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Fahon Ziad

THE RELEVANCE OF THE CODE OF CONDUCT ON TRANSNATIONAL CORPORATIONS TO THE COUNTRIES OF WESTERN ASIA

- EXECUTIVE SUMMARY -

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I. TRANSNATIONAL CORPORATIONS: A CHALLENGE TO THE WORLD

1. Following the surge of decolonization in the 1960's and after regaining their political sovereignty, developing countries became gradually aware of the inequality inherent in the present order of international economic relations. The independence for which they have struggled is gradually being transformed into a kind of dependence having various aspects with distressing consequences. Independence with dependence led inevitably to the rejection by the developing countries of the international economic order as conceived and imposed by economically powerful and monopolistic agencies, namely the transnational corporations (TNC's).

2. The call for a new international economic order, the Colombo Declaration, the Lima Declaration and the impressive resolutions of the United Nations General Assembly, all reflect the grave concern shown by the developing countries with regard to the activities of the TNC's and the deterioration of international terms of trade. The most recent reaction to that effect came from the non-aligned countries at their Seventh Conference of Heads of State or Government, (1) held at New Delhi from 7 to 12 March 1983.

3. Reorganizing the established order is therefore no more than a legitimate defence of the inalienable right of peoples to polictical and economic self-determination. This is all the more urgent since transnational corporations, not content with the economic disruptions, resulting from their operations, were not loath, in certain cases, to interfere in the internal affairs of sovereign States (2).

II. TNC INVOLVEMENT IN THE ECWA REGION

A. Reaction of the arab countries

4. Accordingly, it became necessary, at the regional as well as the international level, to put an end to a period of injustice and exploitation by exposing the previously disguised practices of the transnational corporations.

5. The most dramatic turn of events in the region of Western Asia took place with the creation of OPEC, and ultimately of OAPEC, as a kind of counterbalance to the major oil companies. Power henceforth reverted to the producing countries and the terms of trade were, in part, once again brought into balance.

FOREWORD

Under programme element 4.9 of the 1984-1985 approved work programme of the Joint ECWA/UNCTC Unit on Transnational Corporations, it is stipulated to submit an interim report on the application of the code of conduct at the national and regional level, on the assumption that by end of 1983 the Code of Conduct would have been completely formulated and adopted by member countries. Since negotiations on the Code are still in progress, it was found useful to submit to the Commission a compte-redue on the status of the formulation of the Code, with special emphasis on the relevance of the main raised by the Code to the countries of Western Asia.

This report is an executive summary of the more detailed report referred to above. The Executive summary was already circulated, along with executive summaries relating to other research projects undertaken by the Economic Commission for Western Asia 1/.

1/ See E/ECWA/XI/4/Add.1/Part 2 dated 22 April 1984, pp. 121-138.

are concentrated in countries with a relatively high level of economic development and rather large domestic or regional markets. (4)

10. In contrast, in the ECWA region the purpose of most foreign direct investments is to take advantage of available raw materials while benefiting from relatively low factor costs, particularly that of energy.

11. In some countries of the region the aluminium and iron and steel industries depend on the consumption of enormous quantities of natural gas delivered, in certain cases, free of charge at the well-head, making production costs less onerous than those of steel or aluminium produced anywhere else.

12. Thus, for the TNC's some Arab countries are, so to speak, stopping places for production with a view to exporting, that is to say for the production of an item within the context of the international manufacturing industry, since what is produced in the Arab countries is only a link in the chain of the technological cycle of production orchestrated by the TNC's. This situation places those countries in a state of structural dependence.

III. TOWARDS A CODE OF PROPER CONDUCT FOR TRANSNATIONAL CORPORATIONS

13. Action at the international level was, consequently, urgent and necessary in order to put an end to such developments or, at least, to redirect them. The channelling of foreign investment was to provide the developing countries with a legal basis for benefiting from external resources, developing their external trade, improving their management, acquiring appropriate technology and strengthening internal, regional and international relations.

