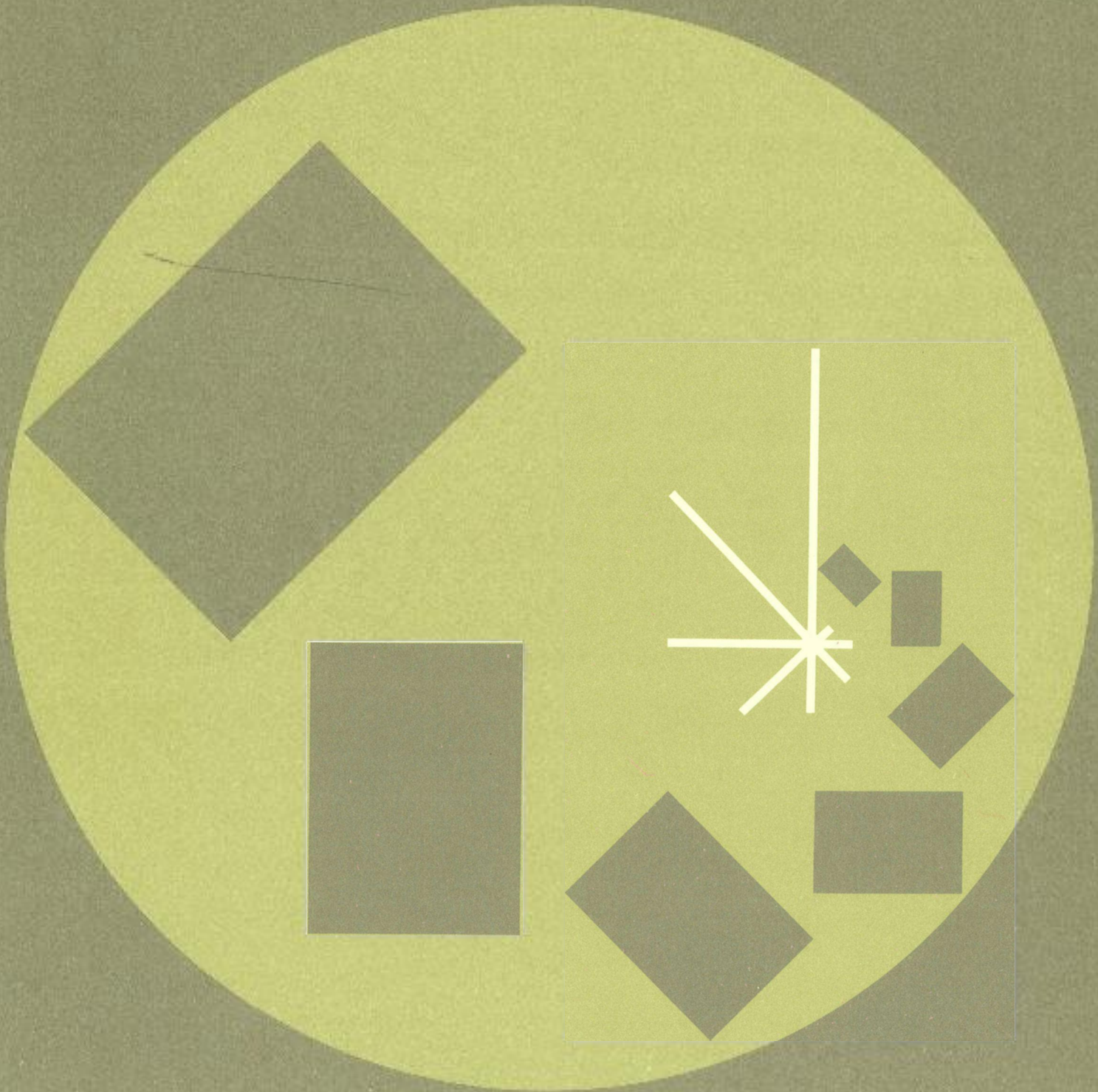


The Impact of Multinational Corporations on Development and on International Relations



Department of Economic and Social Affairs

**THE IMPACT OF
MULTINATIONAL CORPORATIONS
ON DEVELOPMENT AND
ON INTERNATIONAL RELATIONS**



UNITED NATIONS
New York, 1974

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REPORT OF THE SECRETARY-GENERAL

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Introduction

The Economic and Social Council in resolution 1721 (LIII), adopted unanimously on 2 July 1972, requested the Secretary-General to appoint a "group of eminent persons ... to study the role of multinational corporations and their impact on the process of development, especially that of the developing countries, and also their implications for international relations, to formulate conclusions which may possibly be used by Governments in making their sovereign decisions regarding national policy in this respect, and to submit recommendations for appropriate international action". The resolution further requested the Secretary-General to submit the report of the Group, "together with his own comments and recommendations, to the Economic and Social Council at its fifty-seventh session".

The present report is in response to the above resolution.

In its deliberations and in the preparation of its report, 1/ the Group of 20 eminent persons was assisted by two consultants. It was also aided by a comprehensive study prepared by the Department of Economic and Social Affairs of the United Nations Secretariat, entitled Multinational Corporations in World Development, 2/ which set out the facts, analysed the problems and discussed various proposals for action. Relevant documents prepared by the United Nations Conference on Trade and Development and the International Labour Office were made available to the Group in accordance with the resolution. In addition, more detailed studies on the transfer of technology, taxation and investment codes were prepared for the use of the Group.

1/ See below, pages 15-162.

2/ United Nations publication, Sales No. E.73.II.A.11.

The Group held three plenary sessions. At the first two, it heard testimony from some 50 leading personalities from government, business, trade unions, special and public interest groups and universities. This novel approach proved to be a most useful source of information and a valuable medium in which to test ideas. It succeeded in bringing about a high degree of public involvement in a subject which is both complex and of direct concern to many individuals and interest groups.

The report of the Group is composed of three parts. Part one contains a general analysis of the role and impact of multinational corporations on development and on international relations, followed by the Group's recommendations for international machinery and action. Part two analyses in greater detail some of the specific issues involved and contains recommendations which Governments may wish to consider when formulating their policies on the subject. Part three contains comments by some members of the Group. Most of the nine members who availed themselves of the opportunity to include individual comments did so in order to add to, expand, interpret or qualify various passages of the report. A few of them did so to criticize some of its content. On the whole, these comments have proved a valuable addition which enriches the report.

The most remarkable feature of the work of the Group is that, despite the heterogeneity of its membership and the complexity of the subject, the Group is unanimous in its recommendations for international machinery and action. This need was underlined by the sixth special session of the General Assembly. This is indeed a most convincing indication of the urgent need for a continuing and expanding involvement on the part of the United Nations.

