the provision of a preferential and discriminatory status in favour of foreign enterprises. It would also presuppose the establishment of different treatment for nationals and foreigners, which would be unacceptable. But in the last analysis, the exemption of transnational corporations from the internal juridical order would bring, as a consequence, injury to the fundamental basis upon which the sovereignty of the State resides, which implies full competence over the entire area in which the power of the State is exercised.
2. This statement expresses the concern that the transnational corporations should adjust their activities strictly to the legislation of the host country in matters, inter alia, of foreign investment, credit, exchange and fiscal policies, prices and commerce, industrial property, and labour policies. It is considered that the transnational corporations should be disposed to facilitate conformity of their activities (including fields of action and modus operandi) by the renegotiation of the original concession, if such exists, and if this should be considered necessary by the Government of the host country. Also, it is important that the transnational corporations comply with the requests for information that may be made by the Government of the host country.
3. A natural consequence of the subjection of foreign enterprises to national legislation is the existence of an exclusive competence on the part of the courts of the host country to hear any case or litigation that arises from the application of this legislation. On occasion, the foreign enterprise presumes to escape the jurisdiction of the host State by means of private agreements in which it is stipulated that any controversy that may arise concerning the activities of the enterprise shall be resolved by the courts of the country of origin or of a third State, or that they will be submitted to international arbitration. These types of agreements are not acceptable and, in more than one case, are considered nullified of all right by the national laws.

B. The transnational corporations shall abstain from all interference in the internal affairs of the States where they operate

4. At present, concern is centred in the interference of private transnational agents in political questions of the host country. In fact, it has been shown that on occasion the transnational enterprises have engaged in illegitimate political intervention in the internal affairs of the host countries, which has brought about especially grave consequences in the case of developing countries. This clearly infringes on the national sovereignty of those States. Moreover, as is indicated by a recent study prepared under the auspices of the United Nations, the action of multinational enterprises in the political field may assume less direct and less obvious forms. In the countries of origin, it may be possible for them to influence foreign policy and domestic policy by recourse to their great financial power and to their relations, which are frequently close, with high officials of Government. They may exert pressure in support of or against the Governments of the host countries, according to whether or not they receive especially favourable treatment.

5. There should therefore be proscribed, in absolute terms, the use on the part of the transnational corporations of practices or procedures that involve an action, pressure, coercion, or any political interference in the host country.

C. The transnational corporations shall abstain from interference in relations between the Government of a host country and other States, and from perturbing those relations

6. Experience indicates that, in various circumstances, the transnational corporations have been perturbing elements in relations between countries and have provoked confrontations between those States. Instances are known in which the transnational corporations have requested the Government of the country of origin to intercede before the host Government with actions of a political and economic nature in support of their private interests. This illegitimate posture has violated, in more than one case, the constitutional provisions of the host country that prohibit the foreign investor from invoking the protection of his Government, given the existence of local recourses for the solution of controversies. The transnational corporations should likewise not exert pressure on the Governments of the countries of origin for the adoption of restrictive measures that may affect the interests of the host countries.

7. The most frequent cause of confrontation between countries of origin and host countries is the circumstances in which the host country nationalizes the properties of a foreign enterprise and the enterprise requests the protection of its Government of origin. The source of the controversy arises from the statement of the case in terms of questioning the validity of the act of nationalization itself or of demanding prompt, adequate and effective indemnity. Naturally, it is a sovereign power of the State to nationalize the property of foreigners or nationals and any argument tending to object to the legitimacy of such a measure is not valid. The matter that is subject to resolution is the amount of the indemnity that should be paid and the manner in which this amount should be determined. In this sense, the Charter of Economic Rights and Duties of States sets forth suitable criteria to regulate the subject and to indicate that the State that adopts the measure of nationalization should pay appropriate compensation, provided that all the pertinent circumstances so require it.

8. Likewise, as the charter indicates, when the question of the compensation arouses controversies, this will be resolved in conformity with the legislation and the courts of the State that nationalizes, unless that State should decide to have recourse to other pacific means based on the sovereign equality of States and in accordance with the principle of the free election of methods.

D. The transnational corporations shall not serve as an instrument of the foreign policy of another State or as a means of extending to the host country provisions of the juridical order of the country of origin

9. Cases are known in which countries have seen their exports affected by the extraterritorial application, by the country of origin, of legislation that prohibits trading with certain States.