14. Several countries, particularly the developing countries, encountered difficulties in seeking to regulate the conduct of TNC's with a view to ensuring that their activities were compatible with development goals and objectives. Therefore, faced with the inadequacy of national regulatory mechanisms and means of control to effectively counter the international strategies of the TNC's, the adoption of an international framework became inevitable. Accordingly, the developing countries came to realize the need to adopt a multilateral approach. The industrialized countries, for their part, also acknowledged the advantage of adopting, at the multilateral level, common norms designed to regulate the conduct of TNC's.

6. Several ECWA member countries finally came to understand that without real, sovereign and responsible power in economic sectors; development, particularly regional economic integration, would only be a chimera.

7. That the Arab countries should wield such power - which is theirs to wield - could please neither the industrialized countries nor the TNC's. It was therefore necessary to contain that power within an amenable framework and it is for that reason that, following the 1973 Ramadan war and the partial adjustment of oil prices, attempts to include the Arab economies within the overall world economy became more energetic. The prelude to this, in part, consisted in side-tracking a number of Arab regional development objectives while at the same time encouraging the interest of certain countries in the global process. In the ECWA region, most of the industries in which the TNC's play an increasingly active role are involved in a system of integrated services built around oil (ports, gas pipelines, oil pipelines, fleets, etc.). These industries have been connected with others, such as the iron, steel and aluminium industries, which are all export-oriented. Clearly, the evolution of the petrochemical, iron and steel industries also meets the additional needs of the industrialized countries for high-grade steel and petrochemical goods. It would be of interest to know the degree of regional economic integration such industries would be capable of bringing about.

B. Foreign direct investment in the Arab world: an overview

8. Seen as a whole, foreign direct investment in developing countries is characterized by a persistent geographical concentration (3). The greater part of such investment takes place in relatively few developing countries, many of which have a comparatively high *per capita* gross national product. In 1978, this share was nearly 75 percent. Between 1960 and 1979 the proportion invested in most regions increased, with the exception of the Middle East. This was because of the nationalizations taking place in most of the countries of the region.

9. Almost 60% of investment in the Middle East was received by two countries, the Islamic Republic of Iran and Israel, with the remainder being shared by about 13 others. The fact that a select number of developing countries account for the greater part of all direct investment in the third world is, at least partially, related to the pattern and purposes of investments by TNC's in different countries and the framework of host country government policies on foreign direct investment. To the extent that TNC's investments are made to satisfy local demand, they

15. Among many others, J. de Fauchier, Chairman and Director-General of Parisbas, one of the largest financial groupings in the world, was already asking in 1968 for concerted action by heads of State to elaborate a "code of proper conduct" to facilitate the internationalization of business, eliminating abuses so that the needed internationalization might develop in a harmonious manner. (5)

16. Some years later Mr. Henry Kissinger, the American Secretary of State, declared from the podium of the United Nations that, for its part, the United States was inclined to respond favourably to the legitimate concerns of Governments in whose territory transnational corporations carried out their activities. The United States therefore felt that the time had come for the international community to formulate principals governing the conduct of companies after the manner of the rules governing relations between Governments. (6)

17. As a result of these events, several regional and sub-regional attempts were made to establish legal rules to which TNC's were to submit and conform in order to limit to some extent the involvement and sphere of operations of such corporations.

18. In 1970, the Andean countries (7) adopted a foreign investment code with the aim of establishing a common system of treatment for foreign capital, registered trade marks, patents, licenses and royalties in response to the sub-regional integration requirements of the Andean Programme. This system seems to be compatible with the terms of the Carthagena Agreement, in as much as investment benefits accrue to domestic or joint enterprises.

19. The Governments of the OECD countries also reached agreement on a declaration on international investment and multinational enterprises. This led to the 1976 Declaration and Decisions on International Investment and Multinational Enterprises (8) comprising three instruments on international co-operation, among them the Guidelines for Multinational Enterprises.

20. The declaration stresses that, for member countries, co-operation could improve the climate for foreign investment, encourage the positive contribution of TNC's to economic and social progress and minimize or solve outright the difficulties to which their various operations might give rise.