The Secretary-General acknowledges with appreciation the pioneering effort of the 20 members of the Group. The report of the Group proposes the machinery and programme of work for filling an important vacuum at the international level. He is convinced that in so doing the Group has fulfilled a major first step in the continuing involvement of the United Nations in a subject whose importance has been widely recognized.

A programme for international action

The focus of the present report is on international machinery and action. However, this should not detract from the importance of national action. Indeed a major part of the Group's report is devoted to appropriate action by individual Governments at the national or regional levels.

In making their decisions regarding national and regional policy, the attention of Governments is, therefore, drawn to the Group's pertinent recommendations. These recommendations and the analysis upon which they are based are also valuable as regards further studies and possible action by the United Nations. But, as the Group states,

"while the primary responsibility for taking action rests with individual Governments ..., many of the measures that we think necessary will be ineffective and frustrated unless they are accompanied by action at the

international level which promotes co-operation and harmonization. Furthermore, on a number of issues, effective action can only be taken at the international level." (see page 51 below).

International machinery: the Economic and Social Council

10. The central proposal of the Group calls for the continuing involvement in the issue of multinational corporations of the Economic and Social Council assisted by a commission on multinational corporations specifically designed for this purpose. In addition, the establishment of an information and research centre is recommended to provide services for the commission.

11. The Secretary-General fully supports the conclusion of the Group that the Economic and Social Council is the appropriate intergovernmental body to be entrusted with the over-all consideration of the subject. As the Group notes, given the functions and responsibilities vested in the United Nations under Chapters IX and X of the Charter and the methods of conceptualization and negotiation that it has developed over the years, the Economic and Social Council, being fully representative of the membership of the United Nations, is the intergovernmental body that should, on the basis of adequate support, consider the subject of multinational corporations in all its ramifications, and in which pertinent negotiations on a regular basis should be conducted.

12. Although this recommendation is innovative in that it entails a more comprehensive undertaking for the Economic and Social Council in the matter of multinational corporations, the involvement of the United Nations in related matters is not without precedent. As early as 1948, the United Nations played a pivotal role in the preparation of the Havana Charter for an International Trade Organization ^{3/} which, in articles 12 and 46-54, dealt with the question of international investment and restrictive business practices. In 1953, the Economic and Social Council considered a draft convention on restrictive business practices. ^{4/}

13. Furthermore, the three United Nations Conferences on Trade and Development adopted resolutions referring to many aspects of the subject. The General Assembly has also adopted a series of relevant resolutions concerning the permanent sovereignty of States over their natural resources and dating back to 1952. More recently, the Security Council and the General Assembly at its sixth special session adopted resolutions on that subject and on other matters relating to the political, legal and economic aspects of the activities of multinational corporations.

^{3/} Final Act of the United Nations Conference on Trade and Employment, Havana, Cuba, March 1948 (United Nations publication, Sales No. 48.II.D.4, E/CONF.2/78).

^{4/} Official Records of the Economic and Social Council, Sixteenth Session, Supplement No. 11, annex II.

14. However, it is the first time that it had been suggested that a "full discussion of the issues related to multinational corporations should take place in the Economic and Social Council at least once a year" (See page 52 below).

The complexity and breadth of the issues involved are such, the Group notes in its report, that "effective action by the Council must flow out of a continuing elucidation and analysis of the problems involved, based on more information, professional studies and consultations with the various parties concerned" (See page 52 below).

15. The Group is unanimous in its conviction that "the deliberations and decision-making process of the Economic and Social Council would be greatly facilitated and enhanced if the Council were supported in its work in the field by a body specifically designed for the purpose" (See page 52 below). Thus, it recommends that "a commission on multinational corporations should be established under the Economic and Social Council, composed of individuals with a profound understanding of the issues and problems involved" (See page 52 below).

16. The Secretary-General fully endorses the recommendation regarding the nature, objectives and terms of reference of the proposed commission on multinational corporations.

A commission on multinational corporations

17. The multinational corporations, which can be at once effective instruments of development and sources of tensions or conflicts, have become increasingly important in virtually every aspect of international life.

18. Given the complexity and the broad implications of the subject, the Economic and Social Council can most effectively discharge its responsibilities if the issues involved have been adequately developed and elucidated before they are brought before the Council for consideration and possible action.

19. Thus the Secretary-General fully endorses the recommendation of the Group that a body specially designed for the purpose be established in the form of a commission on multinational corporations. The Secretary-General has given serious consideration to the recommendation of the Group that the Commission be composed of members serving in their individual capacity with "a profound understanding of the issues and problems involved". In endorsing this recommendation the Secretary-General is conscious of the merits of alternative forms of groups, especially intergovernmental and mixed bodies. For example, an intergovernmental body carries the weight of governmental support. But this important asset would not be lost, since the proposed commission would be under the auspices of the Economic and Social Council which is itself an intergovernmental body.

20. The commission, as envisaged by the Group, would be entrusted with the functions of promoting a dialogue among the parties concerned and offering advice to the decision-making body, namely the Economic and Social Council. For this purpose, adequate groundwork should be done by persons who are intimately acquainted with the subject and able to devote considerable time to clarifying the issues,

testing ideas and working out the practical details. Because of the complexity of the subject, much of the groundwork could only be done by persons of the highest calibre, drawn from a broad and varied spectrum of expertise and experience. Moreover, since a great deal of the work on this subject would be greatly enhanced by the involvement and voluntary co-operation of the various parties concerned, some of which are private in nature, a non-governmental body would facilitate the consultation process and encourage greater involvement among those affected by activities of multinational corporations. The experience of the Group of Eminent Persons suggests that much of its achievement would not have been possible had not the members been able to act in their individual capacity.

Thus, on the basis of the above considerations the Secretary-General recommends that the Economic and Social Council should, at its fifty-seventh session, consider the immediate establishment of a commission on multinational corporations, consisting of 25 members serving in their individual capacity and with the terms of reference given below. Upon such a decision, the Secretary-General, after consulting with Governments, will nominate 25 individuals to be approved by the Economic and Social Council at its next session.

