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DEVELOPMENT AND INTERNATIONAL ECONOMIC
CO-OPERATION: REVIEW OF THE
IMPLEMENTATION OF THE CHARTER OF
ECONOMIC RIGHTS AND DUTIES OF STATES

ECONOMIC AND SOCIAL COUNCIL
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Agenda item 3
GENERAL DISCUSSION OF
INTERNATIONAL ECONOMIC AND
SOCIAL POLICY, INCLUDING
REGIONAL AND SECTORAL
DEVELOPMENTS

IMPLEMENTATION OF THE CHAPTER OF FCONOMIC RIGHTS AND DUTIES OF STATES

Report of the Secretary-General

Adde nd un:

CONTENTS

		<u>Paragraphs</u>	Page
I.	INTRODUCTION	1 - 3	2
II.	SUMMARY OF REPLIES RECEIVED FROM GOVERNMENTS	4 - 10	2
III.	SUMMARY OF REPLIES RECEIVED FROM INTERGOVERNMENTAL ORGANIZATIONS AND SPECIALIZED AGENCIES AND BODIES OF THE UNITED NATIONS SYSTEM	11 - 26	4
	A. Sovereignty over natural resources and economic activities: regulation of transnational corporations (article 2)	11 - 20	4
	B. Promotion of international scientific and technological co-operation and the transfer of technology (article 13)	21 - 26	7

I. INTRODUCTION

- 1. In fulfilment of the request made by the General Assembly in paragraph 2 of resolution 37/204 of 20 December 1982, the Secretary-General issued his report on the implementation of the Charter of Economic Rights and Duties of States (A/39/332-E/1984/105), for consideration by the Economic and Social Council at its second regular session of 1984. On 26 July 1984, following the conclusion of its general discussion of international economic and social policy, the Council adopted resolution 1984/64 entitled "Charter of Economic Rights and Duties of States". In paragraph 2 of that resolution the Council invited Governments and intergovernmental organizations which had not yet done so to submit to the Secretary-General their comments on the implementation of the Charter, in accordance with Assembly resolution 37/204.
- 2. Since the issue of the report of the Secretary-General (A/39/332-E/1984/105) and after the adoption of Economic and Social Council resolution 1984/64, comments on the implementation of the Charter have been submitted to the Secretary-General by the Governments of the following Member States: Bulgaria, Central African Republic, Cuba, Greece, Hungary, Mongolia, Netherlands, Poland, Rwanda and Togo. As is stated in paragraph 3 of the Secretary-General's report, the invitation for information was also extended to concerned specialized agencies and bodies of the United Nations system. By reflecting the information received from the Governments mentioned above and from the United Nations system, the present addendum brings up to date the information contained in the report of the Secretary-General on the implementation of the Charter of Economic Rights and Duties of States.
- 3. Not all of the replies received from Governments provided information on the specific measures that they had undertaken to implement the articles of the Charter. In many instances, however, those replies did offer interpretative views and observations on the Charter itself as well as on the state of its implementation. Some replies contained views and information that were similar to those already provided in the original report of the Secretary-General. The present addendum refrains from repeating them. The views and observations of Governments on the Charter are reflected in section II. The present addendum also contains a synoptic table on the specific measures taken by Governments regarding the implementation of the articles of the Charter. The complete texts of the replies from Governments are available in their original language for consultation.

II. SUMMARY OF REPLIES RECEIVED FROM GOVERNMENTS

4. In their comments submitted to the Secretary-General, Governments agreed that the Charter of Economic Rights and Duties of States was an embodiment of cardinal principles that must be allowed to govern inter-State relationships. While cognizant of the fact that the development of developing countries could not be excluded from the Charter's raison d'étre, Governments also regarded it as an adequate expression of the need for harmonious development in world economy as well as the maintenance of international peace and security. Governments also held to the view that it was for the establishment and safeguard of those objectives that

the Charter placed special emphasis on sovereignty, territorial integrity, political independence of States, equality of rights, abstention by States from attempts to seek hegemony and spheres of influence, as well as on the promotion of international social justice.