21. The goal was to fill the gap in the field arising from the lack of a system of international rules and agreements relating to investment which were equally valid for and acceptable to host countries, home countries and investors.

22. At the Arab regional level, there is the Standard Convention on Inter-Arab Investment whose aim is to establish rules for inter-Arab investment within a clear, unified and stable framework. This would facilitate the movement of Arab capital and its use within those countries so as to contribute to development and economic growth. The Convention deals with non-discrimination with regard to the origin of Arab capital, grants privileges to capital, offers guarantees against nationalization and expropriation, guarantees compensation for non-commercial risks, deals with the right of abode in host countries, etc. For its implementation, the Convention provides for the establishment of a regional entity with representative offices in each State party to the Convention. The settlement of disputes should, in the first instance, take place in an amicable manner either before an arbitral tribunal or the Arab Investment Court, whose judgement is final.

23. It should however be noted that most ECWA member countries, each in its proper context, have enacted domestic legislation on foreign direct investment. Obviously, such regulations will be subject to various influences according to the political, economic and ideological orientation chosen by each country.

A. The United Nations code of conduct on transnational corporations

24. Attempts to formulate rules governing the activities of TNC's, then, date back to the 1960s when abuses were already evident. The best international forum for this purpose would seem to be the United Nations, a focal point of all trends and ideas. Accordingly, the Commission on Transnational Corporations and the Centre on Transnational Corporations were established to that end. Shortly thereafter an intergovernmental working group was established with a view to elaborating a code of conduct on TNC's. Negotiations on the Code have continued since 1975 and in the meantime about two-thirds of the 71 draft provisions have been completed.

25. In the course of the negotiations it has always been asserted by most delegations that the formulation, adoption and implementation of the United Nations Code of Conduct on Transnational Corporations was of great importance. That importance was stressed in the Programme of Action on the Establishment of a New International Economic Order and in the International Devel-

opment Strategy for the Third United Nations Development Decade. Against this background, full support was expressed for the Commission and it benefited from general good will in expediting the negotiations with a view to finally completing the Code.

26. There nevertheless remain some points of friction on a number of sensitive questions, particularly those associated with the definition of the term "transnational corporations", the general treatment of TNC's by the countries in which they operate, nationalization and compensation, etc.

B. Unsettled questions having a direct bearing on the ECWA region

27. Some of the unsettled questions have a direct bearing on foreign investment policy in the ECWA region.

1. Definition of the term "transnational corporation"

28. One of the principal unsettled questions is that of the definition the Code will give the term "transnational corporation". At the outset, two definitions are given under paragraph I (a) of the draft code. (9) The second of these is general in nature and wide in scope. It includes all TNC's of whatever kind of ownership. On the other hand, the two proposals have three points in common in defining and characterizing the TNC as an enterprise (i) comprising entities in two or more countries, regardless of the legal form and fields of activity of these entities; (ii) which operates under a system of decision-making, permitting coherent policies and a common strategy through one or more decision-making centres and, (iii) in which the entities are so linked, by ownership or otherwise, that one or more of them may be able to exercise a significant influence over the activities of others, and, in particular, to share knowledge, resources and responsibilities with the others.

29. The point of disagreement lies in the manner of ownership of the corporation. The socialist group of countries refuses to include public (State) enterprises in the definition since it considers that they are wholly controlled by the home State and do not belong to that category of corporations whose conduct motivated the establishment of the Commission on Transnational Corporations and the elaboration of a code of conduct. As against that, the capitalist countries reject this distinction and maintain that the nature of ownership is not a determining factor in defining and characterizing the TNC and that, conse-

quently, all corporations have the necessary characteristics mentioned above.

30. It should nevertheless be noted that there are several TNC's based in the socialist countries which operate in the developing countries within the framework of bilateral co-operation and whose goal is not to maximize profit. Some of these TNC's are fairly active in some of the countries of the ECWA region. It is, however, also true that some socialist TNC's operate outside the co-operation framework. Moreover, the activities of socialist TNC's under technical co-operation programmes seem to be carried out on terms which vary from one country to another.