Terms of reference of the commission on multinational corporations

The commission on multinational corporations, acting as a subsidiary body of the Economic and Social Council, would assist and advise the Council in fulfilling its functions in this connexion within the United Nations system. In order to do so, the Commission would:

- (a) Act as a focal point within the United Nations system for the comprehensive consideration of issues relating to multinational corporations;
- (b) Receive reports through the Economic and Social Council from other bodies of the United Nations system on related matters;
- (c) Provide a forum for the presentation and exchange of views by Governments, intergovernmental organizations and non-governmental organizations, including multinational corporations, labour, consumer and other interest groups;
- (d) Undertake work leading to the adoption of specific arrangements or agreements in selected areas pertaining to the activities of multinational corporations;
- (e) Evolve a set of recommendations which, taken together, would represent a code of conduct for Governments and multinational corporations to be considered and adopted by the Economic and Social Council, and review in the light of experience the effective application and continuing applicability of such recommendations;
- (f) Explore the possibility of concluding a general agreement on multinational corporations, enforceable by appropriate machinery, to which participating countries would adhere by means of an international treaty;

(g) Conduct inquiries, make studies, prepare reports and organize panels for facilitating a dialogue among the parties concerned;

(h) Organize the collection and analysis of information and its dissemination to all parties concerned;

(i) Promote a programme of technical co-operation, including training and advisory services, aimed in particular at strengthening the capacity of host, especially developing, countries in their relations with multinational corporations.

Composition

The members of the commission would be selected on the basis of their deep understanding of the issues involved and of their achievement of excellence in their respective fields of competence. The commission as a whole should offer a broad geographical representation of developed and developing home and host countries, and should include members of relevant backgrounds, including those from politics, public service, business, labour, consumer interests and the academic profession.

Working arrangements

The members of the commission would serve for a three-year term. Retiring members would be eligible for re-election.

The commission would hold one regular session each year. It might convene special sessions, as well as establish working groups composed of some of its members. In addition, it might call for the convening of expert groups to deal with specific issues. The commission would submit an annual report to the Economic and Social Council and might issue additional reports on specific subjects.

Information and research centre on multinational corporations

Parallel to the need to establish a commission on multinational corporations for the Economic and Social Council is the need to set up an information and research centre for the commission.

The most obvious requirement is the provision of substantive and administrative services to the commission. In view of the continuing and broad range of activities and the expertise required, the provision of such services could be more efficiently organized in a unit specially designed for the purpose.

The key to the proposal lies in the pivotal role of information and research in the work of the proposed commission. As the United Nations Secretariat report points out, "the complexity of the subject /of multinational corporations/ and the controversy that surrounds it call for serious analysis lest myths prove more appealing than facts and emotions stronger than reason." 5/ The difficulty of

5/ Multinational Corporations in World Development, p. 1.

serious analysis stems not only from the limited availability of conventional data, but also from the fact that even when they are available such data cannot adequately measure the phenomenon of multinational corporations. The large incidence of interaffiliate transactions and attendant transfer pricing may distort the real picture, as may other practices involving capitalization, accounting procedures and the control of local resources. As the Secretariat report further notes, "until sufficient methodological work and collection of standard information has been carried out the figures must be treated with caution and their interpretation is subject to a considerable margin of uncertainty." 6/ In proposing a programme of international action, the Secretariat report suggests the systematic gathering, analysis and dissemination of information and notes the existing serious gaps that need to be filled and the difficulties that are encountered in obtaining certain types of required data. 7/

29. The opinion of the personalities who testified before the Group was similar. Characteristically, the witnesses, government officials, academicians and executives of multinational corporations alike, agreed that a systematic effort was needed to gather existing information and conduct further research in many other areas of the subject of multinational corporations.

30. Throughout its work the group was struck by the lack of useful, reliable and comparable information on many aspects of the subject, and reached the following conclusion:

"The availability of pertinent information is central to many issues, such as restrictive business practices, transfer pricing and taxation. Making available the right kind of information could well be a most important first step in assisting developing countries in their dealings with multinational corporations" (see page 53 below).

31. The Secretary-General fully agrees that analytical clarification of the multidimensional aspects of multinational corporations' activities will assist the Economic and Social Council, and the proposed commission under it, in conducting a dialogue among the parties concerned and initiating programmes of work and institutional arrangements. At the same time, the dissemination of pertinent information and programmes of technical co-operation will strengthen the capacity of host developing countries especially to formulate policies, to evaluate the impact of multinational corporations on their economies and to ensure that the activities of multinational corporations are consistent with national interests and development objectives.

32. The report of the Group outlines a programme of work to be undertaken by the commission. The proposed programme includes in-depth studies on areas of economic activity where multinational corporations play an important part but which have not been adequately covered in the report, namely, banking, transportation and

6/ Ibid., p. 4.

7/ Ibid., p. 87.

communications, land development and tourism. In addition, it is suggested that the Commission should evolve a set of recommendations representing a code of conduct, study the possibility of a general agreement on multinational corporations and undertake work leading to the adoption of specific agreements on such matters as taxation, trusts, export restrictions and international accounting standards. Such a far-reaching agenda will of course require extensive and thorough research and analysis.

Consequently, the Secretary-General fully endorses the proposal of the Group that an information and research centre on multinational corporations should be established under the general guidance of the proposed commission on multinational corporations.

In addition to its substantive and administrative functions, the centre would engage in operational activities in technical co-operation, following the Group's recommendation that the technical capacity of the United Nations in matters related to multinational corporations should be significantly strengthened and expanded in the area of training and advisory services.

Such a programme of technical co-operation was also suggested in the Secretariat report where the following observation was made:

"The availability of pertinent information to developing host countries would tend in itself to strengthen their position in dealing with multinational corporations and thus to redress the inequality of power. On the other hand, without a certain amount of expertise to start with, proper use cannot be made of information." 8/

During the hearings, witnesses from all types of background gave support to the proposal for United Nations technical assistance to developing countries. It was recognized that both general policies on investment and negotiations on the treatment of multinational corporations directly affect the distribution of benefits among the participants and also have implications for income distribution within the host country.

The Group further suggested that assistance should be given to Governments, upon request, for strengthening their relevant machinery and for training local personnel through national or regional training programmes in the fields of negotiation with multinational corporations and the administration of governmental policies on foreign direct investment. More specifically, the Group proposed that advisory teams, composed of economists, engineers, lawyers, social scientists and others should be made available by the United Nations to requesting Governments to assist them in evaluating investment proposals and, if desired, to provide technical advisory support to the Governments in their negotiations with multinational corporations. The Group concluded that, given the mutually reinforcing nature of information and research and technical co-operation functions, it would be advisable to incorporate the latter within the proposed information and research centre.

8/ Ibid., p. 88.

The Secretary-General agrees that co-ordination and efficiency will be enhanced if technical co-operation constitutes one of the main functions of the proposed centre. Hence, upon the decision of the Economic and Social Council to establish a commission on multinational corporations, the Secretary-General proposes to establish an information and research centre on multinational corporations, with the following terms of reference.

Information and research centre on multinational corporations:
functions and administrative arrangements

The terms of reference of the centre would be:

- (a) To provide substantive and administrative services to the commission on multinational corporations;
- (b) To collect, analyse and disseminate information and to conduct research and inquiries as directed by the commission;
- (c) To organize and co-ordinate technical co-operation programmes, especially for host developing countries, in matters related to multinational corporations.