- 5. Against that interpretation of the Charter, Governments reviewed the present global economic as well as political situation and concluded in their comments that the Charter remained largely unimplemented. A group of countries offered a variety of reasons for this, including the following observations:
- (a) Certain Powers had openly arrogated to themselves the right to intervene in the affairs of States, thus making a mockery of the principle of non-aggression;
- (b) Similarly, the right of every State to choose its economic as well as its political, social and cultural system, in accordance with the wishes of its people, was continually threatened by imperialist forces that ignored this precept and resorted to force, aggression and intervention in order to compel States to establish systems and régimes that were compatible with the interests of the aggressors;
- (c) With disregard for the Charter, some Member States used sanctions, blockades and other forms of economic sanctions as a means of exerting pressure and influence on the conduct of the internal affairs of sovereign States;
- (d) Peaceful co-existence had been jeopardized not only by the policy of confrontation adopted within certain circles in the West but also through the unbridled arms race;
- (e) The United Nations, created to maintain international peace and security as well as to foster international development, was now the target of an attack that aimed to convert the Organization into an institution that catered to the narrow national interests of certain States.
- 6. With regard to the political aspects of the Charter, Governments emphasized in their comments the observation that the Charter outlined a juridical framework which was consonant with an international community of co-equal States and served to bring a transition to that end. They also maintained that global peace and security could be greatly enhanced if all Member States displayed a genuine respect for the political objectives of the Charter.
- 7. As part of the reasons for the non-achievement of the economic goals established by the Charter, Governments focused on the institution of protectionism as having substantially damaged the economy and commercial interests of developing countries. In this connection, some Governments took the view that the reduction in the prices of raw materials and commodities, combined with the excessive rise in prices of imports from the developed world, together with high rates of interests for loans and the cost of amortizing and servicing of debts, had contributed decisively towards making the effects of the world economic crisis fall even more heavily on the developing countries.

- 8. To illustrate this point of view, some Governments cited the economic situation in Latin America. As a group, the countries of that region had an average increase of 5.1 per cent in their gross national product between 1976 and 1980; in 1981 that indicator dropped to 1.7 per cent and by 1982 it had become negative. The external trade balance for 19 countries in Latin America, which had a surplus of more than \$13 billion in 1980, showed a negative result of more than \$1 billion in 1982. The prices of 14 out of 18 main export products from Latin America fell in 1982 by as much as a quarter (compared with previous years) and the Latin American debt amounts to three times the value of exports from the region.
- 9. In their comments, Governments maintained that, in several crucial respects, the Latin American situation was no different from that of other developing regions. In that connection, reference was made to the initiative of the Sixth Conference of Heads of State or Governments of the Non-Aligned Countries, the efforts of the Group of 77 and to General Assembly resolution 34/138 of 14 December 1979, in which the Assembly attempted, with great flexibility, to launch a series of global negotiations. The goal of those efforts was to face squarely the main problems besetting the economies of the developing countries and the establishment of an international economy restructured on a fair and democratic basis. Those efforts, Governments observed, were met with rigid, discriminatory action and delaying tactics designed to alter substantially the very essence of those negotiations.
- 10. Without exception, all the replies received from Governments emphasized the relevance and importance of the Charter. They saw it as reflecting the realities of the phenomenon of interdependence, particularly in the area of global economic relations. Its purposes and principles still maintain their full validity and their fulfilment is at present even more urgent than it was when first adopted.
 - III. SUMMARY OF REPLIES RECEIVED FROM INTERGOVERNMENTAL ORGANIZATIONS AND SPECIALIZED AGENCIES AND BODIES OF THE UNITED NATIONS SYSTEM
 - A. Sovereignty over natural resources and economic activities: regulation of transnational corporations (article 2)
- 11. The greater awareness, particularly in developing countries, of the effects of the operations of transnational corporations on the development process, together with the increased international exposure that that issue has received in recent years, have caused both home and host countries to devote greater attention to ensuring that the activities of transnational corporations conform with national priorities. The improved managerial, entrepreneurial and technological capabilities of many developing countries in both the public and private sectors have also been important elements in enabling such countries to negotiate more favourable arrangements with foreign enterprises.
- 12. This long-term improvement in the bargaining capability of developing countries has been tempered by shorter-term changes in the bargaining position of individual countries. In the early and mid-1970s, the negotiating position of some

countries, particularly those in the petroleum sector, improved and the countries benefited accordingly. By the end of the 1970s, severe balance-of-payments difficulties and deteriorating economic circumstances had induced a number of developing countries to be less restrictive and more flexible in their policies towards transnational corporations. That adjustment in policies was facilitated by the increased experience and sophistication of developing countries in dealing with transnational corporations. Within the framework of their basic policies, Governments were able to strike a balance between the regulation and the promotion of foreign participation in their economies, notably by channelling the activities of transnational corporations into priority areas. An increasing number of Governments pursued a strategy of reserving certain sectors or activities exclusively for State or national enterprises, while in other areas a more open policy was adopted and financial and non-financial incentives were offered to attract foreign investment to priority sectors.