31. A definition that would include private, semi-private and State TNC's equally does not seem to have the support of all parties to the negotiations.

2. Preamble and objectives of the code

32. There is general agreement that the preamble to the Code should, inter alia, mention the effect of TNC's on the world economy and the concerns aroused by their activities which underlay measures taken at the national and international levels for their regulation.

33. With regard to the principles, goals and objectives of the Code, the version proposed by the rapporteur of the special session places particular emphasis on respect for the national sovereignty of States over their natural resources, wealth and economic activities, non-interference in internal and intergovernmental affairs and the right of States to regulate and control the activities of TNC's. The positive contributions of TNC's are also emphasized, in particular with regard to the social aspect of the Code, namely that concerning the work-force. Then, since it has been agreed that the provisions of the other codes of conduct having a bearing on different specialized aspects of TNC activities which have been elaborated by other organs of the United Nation system should be incorporated into the Code, an appropriate formula has been agreed upon for the incorporation into the Code of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the International Labour Organization.

34. Accordingly, the Intergovernmental Working Group of the Commission on Transnational Corporations has decided to place

the following paragraph in one of the introductory parts of the Code:

> "For the purposes of this Code, the principles set out in the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the International Labour Organization, should apply in the field of employment, training, conditions of work and life and industrial relations."

No decision has yet been taken on the exact location of this paragraph. (10)

3. The ILO viewpoint incorporated into the code

35. The goal of the ILO Declaration is to encourage transnational enterprises to make a positive contribution to economic and social development and to minimize or even resolve the dificulties caused by their operations. Particular attention is paid to the United Nations resolutions calling for the establishment of a new international economic order. According to the same instrument, transnational enterprises should pay most particular attention to the general policy objectives of the countries in which they operate and should see to it that their activities are not contrary to the development priorities, social objectives and structures of these countries. the Declaration also stipulates that the governments of the home countries should encourage proper social practices on the part of their transnational enterprises and urges them to respect the social and labour legislation of the host countries and to comply with the relevant international norms.

36. The ILO study on the impact of TNC's on employment and vocational training attempts, in spite of everything, to show the positive side of the TNC's in this field but does not, for all that, deny the fact that in 1970 the number of jobs created by TNC's in developing countries represented no more than 0.3 percent of total employment in these countries. Some authors advance the proposition that the contribution of the TNC's to the indigenous creation of employment opportunities is slight or even marginal.

37. The insertion into the Code of the paragraph calling attention to the Tripartite Declaration of Principles would seem to be of particular importance to countries which are, in one way or another, victims of the labour policy generally adopted by TNC's and would be of particular benefit to the toiling masses in the developing countries where labour policy and working conditions leave something to be desired.

38. In most ECWA member countries the situation of the work-force is alarming. After the beginning of the oil boom, and in order to implement ambitious projects, the oil-producing countries had opened wide their doors to a large-scale immigration of workers of all levels and all races in the quantities that their indigenous populations were unable to supply. Thus, a large and heterogeneous mass of immigrants became installed in the region and gradually made its presence felt in different economic sectors, thereby posing potential problems with regard to their integration, assimilation or repatriation. According to some observers, the danger lies largely in the growing number of foreigners in relation to the indigenous population in general and in the preponderance of Asian immigrants over Arab immigrants in particular.