The centre would be an autonomous body under the aegis of the United Nations. The centre would be headed by an Executive Director appointed by the Secretary-General.

Since the centre would be involved in activities related to those of other United Nations bodies it is proposed that a co-ordinating committee be set up, composed of the heads, or their representatives, of the following units, organs and agencies: the Department of Economic and Social Affairs, the Office of Legal Affairs, the United Nations Conference on Trade and Development, the United Nations Industrial Development Organization, and the International Labour Office. Where the need arose, other agencies in the United Nations system would be invited to participate in the meetings. The Executive Director of the centre would be a member ex officio of the co-ordinating committee.

The function of the co-ordinating committee would be to co-ordinate the programme of work pertaining to multinational corporations in the United Nations system.

Under the direction of the Executive Director the centre would be organized as follows:

- (a) Secretariat of the commission;
- (b) Information and research services;
- (c) Technical co-operation services.

The secretariat of the commission would provide administrative support to the commission and the centre. It would be responsible for organizing and providing services for hearings and panels, as well as for providing information to all interested parties regarding the work of the commission and of the centre.

The information and research services would collect, analyse and disseminate information, conduct studies and publish reports. They would also prepare statistical series, questionnaires and methodological studies for the improvement of basic information and its retrieval. In addition, they would collect special information, publish compendia of agreements between multinational corporations and Governments, and develop model investment codes and tax agreements.

The technical co-operation services would prepare training programmes, organize seminars and fellowships and provide experts (economists, lawyers, engineers, social scientists and others individually or in multidisciplinary teams) to assist Governments in formulating policies regarding foreign investment and multinational corporations. Since there is an indication that some Governments are interested in receiving technical assistance in their negotiations with multinational corporations, the centre would make available to them a roster of competent persons to serve under the responsibility of requesting Governments.

It is anticipated that the centre would initially consist of the Executive Director and some 15 professional staff members and advisers, with the necessary support services. The cost of the centre would be met from a combination of regular budget and extra-budgetary sources. The cost of only a small nucleus of the above-mentioned staff would be charged to the regular budget (five professional staff plus supporting staff), while the remainder would be recruited using technical assistance funds and voluntary contributions as they became available. In addition, arrangements may be made to make available the services of staff members of various United Nations organizations to assist the centre in carrying out specific tasks.

REPORT OF THE GROUP OF EMINENT PERSONS
TO STUDY THE IMPACT OF MULTINATIONAL CORPORATIONS
ON DEVELOPMENT AND ON INTERNATIONAL RELATIONS

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LETTER OF TRANSMITTAL

22 May 1974

Dear Mr. Secretary-General,

We have the honour to transmit to you herewith our report on the role of multinational corporations and their impact on development, particularly in developing countries, and on international relations, requested by the Economic and Social Council in its resolution 1721 (LIII).

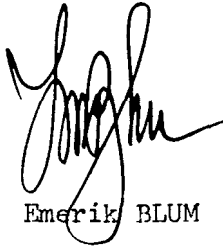
Our report comprises three parts. Part One contains a general analysis of the role and impact of multinational corporations on development and on international relations, followed by our recommendations for international machinery and action. In part Two we examine in greater detail some of the specific issues involved. Finally, part Three is devoted to comments by individual members of the Group.

Realizing the important responsibility bestowed upon us, we have devoted considerable time to the examination of this subject, whose ramifications touch upon many aspects of the economic and social life throughout most of the world. Even so, given the complexity and diversity of the issues involved, we did not attempt to cover every area in which multinational corporations are active, nor could we exhaust to our satisfaction our consideration of every issue covered in our report. Furthermore, within the limited time available, we were not able to reconcile all our views on every subject touched in our report. Therefore, the Group is not necessarily unanimous on every recommendation in the report, as may be seen in part Three.

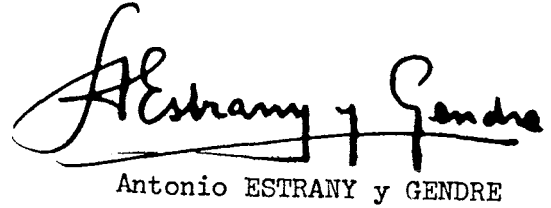
However, we all agree on the need for continuing discussion and work at the international level. At the intergovernmental level we recommend that the Economic and Social Council keep this subject under review on a regular basis. We are convinced that this function can be performed most effectively and most constructively if the Council is supported by a body specifically designed for this purpose. It is for this reason that we all attach particular importance to the establishment, under the Economic and Social Council, of a commission on multinational corporations, composed of individuals having a broad and varied experience and a deep knowledge and understanding of the many aspects related to the subject of multinational corporations. As a corollary to this recommendation we recommend the establishment, within the United Nations Secretariat or closely linked with it, of an information and research centre on multinational corporations so that the commission will receive the continuous support it will require to fulfil its mandate.

In closing, we wish to express our deep and sincere appreciation for your confidence in selecting us to participate in what may be regarded as the beginning of an important function and responsibility of the United Nations.

Please accept, Mr. Secretary-General, the expression of our highest consideration.



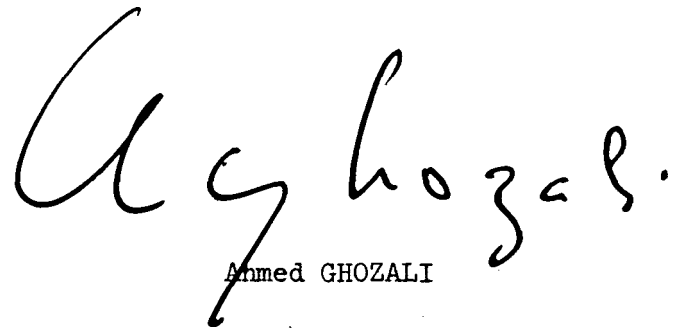
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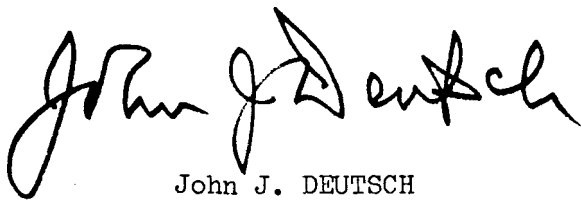
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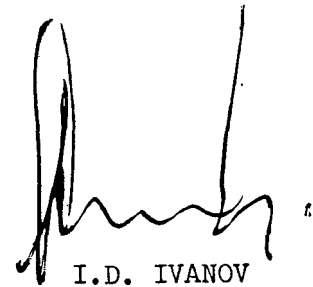
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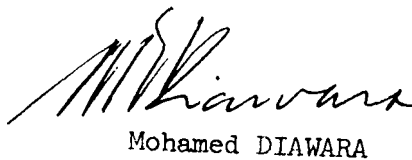
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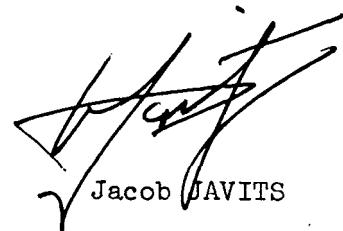
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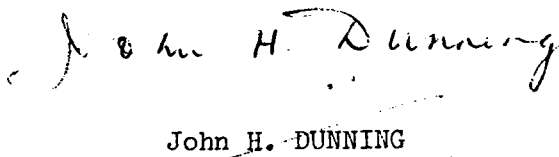
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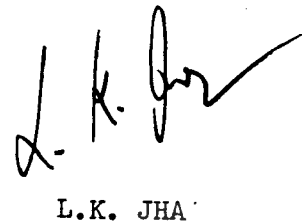
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PREFACE