- 13. Developing countries differ in their objectives with regard to the ownership and management of the local operations of transnational corporations. In this regard, national policies have not only varied among countries but have also changed over time. Nationalizations in the natural resources sector decreased as the 1970s progressed, but host countries continued to adopt various devices for consolidating and maintaining their sovereignty over their natural resources and for achieving more effective control over their industries. Transnational corporations in the non-renewable energy and non-fuel mineral sectors lost much of their ownership of primary resources in developing countries but managed to retain a large degree of control through such downstream operations as marketing and distribution and through their superior exploration and production technology.
- 14. In primary export commodities, a similar shift in the ownership of production facilities in favour of producing countries has taken place. As in the oil sector, however, transnational corporations continue to dominate downstream processing and marketing. In the case of agricultural commodities, for example, it is estimated that approximately 80 per cent of exports from developing countries remain under the control of transnational corporations. At the same time, transnational corporations that were formerly heavily involved in agricultural production in developing countries have diversified into other food-related industries, with the result that the primary and growing role of transnational corporations in the food sector in developing countries is in pre-production industrial activities and in post-harvest processing and trading. In some cases, however, transnational corporations have come to play an indirect role in agricultural production through contract production or through consulting services to national enterprises.
- 15. In manufacturing, joint ventures between domestic and foreign entities are often a preferred form of co-operation. In some cases, this has been achieved through domestic ownership requirements being imposed at the entry stage; an increasingly common alternative has been to dilute foreign ownership over time by requiring that additions to equity be made available, exclusively or predominantly, to domestic investors. However, increased domestic ownership has not necessarily led to increased control over the enterprises concerned. Experience shows that transnational corporations can exercise effective control over local affiliates not only through equity ownership but also through their control of technology,

trademarks, marketing, the supply of essential inputs and so on. This has induced developing countries to adopt a variety of measures to ensure that the activities of transnational corporation affiliates, once established, contribute to the attainment of national development objectives. Performance requirements and measures to ensure the effective transfer of technology under mutually beneficial terms and conditions have become increasingly common.

- 16. Another significant development has been the continued increase in the number of bilateral investment agreements or treaties concluded between the principal capital-exporting countries and individual developing countries. Those agreements essentially deal with the promotion and protection of investments and usually spell out in considerable detail the obligations of host country Governments towards the treatment of foreign investments. They do not normally deal with the conduct or the obligations of transnational corporations in host countries. Thirty-five bilateral investment agreements were signed by developed countries with developing countries and socialist countries of eastern Europe during the period 1971 to 1975 and 55 during 1976 to 1980. During 1981 and 1982, 26 such agreements were signed. There is evidence that in some quarters among the capital-exporting countries, those agreements may be regarded as obviating the need for a multilateral instrument, such as the United Nations code of conduct; however, a multilateral approach is as essential in this field as it is in the field of international trade and international finance.
- 17. In 1976, the Commission on Transmational Corporations established an Intergovernmental Working Group to prepare a draft code of conduct on transmational corporations. The Working Group submitted its final report to the Commission in 1982. The report contained a draft text for the code, although alternative formulations were included for a number of provisions on which the Working Group had not been able to reach agreement.
- 18. The draft code of conduct contains definitive formulations for about two thirds of its provisions. It addresses a number of important issues related to transnational corporations which have not been dealt with in international forums up to the present time. The code is composed of six chapters: (a) preamble and objectives, (b) definitions and scope of application, (c) activities of transnational corporations, (d) treatment of transnational corporations, (e) intergovernmental co-operation, and (f) implementation of the code of conduct. The chapter on activities of transnational corporations deals with such issues as adherence by transnational corporations to economic goals and development objectives, policies and priorities and socio-cultural objectives and values, ownership and control; balance of payments and financing; transfer pricing; taxation; and consumer and environmental protection. It also contains provisions dealing with employment and labour, competition and restrictive business practices, abstention from corrupt practices, and transfer of technology. On most of those issues, a consensus has been reached.
- 19. Two special sessions of the Commission on Transnational Corporations have been held in order to complete the work on the draft code. Although progress has been made, there are a number of outstanding issues still to be resolved. At the end of its special session in June 1984, the Commission stressed the importance of the completion and the adoption of the code. The Commission submitted its report to

the Economic and Social Council at its second regular session of 1984 for its consideration and transmission to the General Assembly, which is to decide at its thirty-ninth session on how to proceed with the code.