There likewise exist precedents in subjecting to restriction the movement of capital to enterprises that operate in foreign countries and directives concerning the recovery of financial assets for the purpose of improving the balance of payments of the country of origin have been noted. In other cases, laws and provisions have been applied, principally in the matter of monopolies, that have an extraterritorial effect and that affect indirectly the capacity of the branches in foreign countries to conform to the policies of the host Government.

Another question that is of concern is the fact that the transnational corporations may lend themselves as instruments of the foreign policy, including for intelligence activities, contrary to the interests of the host country.

E. The transnational corporations shall be subject to the exercise by the host country of its permanent sovereignty over all its wealth, natural resources and economic activities

10. The natural resources of a country constitute the national heritage of that country and of its people. Practice has shown that the transnational corporations have not always fully abided by the principle that every country, in the exercise of its permanent sovereignty over its natural resources, has the inalienable right to the ownership, effective control and development of those resources. The failure to abide by this principle is a source of concern on the part of the host country.

Whenever the transnational corporations are granted access to a country's resources, their activities shall be carried out in a manner consistent with the priorities and developmental needs as defined by that country.

The transnational corporations must not in any way attempt to obstruct the efforts of the host country to assume its rightful responsibility and exercise effective control over the development and management of its resources.

The transnational corporations, during their presence in the host country, must operate in such a way as to ensure that nationals of the host country can manage and operate the enterprise at all levels, including that of decision-making.

- F. The transnational corporations shall be subject to the national policies, objectives and priorities for development, and should contribute positively to carrying them out

11. The intention of this principle is to insist on the necessity that the transnational corporations should adjust their conduct not only to the formal juridical dispositions but that they likewise make their activities subject to the general lines of economic and social policy set forth by the Government of the host country.

12. Special consideration should be given by the transnational corporations to the guidelines relating to foreign trade, finance and movement of capital; financial arrangements and anti-monopoly norms; employment regulations; utilization and training of local personnel; regional dispersion; company administration; transfer of technology and promotion of national technological development; global policy for foreign investment and, in particular, the arrangements for the participation of foreign capital in the diverse sectors of economic activity. Therefore, it is necessary that the affiliates of the transnational corporations adapt their corporate global strategy with a view to satisfying the requirements of the priorities of development established by the host country.

- G. The transnational corporations shall supply to the Government of the host country pertinent information about their activities in order to ensure that these activities shall be in accord with the national policies, objectives and priorities of development of the host country

13. The goal sought is for the Governments of the host countries to have sufficient information at their disposal to carry out an effective supervision and regulation of the activities of the transnational corporations. Customarily, because of the lack of disaggregated data, by country and company, the complete evaluation of these activities eludes the Government and renders uncertain the bases for tax, fiscal, credit and other verification. What is sought, in short, is the arrangement of a tangible, acceptable and sure frame of reference that allows for the most exact determination possible of the contribution of the transnational corporation in national development.

- H. The transnational corporations shall conduct their operations in a manner that results in a net receipt of financial resources for the host country

14. The fundamental objective is that the transnational corporations contribute to the largest degree possible not only a net initial transfer but a continuing transfer of resources. There is concern that the accounting practices of the companies do not reflect the real flow of the investment of the transnational corporations into the economy, and that scarce internal resources are habitually used to finance transnational corporations activities, for example, by means of the overvaluation of imported capital goods or the overstatement of liabilities owed abroad.

15. Regarding the balance of payments, it is maintained that the transnational corporations as resident entities in the host country ought to be a source of generation of foreign exchange for that country and a positive force on the balance of payments. The transnational corporations should:

(a) Generate foreign exchange through the exportation of part of the goods and services produced or contribute to the savings of foreign exchange through the substitution of imports;

(b) Pay competitive, international, market-based prices for financial services and technology, not applying transfer prices unless authorized by the Government of the host country;

(c) Respect host country regulations regarding repatriation of capital and remittance of profits.

Regarding point (a), the transnational corporations should not limit their production to the supply of the local market; regarding point (b), the transnational corporations, in their payments for items of financial services and importation of technology, should have a real counterpart and adjust themselves to the conditions prevailing in international markets.

16. The transnational corporations should strictly respect the regulations established by the host country in matters of: repatriation of capital and transfer of profits; external finance, payments abroad for royalties; patents, commercial and financial services; and payments to the parent company, affiliates subsidiaries directly linked or through third persons; and mechanisms for the promotion of exports and defence of the national industry of the host country.