This report has been prepared in response to Economic and Social Council resolution 1721 (LIII), which requested the Secretary-General to appoint a

"group of eminent persons ... to study the role of multinational corporations and their impact on the process of development, especially that of the developing countries, and also their implications for international relations, to formulate conclusions which may possibly be used by Governments in making their sovereign decisions regarding national policy in this respect, and to submit recommendations for appropriate international action."

The Group unanimously elected L. K. Jha Chairman, George Kahama, J. Irwin Miller and Pierre Uri Vice-Chairmen, and Juan Somavia, Rapporteur.

The Group held three plenary sessions totalling some seven weeks (at United Nations Headquarters from 4 to 14 September 1973; at Geneva from 1 to 16 November 1973; and again at United Nations Headquarters from 25 March to 6 April 1974). In addition, a drafting committee composed of about half the members of the Group met in Rome from 11 to 21 January 1974 to prepare the elements of a draft report on the basis of the discussions held during the first two sessions of the entire Group. This was followed by a meeting in New Delhi from 18 to 26 February 1974 of the Chairman and another member of the Group to prepare the draft on the basis of the Rome meeting. The Rapporteur completed the draft in Geneva from 1 to 4 March 1974. Furthermore, members of the Group who did not attend the Rome or New Delhi meetings prepared material and comments which greatly assisted and helped to guide those who participated in the preparation of the draft. The report was put into its final form during the third plenary session of the Group.

The Group was greatly helped in its task by the hearings that were held during its first two plenary sessions when it heard testimony and answers to questions from some 50 leading personalities from Governments, business, trade unions, special and public interest groups and universities. This novel approach for the United Nations proved to be a most useful source of information, as well as a valuable occasion to test ideas. The views and suggestions expressed by those who appeared before the Group brought out to a significant extent the need for action similar to many of the recommendations of the Group. An extensive summary of each of the statements and answers to questions is being published by the United Nations Secretariat.

The Group was also greatly helped by two consultants: Raúl Prebisch, whose intimate knowledge and understanding of the development issues and of the United Nations organizations is well known to all; and Nat Weinberg, former Director of Special Projects and Economic Analysis of the United Automobile Workers Union (UAW) of the United States and Canada. Since the Group included only one member with extensive trade union experience, it was decided that Mr. Weinberg would participate fully in the elaboration of the views and recommendations of the Group as well as in the drafting of its report, not only concerning labour and employment but in all matters.

Finally, the Group wishes to express its deep appreciation to Philippe de Seynes and his colleagues in the Department of Economic and Social Affairs, whose assistance

in arranging and servicing the meetings, as well as in providing substantive support, greatly facilitated and helped the Group in the discharge of its responsibility. The report entitled Multinational Corporations in World Development, 1/ proved to be a most useful basis for discussion and source of information.

The report has been prepared in three parts. The broad areas of issues have been dealt with in part One, which consists of an introduction and three chapters, in the order in which they were raised in Economic and Social Council resolution 1721 (LIII).

In the introduction, we set out briefly the role and importance of multinational corporations, as well as the concern to which they give rise. This is followed by an examination of the world perspective in which multinational corporations should be viewed and their role in the development process. Finally, attention is given to the main causes of the problems that may arise between nation-States and multinational corporations.

In chapter I the role of multinational corporations in development is evaluated and analysed. More specifically, the characteristics of multinational corporations and their impact and some problems, particularly those pertaining to host developing countries, are analysed and are related to a series of measures that could be taken by individual Governments or by regional groupings to promote a more satisfactory situation. Some of the specific issues relating to the impact of multinational corporations are analysed in greater detail in part Two. In each case, a series of recommendations are proposed aimed at dealing with problem areas.

In chapter II, the impact of multinational corporations on international relations is analysed, with particular attention to the question of political intervention by multinational corporations, and to ways in which their activities can lead to confrontations and conflicts of jurisdiction between Governments.

Chapter III is devoted to the international action and machinery that the Group believes to be an indispensable corollary to national and regional action. This chapter stresses the crucial role of the Economic and Social Council, assisted by a body specifically designed for this purpose, in keeping this matter under continuous review, in initiating programmes of study and action on various specific aspects, and in providing a basis for future negotiations and institutional developments.

In part Two, the issue of control and ownership, which is a fundamental factor in the decision-making process, is analysed first. Then the implications for finance, technology, employment and labour, which are, generally speaking, also main elements of the package introduced into a host country by multinational corporations are examined. This is followed by a brief discussion of the activities of multinational corporations and consumer protection, and some issues arising from or affecting the operations of multinational corporations, in particular competition and market structure, transfer pricing and taxation. The last chapter deals with information disclosure and evaluation, which are central to many of the questions discussed earlier.

Part Three contains comments by individual members of the Group.

1/ United Nations publication, Sales No. 73.II.A.11.

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Specialized agencies

The following specialized agencies were represented at the sessions:

International Labour Organisation

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PART ONE . GENERAL REPORT

INTRODUCTION

Multinational corporations are important actors on the world stage. The report entitled, Multinational Corporations in World Development, ^{1/} aptly describes their current significance and recent trends. The total value of international production controlled by such corporations now exceeds that of international trade. Their spread and growth has been one of the outstanding phenomena of the last two decades, and in many countries, outside the centrally planned economies, they have significantly increased their share of national output.

Multinational corporations are enterprises which own or control production or service facilities outside the country in which they are based. Such enterprises are not always incorporated or private; they can also be co-operatives or state-owned entities. ^{2/}

Most countries have recognized the potential of multinational corporations and have encouraged the expansion of their activities in one form or another within their national borders. The role of foreign private investment in development is indeed acknowledged in the International Development Strategy for the Second United Nations Development Decade. ^{3/} At the same time, certain practices and effects of multinational corporations have given rise to widespread concern and anxiety in many quarters and a strong feeling has emerged that the present modus vivendi should be reviewed at the international level.