In addition to the draft code of conduct, work has been undertaken on a number of other international and regional instruments containing standards and principles for the regulation and treatment of international business. Some of these were adopted at the international level, such as the Tripartite Declaration of Principles concerning Multinational Enterprises (adopted by the Governing Body of the International Labour Office in 1977) and the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (adopted by the General Assembly in 1980). 1/ Others were more limited in coverage, such as, for instance, the Guidelines for Multinational Enterprises adopted by the Council of the Organisation for Economic Co-operation and Development (CECD) in 1976. An international agreement on the prevention and elimination of illicit payments was also drafted under the auspices of the United Nations in the 1970s. No final decision has been taken by the Economic and Social Council on that draft. The draft international code of conduct on the transfer of technology, on which work also began in the mid-1970s, is still being negotiated. Other international instruments that have a bearing on the activities of transnational corporations include (a) the International Code of Marketing of Breast-milk Substitutes, adopted by the World Health Assembly in its resolution WHA 34.23 of May 1981; (b) the Guidelines Governing the Protection of Privacy and Transborder Data Flows of Personal Data, promulgated by OECD in 1980; and (c) the Code of Conduct for Companies with Subsidiaries, Branches or Representation in South Africa, issued by the Council of Ministers of the European Community in 1978.

B. Promotion of international scientific and technological co-operation and the transfer of technology (article 13)

- 21. One of the major steps taken by the international community towards co-operation in the area of science and technology was the convening of the United Nations Conference on Science and Technology for Development at Vienna, in August 1979. Recalling the Charter of Economic Rights and Duties of States, the Conference adopted a resolution and Programme of Action on Science and Technology for Development. 2/ Having been endorsed by the General Assembly in resolution 34/218 of 19 December 1979, the Programme of Action gave rise to an institutional machinery for its implementation. That machinery consists of:
- (a) The Intergovernmental Committee on Science and Technology for Development, open to all States;
 - (b) The Centre for Science and Technology for Development;
- (c) The United Nations Financing System for Science and Technology for Development.

The Programme of Action and the machinery for its implementation have been designed so as to ensure that every State has the right to benefit from the advances and developments in science and technology for the acceleration of its economic and social benefit.

- 22. In fulfilment of its mandate and following the decisions taken by the Intergovernmental Committee in the course of its six regular sessions (1980-1984) the Centre has taken steps for the establishment of two important mechanisms called for in the Programme of Action and which also respond directly to the letter and spirit of article 13 of the Charter. Those mechanisms are:
- (a) An Advance Technology Alert System on new scientific and technological development, especially for the benefit of developing countries;
 - (b) A global information network for science and technology.

For the period 1984 to 1989, the Centre, in co-operation with the Office of Programme Planning and Co-ordination, of the Department of International Economic and Social Affairs, has co-ordinated the preparation of programme 20 (Science and technology) of the medium-term plan for the period 1984-1989. The programme is premised on the recognition that rational utilization of science and technology can play a crucial role in the development of all countries, particularly that of developing countries, and on the decision of the Vienna Conference that recognized the necessity for an equitable distribution of the world's scientific and technological capabilities and the importance of developing countries exercising full control over their own resources. In the implementation of this programme, related project activities will take place in Africa, Europe, Latin America and Western Asia, as well as in Asia and the Pacific.

- 23. The Joint Inter-Agency Task Force on Science and Technology for Development has contributed to harmonization and improved efficiency in the utilization of resources within the United Nations system for the strengthening of the scientific and technological capabilities of developing countries. The Task Force has recommended the implementation of 24 joint projects in which the system as a whole is to participate.
- 24. The World Health Organization (WHO) implements health science and technology programmes which deal with the identification of technologies that are already appropriate for delivery by the health system infrastructure in Member States. Those programmes also deal with the research required to adopt or develop technologies that are not yet appropriate for delivery, as well as with the transfer of appropriate technologies in the medical field.
- 25. Many countries, especially those in the developing world, have not yet developed an effective national organization for the management of health research or even for articulating health research policy, although there is a notable trend towards the development of such mechanisms. There is growing concern over the disparities between developed and developing countries in research efforts that are relevant to world-wide health problems. WHO, therefore, pays special attention to the development and strengthening of the health research capacities of the developing countries. It continues to support the building up of research capability by Member States and to promote effective and efficient systems for health research management, including information support for research. A central function of health research at the national level is to assess existing technology for suitability in the light of local conditions and health priorities. Such an

assessment would enable countries to decide what existing technology, in its present or adapted form, is usable and what are the gaps needing to be filled by research leading to new technology.

26. The World Health Organization is emphasizing that the corner-stone of any national health research effort is a coherent policy that would permit a rational allocation of resources and sustained work towards clearly defined objectives. International exchanges of workers and participation in international collaborative research are being encouraged. Its special research and training programmes initiated at the international level have responsibilities for strengthening national health research capabilities through collaboration in the design and implementation of research. WHO also continues to develop its capacity for ensuring the prompt and relevant dissemination of research findings.

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Notes

- United Nations publication, Sales No. E.81.II.D.5.
- 2/ See Report of the United Nations Conference on Science and Technology for Development, Vienna, 20-31 August 1979 (United Nations publication, Sales No. E.79.I.21 and corrigenda), chaps. VI and VII.