17. There is also concern that the transnational corporations in the host countries may become mere entities for the collection of wealth. There is concern about the acquisition and control by the transnational corporations of national, locally capitalized enterprises through controlled provision of technology, among other means. It is therefore important to strengthen the private or State-owned enterprises so as to maintain an adequate balance between them and the transnational corporations. The transnational corporations should also respect the standards established by the host country regarding forms of capitalization and ownership. In addition there is concern that the investments of transnational corporations will be made with overvalued capital and that those investments, their operation and repatriation will utilize the scarce domestic financial resources of the host country.

18. Following the principle that repatriations and payments made from the host country to other countries by transnational corporations should have real counterparts and not give rise to excessive or unjustified returns, payments made for technology transferred to enterprises in the host countries should not exceed the time in which the technology can be effectively absorbed. The transnational corporations should not charge for technology transferred between subsidiaries and the parent company or between subsidiaries of the same transnational corporation. Similarly, transactions of transnational corporations, with respect to imports as well as exports to and from the receiving country and their subsidiaries, or between subsidiaries of the same transnational corporation and its affiliates, should be made at market prices, avoiding transfer prices unless expressly authorized by the Government of the host country.

I. The transnational corporations shall contribute to the development of the scientific and technological capacity of the host country

19. The transnational corporations should support the local efforts towards technological investigation and development and their consequent diffusion and use. To this end, the local subsidiaries of the transnational corporations should have the facilities and their own budget for investigation and development, encouraging the use of the technologies that take into account the factors of production with which each country is endowed. The Latin American experience shows that the transnational corporations tend to utilize technology imported from the parent company without any adaptation to local conditions, creating various types of distortions. They ought to use techniques that are different from those used by the home company if such techniques are more suitable for the host country's development. The transnational corporations should not prevent or limit their subsidiaries, affiliates or local companies in the host country from having ample access to world technology.

20. The transnational corporations should encourage the continuing scientific and technical training of the host country nationals, assuring, moreover, their access to executive and management positions.

J. The transnational corporations shall refrain from restrictive business practices

21. There is evidence that the transnational corporations tend to limit their subsidiaries' activities to their respective national markets, through the restriction of exports, control of the means of distribution, supply and external finance. Transnational corporations should refrain from commercial practices such as agreements with competitors for a division of markets or for fixing prices which are detrimental to the receiving country.

The following restrictive practices, inter alia, have been already identified:

1. Full or partial export restrictions;
2. Compulsory purchase of products, machinery and equipment from either the suppliers or firms indicated by them;
3. Obligation of entering into a remunerated contract of "transfer of technology" in order to obtain the possibility of acquiring products, machinery and equipment abroad;
4. Imposition of contractual secrecy in an abusive manner, tending to transform a technology not patented in the requiring country, into an industrial property right;
5. Collection of "royalties" on patents which have entered into the public domain or which have not been patented in the demand country;
6. Compulsory transfer of improvement and invention rights to the grantor of technology when the improvements have been made by the recipient;

7. Imposition of the use of a foreign trade mark for the acquisition or transfer of the technology;
8. The establishment of sales prices, including export prices;
9. Compulsory export through the technology supplier;
10. Total or partial limitation of production during and/or after the effective period of the technology contract;
11. Maintenance of a contractual vehicle, with or without remuneration, even after the expiration of the industrial property privileges;
12. Imposition of participation in the capital of the firm requiring the technology;
13. Limitation to the research policies and activities of the firm requiring the technology;
14. Obligation of purchasing labour from the supplier;
15. Prevention of contesting the industrial property rights alleged or secured by the technology supplier;
16. Restrictions to obtaining technology from other suppliers;
17. Practices that make it compulsory for the firm requiring the technology to accept additional remunerated technology either not desired or not needed by it;
18. Practices by the supplier which apply quality control or production standards as a means to impose upon the acquirer of technology unjustified requirements;
19. Practices requiring higher payments for technology on goods produced for export vis-à-vis goods for the domestic market;
20. Submission to foreign courts of information or judgements in law-suits regarding the interpretation or fulfilment of contracts;
21. Mandatory provisions to be held beyond the life of the contract.