^{1/} United Nations publication, Sales No. 73.II.A.11.

^{2/} There is general agreement in the Group that the word "enterprise" should be substituted for corporations, and a strong feeling that the word transnational would better convey the notion that these firms operate from their home bases across national borders. However, the term "multinational corporations" is used in this report in conformity with Economic and Social Council resolution 1721 (LIII). See also alternative definitions in Multinational Corporations in World Development.

^{3/} International Development Strategy: Action Programme of the General Assembly for the Second United Nations Development Decade (United Nations publication, Sales No. E.71.II.A.2), para. 50.

Opinions vary on the contribution of multinational corporations to world economic development and international relations, on the problems created by them and on the ways in which they should be treated. This was amply borne out in the discussions of the Group and in the views expressed during the hearings by representatives of Governments, labour and consumer organizations, by executives of multinational corporations and by members of the academic community. All, including the multinational corporations themselves, expressed concern of one kind or another.

Home countries are concerned about the undesirable effects that foreign investment by multinational corporations may have on domestic employment and the balance of payments, and about the capacity of such corporations to alter the normal play of competition. Host countries are concerned about the ownership and control of key economic sectors by foreign enterprises, the excessive cost to the domestic economy which their operations may entail, the extent to which they may encroach upon political sovereignty and their possible adverse influence on socio-cultural values. Labour interests are concerned about the impact of multinational corporations on employment and workers' welfare and on the bargaining strength of trade unions. Consumer interests are concerned about the appropriateness, quality and price of the goods produced by multinational corporations. The multinational corporations themselves are concerned about the possible nationalization or expropriation of their assets without adequate compensation and about restrictive, unclear and frequently changing government policies.

From all these expressions of concern, one conclusion emerges: fundamental new problems have arisen as a direct result of the growing internationalization of production as carried out by multinational corporations. We believe that these problems must be tackled without delay, so that tensions are eased and the benefits which can be derived from multinational corporations are fully realized.

Although international, intergovernmental and governmental bodies have been devoting themselves to the issue for some time, most efforts concentrate on the problem as seen in certain countries or groups of countries, or with respect to particular subjects, rather than taking up the total international implication of multinational corporations. It is in this context that the present involvement of the United Nations acquires particular significance and leads the way for pioneering work within the Organization.

In our report, we seek to identify and analyse the most urgent areas of concern and to propose action for political decision making. We regard our recommendations, which are addressed to Governments and to inter-governmental bodies, as the first step towards a programme for harnessing the capacities of multinational corporations for world development while safeguarding the legitimate interests of all the parties involved. Because of their major importance, our time was devoted primarily to an examination of the problems that arise from the operations of multinational corporations in the manufacturing and resource-based sectors. Further studies are certainly required on the role of multinational corporations in the service sector, that is to say in banking, tourism, land development, transport and communications. Special consideration has been given to the concerns of developing countries. To a large extent our proposals are directed towards tackling the problems these countries are facing. To implement the action proposed, we feel strongly that some permanent machinery within the United Nations is necessary.

There are frequently alternative ways which should be actively explored of obtaining the benefits provided by multinational corporations. These enterprises are not the only vehicles for the internationalization of production. In the socialist countries of Eastern Europe, for example, where planned economic integration is the counterpart of regional integration among market economies, this process is carried out at the public and interstate level through, inter alia, joint state-owned undertakings established by the member States of the Council for Mutual Economic Assistance. Moreover, these countries follow a selective, centrally planned, approach as regards the objectives, areas and forms of co-operation with multinational corporations - for example, co-production arrangements - employing the modalities of their economic and social system to protect national interest. In addition, there are countries which, on the basis of their political and social choices, may opt for different, self-reliant styles or models of development which leave little or no room for the participation of multinational corporations as they are currently organized.

The world perspective

The role of multinational corporations should be viewed in the context of the world economic and political system within which they operate. Most industrialized developed countries have, in recent years, experienced unprecedented levels of material prosperity and economic growth. At the same time, the realization has been increasing that society cannot be guided exclusively by the pursuit of economic goals, and that man's habitat, both physical and spiritual, is in danger of deterioration. There is a widespread feeling of unease and discontent. The continued expansion of large and impersonal institutions, both public and private, has created the belief that, in all walks of life, the individual is being increasingly manipulated by forces over which he has little control or influence.

For the developing countries, and thus for the vast majority of mankind, the issue is more basic: it is a question simply of attaining a minimum level of subsistence. Millions of peoples are subject to daily privations affecting their human dignity more profoundly than can be reflected in any statistics. Development has little meaning unless it succeeds in eradicating hunger, disease and squalor.

Glaring inequalities in the distribution of the world's wealth, between rich and poor countries and within countries, have led to a serious questioning of the ability of Governments and international institutions to create policies or mechanisms which will allocate the world's resources fairly and efficiently. The recent energy crisis and the increasing scarcity of some commodities pose a new set of problems and challenges. These are not merely technical questions but some of the fundamental political issues of our time.

The United Nations has, since its inception, addressed itself to these questions and has frequently affirmed as, for example, in the International Development Strategy for the Second United Nations Development Decade, valid concepts of international order. Unfortunately, these concepts are far from having been adequately implemented. The way in which the world community chooses to deal with them will inevitably affect the role of the multinational corporations in world development.

Multinational corporations and the development process

Multinational corporations have distinct capabilities which can be put to the service of development. Their ability to tap financial, physical and human resources around the world and to combine them in economically feasible and commercially profitable activities, together with their capacity to develop and apply new technology and skills, to translate resources into output and to integrate product and financial markets throughout the world, has proved to be outstanding. Their activities, however, are not per se geared to the goals of development. Therefore, the limitations as well as the capabilities of multinational corporations in meeting development objectives need to be clearly understood.

Development is a complex process emerging from the interaction of many different national and international elements and is shaped by a wide ranging number of economic, social, cultural and political objectives pursued by individual countries. The development process is not solely concerned with immediate increase in output. The reduction of inequalities in income and wealth has become a major preoccupation. Multinational corporations although powerful engines of growth, tend to accentuate rather than reduce inequalities in the absence of proper government policies and, where necessary, social reforms. It is not by chance that most of the activities of multinational corporations are located in the developed industrialized countries and that their investments do not spontaneously flow to the areas where they are most needed for a more balanced world development. Although it might seem that capital would be most profitably invested in the areas where it is scarce, the absence of an infrastructural base may often make the poorest areas of the world the least attractive to investors. This is so even in developed countries where private investment tends to concentrate in the relatively more developed regions and Governments have to incur public expenditure to avoid regional disparities.