39. The growth of this mass of immigrants has had negative repercussions on social and economic planning, the most significant of them being the inability of the indigeneous populations to provide a competitive work-force capable of replacing foreign workers in all economic activities. (11)

40. Moreover, while some countries of the ECWA region suffer from a lack of capital necessary to implement their development plans and are teeming with unemployed, others, while enjoying a financial surplus, are deficient in the manpower required for the execution of their projects. In order to attain a degree of economic integration in the Arab region, an objective so strongly preached in so many bilateral and multilateral conventions, sustained efforts have been made over a number of years by several Arab countries with the aim of co-ordinating their policies in the field of migration and labour. The 1957 Arab Economic Unity Agreement was the outcome of these efforts. It mentions the establishment of Arab economic unity among the members of the League, while guaranteeing rights and freedoms. This Agreement, like so many others, has not had the desired results because of political differences and distortions among the Arab States. Some countries of the region prohibit university graduates from leaving their countries other than in cases of extreme need. This is justified on the grounds that the services of such personnel are essential for national development. Moreover, in some countries the laws relating to the domicile of foreigners give discretionary power to the Ministry of the Interior with regard to the residence of members of the families of immigrant workers. It is often expressly forbidden. Clearly, such provisions only go to confirm arguments to the effect that such workers are generally considered "guest workers" rather than regular immigrants. (12)

41. There has, however, appeared in recent years in some countries of the region a most alarming phenomenon connected with

employment and migration. Some countries seem no longer to want Arab workers and prefer to import Asian (particularly Korean) labour, ceding the authority to do so to TNC's specializing in the importation of labour in total contradiction with the spirit of Arab regional economic development objectives.

42. Moreover, the great majority of the workers engaged in construction projects carried out by TNC's are accomodated in camps or "compounds", which are a species of prefabricated ghetto. These thousands of Indians, Koreans, Filipinos and Arabs are considered as merely "on loan", accept proverty-level salaries and very difficult living conditions and remain socially and culturally apart.

43. For all of these reasons of fundamental human rights and principles, paragraphs 24 and 25 the draft Code of Conduct (contained in the economic, financial and social section) and paragraph 46 (under disclosure of information) are of very great importance for the present situation of immigrants employed by TNC's operating in the ECWA region. It should also not be forgotten that a humanitarian and non-discriminatory policy in the field of employment and immirgration would be a beneficial and dynamic factor in the development process and in Arab economic integration.

4. Non-collaboration by TNC's with racist minority regimes in Southern Africa

44. Since its inception, the minority regime in South Africa has continued to violate human rights and fundamental freedoms by condemning the majority black population to servitude. Consequently, the TNC's operating in this country provide political and economic support to the established regime.

45. The approach adopted by the Commission of the European Communities in its code of conduct for European TNC's operating in southern Africa (13) seems to be very flexible. The Commission requests TNC's to apply, while continuing their activities, the sanctions imposed by the United Nations and other international bodies against this racist State. They should also endeavour to do their best to encourage and promote human rights and fundamental freedoms. In contrast, the opposite approach would call upon all TNC's to abstain totally from engaging in economic or other activities in countries practising a racist policy or exercising a colonial policy in territories which do not belong to them.

46. Falling between these two outlooks is that of the United Nations, more flexible and more moderate in tone. Paragraph 14 of the draft Code, on which no final decision has been taken, requests TNC's to make no further investment in this country and progressively to reduce their present activities. They should at least refrain from collaborating with the racist minority regime in South Africa. The TNC's are also called upon to comply with Security Council decisions and to respect all of the relevant United Nations resolutions. Finally, they are urged to engage in appropriate activities with a view to eliminating all forms of racial discrimination and all other aspects of the system of apartheid. (14)

47. In spite of this flexibility and great caution, the Western countries have not yet applied the required vigorous sanctions that would allow the political and economic isolation of South Africa.

48. The ECWA member countries have often expressed their desire to contribute to the elimination of apartheid, all other forms of racial discrimination and colonialism and to promote the right to self determination and safeguard human rights and fundamental freedoms for all.

49. It is to be deplored, none the less, that the relevant provisions of the Code make no mention of the other racist regimes. The question was raised by the delegation of Saudi Arabia during the second part of the 1983 special session of the Commission on Transnational Corporations. There was however no apparant follow-up which might lead to the inclusion of Israel in this paragraph, the present tenor of which represents years of negotiation.