K. The transnational corporations shall respect the socio-cultural identity of the host country

22. The activities of the transnational corporations produce effects in the host country other than of an economic nature that, on occasion, are even more important than the strictly economic. The social institutions, cultural values, traditions, the usages and customs of a nation, are affected by the attempts of the transnational corporations to transplant to the host country, their own models of

social development that, in more than one case, have differed considerably from the cultural identity and social structure of the host country. That is especially true of developing countries in that the transnational corporation, when importing a culture peculiar to industrialized countries, distorts the local social and cultural character. In essence it is necessary for the transnational corporations to conform not only to formal, legal prescriptions, but also to the political features, uses and customs observed by the host country.

Annex V

GENERAL ASSEMBLY RESOLUTION 3514 (XXX) OF 15 DECEMBER 1975

Measures against corrupt practices of transnational
and other corporations, their intermediaries and
others involved

The General Assembly,

Concerned by the corrupt practices of certain transnational and other corporations, their intermediaries and others involved,

Recalling paragraph 4 (g) of the Declaration on the Establishment of a New International Economic Order, a/ which provides for the regulation and supervision of the activities of transnational corporations,

Recalling also the provisions of section V of the Programme of Action on the Establishment of a New International Economic Order b/ emphasizing, inter alia, the need to formulate, adopt and implement the code of conduct referred to in the report of the Commission on Transnational Corporations on its first session; c/

Recalling further the provisions of the Charter of Economic Rights and Duties of States, d/ according to which such corporations should not operate in a manner that violates the laws and regulations of the host countries,

Recalling Economic and Social Council resolutions 1721 (LIII) of 28 July 1972, 1908 (LVII) of 2 August 1974 and 1913 (LVII) of 5 December 1974,

Recalling the report of the Commission on Transnational Corporations on its first session,

1. Condemns all corrupt practices, including bribery, by transnational and other corporations, their intermediaries and others involved, in violation of the laws and regulations of the host countries;

2. Reaffirms the right of any State to adopt legislation and to investigate and take appropriate legal action, in accordance with its national laws and regulations, against transnational and other corporations, their intermediaries and others involved for such corrupt practices;

a/ General Assembly resolution 3201 (S-VI) of 1 May 1974.

b/ General Assembly resolution 3202 (S-VI) of 1 May 1974.

c/ Official Records of the Economic and Social Council, Fifty-ninth Session, Supplement No. 12.

d/ General Assembly resolution 3281 (XXIX) of 12 December 1974.

3. Calls upon both home and host Governments to take, within their respective national jurisdictions, all necessary measures which they deem appropriate, including legislative measures, to prevent such corrupt practices, and to take consequent measures against the violators;

4. Calls upon Governments to collect information on such corrupt practices, as well as on measures taken against such practices, and to exchange information bilaterally and, as appropriate, multilaterally, particularly through the United Nations Centre on Transnational Corporations;

5. Calls upon home Governments to co-operate with Governments of the host countries to prevent such corrupt practices, including bribery, and to prosecute, within their national jurisdictions, those who engage in such acts;

6. Requests the Economic and Social Council to direct the Commission on Transnational Corporations to include in its programme of work the question of corrupt practices of transnational corporations and to make recommendations on ways and means whereby such corrupt practices may be effectively prevented;

7. Requests the Secretary-General to report to the General Assembly at its thirty-first session, through the Economic and Social Council, on the implementation of the present resolution.

Annex VI

PAPER SUBMITTED BY THE DELEGATION OF THE UNITED STATES OF AMERICA

1. Resolution 3514 (XXX), adopted unanimously by the General Assembly, condemns all corrupt practices, including bribery, by transnational and other corporations, their intermediaries and others involved in violation of the laws and regulations of the host countries. The resolution calls upon Governments to take necessary and appropriate measures within their respective national jurisdictions and to co-operate to prevent such corrupt practices. Finally, the resolution requests the Economic and Social Council to direct the Commission on Transnational Corporations to include in its programme of work the question of corrupt practices of transnational corporations and to make recommendations on ways and means whereby such corrupt practices may be effectively prevented.

2. The problem of corrupt practices is both a trade and investment problem and, in fact, extends beyond the activities of transnational enterprises. It is primarily the responsibility of each State to set forth clear rules relevant to such activities within their territories - to establish and enforce legislation dealing with the problem, including clear rules as to the use of agents in transactions with the Government. However, the dimensions of the problem are such that unilateral action needs to be supplemented by multilateral co-operation. Co-ordinated action by exporting and importing, host and home countries is the only effective way to prevent improper activities of this kind. The most effective method of achieving such international co-operation is through an international agreement dealing with corrupt practices.