It is therefore apparent that private foreign investment is not a substitute for aid. This needs to be stressed because we sense the emergence of strong inward-looking attitudes on the part of some developed countries, as reflected in the reduction of aid as a percentage of gross national product and in the tendency towards the imposition of restrictive trade policies on products of developing countries. In fact, the degree to which developing countries can benefit from private foreign investment is linked with appropriate measures of international economic co-operation, such as terms of official capital flows and trade policies. Moreover, unless Governments of developing countries actively and effectively concern themselves with a better distribution of income and the needs of the poorer sectors of their population, even the most determined international effort will have little impact.

Multinational corporations often concentrate on higher technology industries employment capital intensive techniques. Although such industries may contribute to the eventual modernization of the industrial structure of the host countries, they may not serve one of the immediate prime objectives of development, namely an increase in employment opportunities. Furthermore, many of the products which multinational corporations specialize in cater to the demand in high income countries. When they are marketed in developing countries, they may introduce patterns of consumption which are not conducive to sustained development and confer very limited benefits to the vast majority of the population. Multinational corporations often exploit natural resources in developing countries for export to world markets. A major objective of host countries would be to secure fair prices for the commodities sold and as much processing as possible in their own countries. The multinational corporation, guided by its own world-wide marketing strategy, might not pursue the same objective. Bearing in mind all these considerations, it is necessary for host developing countries to formulate their development strategies clearly in order to direct the investments of multinational corporations in a way that is consistent with their national goals and policies, including income distribution, labour conditions, industrialization or balance of payments.

Nation-States and multinational corporations: sovereignty and power

Most of the problems connected with multinational corporations stem from their distinctive transnational features in a world that is divided into separate sovereign States. As we have observed, multinational corporations have developed important capacities which can be put to the service of world development. Yet, these same capacities can also be used in ways which may conflict with the interests of individual States. While Governments pursue a variety of economic and non-economic objectives to advance the welfare of their citizens, the chief goals of multinational corporations like those of all business enterprises, are profit and growth. The differing objectives of nation-States and multinational corporations suggest that their respective decisions will not always be in harmony with each other.

The exercise of direct control over the allocation of one country's resources by residents of another - forcefully expressed to us by representatives of developed and developing countries as a matter of considerable political concern - makes the task of harmonizing varying interests and the promotion of the public good by Governments especially complex. Advances in communications technology allow many multinational corporations to pursue global strategies which, rather than maximizing the profits or growth of individual affiliates, seek to advance the interest of the enterprise as a whole. Lack of harmonization of policies among countries, in monetary or tax fields for example, allows multinational corporations on occasion to utilize their transnational mobility to circumvent national policies or render them ineffective. It is in this context that countries may find their national sovereignty infringed upon and their policy instruments blunted by the operations of multinational corporations.

Since the objectives of nation-States and multinational corporations are frequently different, their respective power to attain them assumes particular importance. Under any form of social organization, the power exerted by individuals, corporations, pressure groups or nation-States is basically determined by the extent to which their opinions or decisions affect others. Because of their size and the transnational nature of their activities, multinational corporations, particularly the very large ones, possess considerable power and influence.

In the process of conducting their normal business activities, multinational corporations make decisions which may have far-reaching consequences for the societies in which they operate. They affect patterns of consumption and the direction of innovation; they orient technological change and investment; and they own or produce most of the basic commodities used in industry and commerce; intentionally or unintentionally, they can affect political processes of both home and host countries.

Decisions on the allocation of resources, with respect to what, how, and for whom to produce, are usually made by corporate planning mechanisms situated in a few industrial countries. The size and scope of the larger multinational corporations make it possible for a few large firms to control substantial shares of local and sometimes world markets. Because of this, and their transnational flexibility, they can engage in export market allocation, price discrimination, and transfer pricing, place stringent conditions on the transfer of technology and patents, and enter into cartel agreements that reduce competition.

At present, national and especially international institutions do not deal adequately with the various ways in which multinational corporations can use their power in a manner which may run counter to the needs of the societies in which they operate. This underlines the need for public involvement and for discussion of the goals and policies that multinational corporations should pursue and the means whereby corporate power may be oriented in the interest of world development. Some of these are clear - among them the development of appropriate policies and regulatory mechanisms which will define more closely the interests to which corporate management should respond, the promotion of more competitive markets and the countervailing power of trade unions.

Corporate power cannot, of course, be compared with the political power of Governments which possess both legitimacy and means of enforcement. Yet many developing countries may hesitate to exercise their governmental power because of the real or perceived costs entailed.

Some of the problems posed by the activities of multinational corporations are similar to those which may arise in a modern or emerging industrial society from the activities of large and dominant corporations that are wholly national. In view of their transnational character, however, a policy framework which may be adequate for dealing with national corporations needs to be modified when dealing with multinational ones. In developing countries particularly, where multinational corporations may often be the only large enterprises, legislation and other institutional checks and balances, such as public control and trade unionism, may not have developed sufficiently to cope with the power of those corporations. Various host countries are reviewing their attitudes and are introducing new institutional arrangements and policies in an attempt to handle the issues arising from the activities of multinational corporations and to redress certain undesirable effects.

Our concentration on the relative capacity of nation States to regulate the activities of multinational corporations should not imply that the corporations themselves have no responsibility for regulating their own conduct. Successful corporate managements are usually those which are perceptive of the needs of their various constituencies, namely shareholders, employees, customers, suppliers, distributors and the communities and countries in which they maintain facilities. When a corporation operates in many countries its task of being responsive to differing needs and claims becomes more complex and at the same time more essential. We consider that efforts to articulate more clearly and precisely the claims of various corporate constituencies should continue; it will help to bring about more socially responsible corporate behaviour.

However, the self-regulatory efforts of multinational corporations should not be over-emphasized. Although multinational corporations are exceedingly effective initiators and organizers of economic activity and growth, they are also reactors to forces and institutions which define the political environment in which they operate. Multinational corporations, then, must be directed towards and constrained from certain types of activity, if they are to serve well the social purposes of development.

Distribution of benefits

We believe that policies and institutions should address themselves more specifically to the issue of the size and the distribution of the economic benefits resulting from the operations of multinational corporations. Of particular concern is the extent to which host countries, especially developing countries, can develop the capacity to purchase the package of resources provided by multinational corporations, namely technology, management, capital and access to markets, at the lowest total cost. This capacity relates both to knowing which package to purchase and how best to reshape it so that it can be integrated into the country's total strategy for development. Perhaps the most costly decision a host country can make is to choose the wrong package of resources - wrong either because it introduces factors which run counter to the development process or because it involves an expenditure of its scarce resources at an inappropriate time.