5. Treatment of transnational corporations

(a) General treatment of transnational corporations by the countries in which they operate

50. The fourth part of the Code, is the most controversial part. It raises very delicate questions given the divergent interests of different parties to the negotiations. These questions relate to the principles of universally recognized international law prescribing minimum standards for the treatment of foreign-based TNC's which are to be incorporated in domestic legislation. They further raise the question of whether the concept of national sovereignty requires all aspects of such treatment to be governed by domestic legislation.

51. The economically powerful western countries wish to see the host countries, generally developing countries which, in a manner of speaking, go to make up the periphery of such economic power accord equitable and non-discriminatory treatment to affiliates of TNC's in accordance with established laws, regulations and administrative practices. Thus, entities of TNC's would be given by the countries in which they operate the treatment accorded to domestic enterprises engaged in the same economic activities.

52. The risk incurred by a developing country in adopting such an attitude would be that of renouncing once and for all any chance of creating and developing domestic industries which would ultimately be able to meet national economic needs and demands.

53. From the same Western point of view, the host countries should offer precise and predictable terms for the setting up and operation of TNC's; in other words they should have a clear and openly declared economic policy, as has frequently been stated in the course of the negotiations.

54. In the view of the developing countries, TNC's should not claim preferential treatment or the incentives and concessions generally granted to domestic enterprises. Such "discrimination" is in a way essential to developing countries, given the inequality of capacities and powers of the two kinds of enterprise and the goals and objectives of collective autonomy and self-reliant development that the developing countries should, as a rule, attain.

55. During the negotiations, some delegations referred to the fair and equal treatment accorded to each other by the OECD countries in support of the argument that the TNC's of the developed countries should benefit from the "encouragements" accorded by developing countries to their own enterprises.

56. This attitude, which would be valid as between countries having attained more or less the same degree of development, is no longer so when the countries in question have different levels of development.

(b) Nationalization and compensation

57. Long years of struggle were necessary before the international community, and the developing countries in particular, managed to gain acceptance of the right of States to implement nationalization in the interests of their population.

58. For the developing countries, nationalization is no more than a legitimate concomitant of the sacrosanct principle of permanent sovereignty over natural resources and national wealth. Nationalization is thus an act carried out in the public interest aimed at retrieving national property and national rights. For some, it is a legal device for the redistribution of national wealth.

59. Generally speaking, international law recognizes the right of every State to expropriate foreign-owned private property as an expression of its sovereignty. In contrast, the traditional and outdated notions of international law often advanced by the Western countries have always sought to impose strict limitations on this sacrosanct right.

60. The traditional view of State responsibility with regard to nationalization is contested by another doctrine widely embraced by the Eastern countries and the developing countries. They assert that domestic law alone is competent to establish terms for the legality and legitimacy of nationalization and that the courts and tribunals of the nationalizing State alone have jurisdiction with regard to any claim that might arise. This derives from the concept of the equality of treatment under domestic law, according to which no foreign entity can be subject to a jurisdiction other than that of the country in which it operates. No preferential treatment should therefore be accorded to foreigners in this field.

61. It has been unequivocally asserted that nationalization, as an expression of State sovereignty, takes place at the sole discretion of the State. It is embarked upon in the light of the circumstances the State considers relevant and in accordance with its national Constitution, laws and regulations, and not necessarily on the basis of an objectively established public interest.

62. The Western countries would like this sovereign right of nationalization to be applied without discrimination to domestic as well as foreign enterprises operating in the same branch of activity. The goal of this stipulation is to place additional constraints on the right to nationalization. Non-discrimination as a limiting factor has not been well received by the developing countries. In a situation where the strategic sectors of the domestic economy are dominated by foreign interest, nationalization, as a mechanism for transferring ownership to the local people and for retrieving resources and wealth, can certainly not be other than discriminatory. It can only be directed against the originators of this particular problem.

63. Equally controversial is the idea that the payment of compensation is an integral part of lawful nationalization. Most States consider that the absence of compensation does not render expropriation unlawful and that the measure remains legitimate for all matters, including the transfer of title. It is up to the nationalizing State to determine whether or not the payment of compensation is appropriate.