3. An international agreement dealing with corrupt practices should be based on the following principles:

(a) It would apply to international trade and investment transactions with Governments, i.e. government procurement and other governmental actions affecting international trade and investment as may be agreed;

(b) It would apply equally to those who offer or make improper payments and to those who request or accept them;

(c) Importing Governments would agree to (i) establish clear guidelines concerning the use of agents in connexion with government procurement and other covered transactions and (ii) establish appropriate criminal penalties for defined corrupt practices by enterprises and officials in their territory;

(d) All Governments would co-operate and exchange information to help eradicate corrupt practices;

(e) Uniform provisions would be agreed for disclosure by enterprises, agents and officials of political contributions, gifts and payments made in connexion with covered transactions.

4. The Commission believes that urgent and serious consideration should be given to the preparation of an international agreement which would establish certain standards and procedures relative to international trade and investment transactions with Governments with the aim of eliminating corrupt practices in these areas. Accordingly, the Commission requests that the Economic and Social Council at its sixty-first session give priority consideration to this question and establish a group to which each State shall appoint a high-level expert taking into account his knowledge of the issues involved, to study and prepare, based on the principles set forth in paragraph 3 hereof, recommendations for such an agreement. The report of the group would be submitted to the Economic and Social Council at its sixty-third session. The Centre on Transnational Corporations, along with such other organs of the United Nations as the Economic and Social Council deems appropriate, would give full support and assistance to the group in its work.

Annex VII

LIST OF DOCUMENTS BEFORE THE COMMISSION AT ITS SECOND SESSION

<u>Document No.</u>	<u>Agenda item</u>	<u>Title</u>
E/C.10/8 and Add.1	4	National legislation and regulations relating to transnational corporations: report of the Secretariat
E/C.10/9 and Add.1	4	International codes and regional agreements relating to transnational corporations: report of the Secretariat
E/C.10/10	4	Possible methods of work related to the drafting of a code of conduct: note by the Secretariat
E/C.10/11 and Add.1	4	Information on transnational corporations: preliminary report of the Secretariat
E/C.10/12 and Add.1	4	Research on transnational corporations: preliminary report of the Secretariat
E/C.10/13	4	Proposed programme of technical co-operation on matters related to transnational corporations: report of the Secretariat
E/C.10/14	3	Annotated provisional agenda
E/C.10/15	6	Draft provisional agenda for the third session of the Commission
E/C.10/L.3 and Add.1-6	7	Draft report of the Commission
E/C.10/L.4		Letter dated 4 March 1976 to the Chairman of the Commission from the Head of the delegation of the German Democratic Republic
E/C.10/L.5		Letter dated 4 March 1976 to the Chairman of the Commission from the Head of the delegation of the Union of Soviet Socialist Republics
E/C.10/L.6		Letter dated 4 March 1976 to the Chairman of the Commission from the Head of the delegation of the People's Republic of Bulgaria

<u>Document No.</u>	<u>Agenda item</u>	<u>Title</u>
E/C.10/L.7		Letter dated 10 March 1976 to the Chairman of the Commission from the Heads of the delegations of France, the United Kingdom of Great Britain and Northern Ireland and the United States of America
E/C.10/L.8		Document, circulated at the request of the delegation of Peru, containing the conclusions adopted at its session in February 1976 by the Inter-American Juridical Committee, which has its headquarters at Rio de Janeiro
E/C.10/L.9		Letter dated 11 March 1976 to the Chairman of the Commission from the Head of the delegation of the Federal Republic of Germany
E/C.10/L.10 and Corr.1		Draft report of the Commission
E/C.10/L.11		Statement by the Executive Director on the financial implications related to the proposed programme of work contained in document E/C.10/L.10 and Corr.1
E/C.10/INF.2		List of documents before the Commission
E/C.10/INF.3 and Corr.1 and Add.1 and 2		List of representatives to the second session of the Commission
E/C.10/NGO/1 and Corr.1		Statement submitted by Dorothy Willner, representative of the International Organization of Consumer Unions
E/C.10/NGO/2		Statement by the World Federation of Trade Unions, a non-governmental organization in consultative status (category I) with the Economic and Social Council
E/C.10/NGO/3		Statement by the International Confederation of Free Trade Unions, a non-governmental organization in consultative status (category I) with the Economic and Social Council
E/C.10/NGO/4		Statement by the World Confederation of Labour, a non-governmental organization in consultative status (category I) with the Economic and Social Council

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