64. However, even where the principle of compensations is accepted, the manner of its payment is the thorny problem.

65. In a word, the right of every State to exercise permanent sovereignty over its natural resources and wealth gives rise to and accounts incontrovertibly for the right of nationalization. Moreover, the conditions affecting its legality fall uniquely within the competence of the internal legal system and entail no international responsibility other than in cases of denial of justice.

66. A dispute concerning compensation (its amount for example, or the reasonable scheduling of payments) is subject to the law of the nationalizing State and subject exclusively to the competent domestic courts or adminstrative authorities unless international arbitration or other settlement procedures have been mutually established by the parties concerned before or after the occurrence of the dispute.

67. The great majority of ECWA member countries have dealt with this question in their legislation. The region has for long been a bastion of nationalization, particularly in the exploitation of oil, as is evident from the experience of Iraq and Saudi Arabia.

C. Future of the code

68. In the present state of negotiations, only one point of general concensus has been reached; that the Code should be effective. Once it is adopted, its proper implementation at the national and international levels must be seen to it. To that end, the Code lays down certain rules that States accepting it must follow in order to encourage and ensure its implementation at the national level. At the international level, the United Nations Commission on Transnational Corporations could become the institutional mechanism supervising implementation of the provisions of the Code. Some delegations have protested against the granting of such quasi-judicial power to the Commission and

it will, in fact, have no meaning in the event that the Code is made voluntary.

69. The ultimate fate of this mechanism is, in effect, contingent on the legal nature and form of the Code. If it is voluntary, its implementation will be at the sole discretion of States which have the desire to implement it in their territory. If, on the other hand, it is compulsory, as an international instrument it will have executive force within the jurisdiction of States parties thereto. This question still remains as that most crucial to the future of the Code of Conduct and that which will determine the scope of application and the usefulness and effectiveness of the instrument.

70. On the other hand, whatever the legal nature of the Code, intergovernmental co-operation at the regional and international levels will be essential in order to ensure the attainment of the objectives of the Code. Failing this, each State, taken separately, will be isolated and weakened in confronting the TNC's operating in its territory. It is this isolation that the international community is seeking to prevent by formulating a universal code of conduct on transnational corporations.

Notes

(1) The Economic Declaration and Programme of Action for Economic Co-operation adopted on this occasion states the following:

"The Heads of State or Government reviewed the operations of transnational corporations, particularly in the non-aligned and other developing countries. They expressed grave concern with respect to transnational corporations which carry out illegal and undesirable policies and engage in corrupt practices in developing countries, and when their motivation to maximize profits leads to distortions in the economies of those countries." See NAC/Conf.7/Doc.6/Rev.3 and NAC/Conf.7/Doc.7/Rev.2, both of 11 March 1983.

(2) In May 1972 the Foreign Affairs Committee of the United States Senate decided to inquire into the activities of International Telephone and Telegraph (ITT) in Chile and took the initiative of forming a sub-committee to study the role and impact of TNC's.

(3) UNCTC, Salient Features and Trends in Foreign Direct Investment (New York, 1983) (ST/CTC/14) (United Nations publication, Sales No. E.83.II.a.8), para. 50, p.16.

(4) Ibid., para. 54, p.17.

(5) Statement to the Association professionale des banques, a summary of which appears in Usine Nouvelle (Paris, 10 October 1968).

(6) Inaugural meeting of the seventh extraordinary session of the United Nations General Assembly, 1 September 1975.

(7) Namely Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela.

(8) OECD, International Investment and Mutinational Enterprises (Paris, 1979).

(9) See E/1983/17/Rev.1, Annex II.

(10) Ibid., Annex V.

(11) Ministry of Labour and Social Affairs, Bahrain/ILO, API, Working paper (Kuwait, December 1978), p. 287.

(12) See Kingsley Davis in Population Bulletin of ECWA, No. 21, December 1981.

(13) Adopted by the Council of Ministers of the EEC in September 1977.

(14) Position adopted by the group of African States at the 13th meeting of the Intergovernmental Working Group.