Developing countries need to develop the capacity to monitor the pattern of the distribution of benefits between themselves and the multinational corporations which operate in their economies. This issue is an underlying theme of much of our report. Suffice it to say here that one basic element is involved: host country bargaining ability and power should be increased. Not only should host countries be prepared to use, with fairness and skill, the powers which belong to them as political entities, but they should develop sufficient knowledge to control the impact of multinational corporations on their economies as a whole. This knowledge is necessary not only in regulating the activities of multinational corporations but also in formulating agreements with them prior to their entry. As will be discussed later, regional groupings of developing countries are an important instrument for enabling participating countries to negotiate arrangements which are attractive to multinational corporations and at the same time will increase the benefits which accrue to the countries individually. However, bargaining power and information are not enough unless there are clear national development objectives and the necessary skills to attain them.

* * *

Most home countries have the potential to help in steering the activities of multinational corporations into serving the purposes of development. Even with the best of intentions, however, national action may lead to misunderstandings and tensions, unless it is fully explained and discussed. Many host countries, even with the fullest exercise of their sovereignty, may not have the effective means to carry out all the tasks they are called upon to discharge.

For all these reasons, we propose the establishment of an appropriate United Nations machinery specifically designed for this purpose, which under the direction of the Economic and Social Council will deal with the issues arising from the activities of multinational corporations and keep the matter under continuous review. The establishment of such an international forum will facilitate discussion, initiate programmes of study and action on various specific aspects, and provide the basis for future institutional developments. Furthermore, a programme of technical co-operation can assist host, especially developing, countries and the dissemination of pertinent information will benefit all parties concerned.

I. IMPACT ON DEVELOPMENT

Economic growth in this century has been to a large extent the result of the technological explosion, the development of management systems which permit increasingly effective mobilization and utilization of human and other resources, and of the new skills of marketing and world-wide distribution. Constantly developing technology, management systems, and distribution skills are the major assets of multinational corporations. It is therefore understandable that developing nations turn to multinational corporations for some of the inputs needed for accelerated economic growth.

With the exception of those operating in the field of extractive industries, multinational corporations are not necessarily equally attracted to all developing countries. They tend to enter countries possessing large or expanding markets, high per capita income, abundant and relatively skilled labour, stable political conditions as well as ancillary skills and services that multinational corporations need. This is why the bulk of foreign direct investment goes to developed countries. Consequently, many developing countries have offered special inducements to attract multinational corporations, in the form of tax holidays, protective tariffs or export and other subsidies. The merits of such policies are discussed more fully in part Two.

While the importance of multinational corporations in economic development is acknowledged by most developing countries, it is equally recognized that their role in the development process is usually a limited one. Indeed no single device is sufficient for achieving development or is equally suitable.

In view of their scarce resources, developing countries should endeavour to allocate them efficiently on the basis of both short-term and long-term priorities. Recognizing this fact we have laid particular emphasis throughout this report on the importance of national planning and the formulation of priorities, as well as on the need to ensure that multinational corporations are sought after and admitted in accordance with predetermined goals and in harmony with existing plans. In this way the process of development will be advanced with greater certainty, and multinational corporations could be more willing to enter developing countries on terms more favourable to the latter.

In examining the impact of multinational corporations it should be recognized that these enterprises are of many different kinds and that host countries may react very differently to their presence. The skills and know-how provided by multinational corporations in resource-based industries are different from those provided in manufacturing industries. The control mechanisms of multinational corporations which adopt an integrated production or marketing strategy towards their affiliates are not the same as those which treat their affiliates as largely autonomous units.

Similarly, developing countries which are large, comparatively prosperous, and possess strong indigenous industries, may view foreign direct investment in a very different light from those which are smaller and poorer and which have little local industry.

Nevertheless, we believe that there are certain aspects of international production common to all multinational corporations wherever they operate. These are relevant to a large enough number of countries and multinational corporations to call for world attention, and it is on these aspects that this chapter concentrates. The main focus is on multinational corporations as industrial producers in the resource and manufacturing sectors in developing countries.

The impact: some problems

Generally speaking, multinational corporations introduce into a host country a package of resources and capabilities which they continue to own or control. They also tap resources on a world-wide basis and syphon them off to markets where profitable possibilities exist. Their impact depends on the one hand on the nature of the package and the attitude and strategies of the multinational corporations, and on the other hand on the environment in which they operate. For example, foreign capital may augment the resources of the host country and relieve bottle-necks in foreign exchange; but it may also generate a series of large outflows in dividends and service payments. New technology may improve the utilization of resources, but may not always be appropriate for local needs such as for employment creation. Managerial and marketing skills may enhance productivity and the availability of goods, but they may also divert resources from where they are most needed to where they are most profitably sold.

However, it is often the less tangible elements in the package that carry with them the most far-reaching effects. Indeed, the package in its entirety is more than the sum of the individual components. Similarly, the impact as a whole is often more than the sum arising from each component.

The significance of the package is that the components are assembled so that they are mutually complementary. It is not only what is actually brought into the host country that counts; the potential access to the capital, technology, skills and markets of the global network of the multinational corporation is equally important. It is not only the number of people that the affiliates employ that must be considered, but also the possibility of employment creation or labour displacement elsewhere in the economy. It is not only the foreign exchange brought in and out that matters, but also the long-term repercussions on the balance of payments. It is not only the increment of national income that is relevant, but also the possible effect on the direction and parth of development. Multinational corporations may serve as carriers of modernization and agents for linking host developing countries and the world economy, or they may place the host countries in a situation of even greater dependency.

The non-economic impact is frequently as important as or even more important than the economic impact. The effect of multinational corporations on the social institutions and cultural values of host countries may be especially striking if the tenor, tradition and stage of development of these countries differ considerably from those of the home countries. For example, the "business culture", with its emphasis on efficiency, may be considered too impersonal in traditional societies. The very cultural identity and the entire social fabric may be at stake, especially if multinational corporations attempt to transplant their own models of social development to the host country.

These problems are more pronounced in developing countries because most multinational corporations originate in countries with very different social and cultural backgrounds. Multinational corporations feel they can count on the support of a powerful home country or on the co-operation of a broad service network might behave differently from others. Those which operate on a relatively modest scale may be less inclined to exert their influence and may generate fewer stresses and strains in the process.

Even in strictly economic terms, a wider vision and deeper probing beneath the surface is essential. Spurs by multinational corporations to productive activities do not always provide a basis for sustained and sound development. Isolated foreign enclaves have few linkages with the domestic economy. The extraction of natural resources may generate few processing industries or do little to raise the level of local skills. Branch plants which operate purely as off-shoots of their parent companies, such as component manufacturers, are unlikely to integrate fully into the local economy. Restrictions to competition may benefit the enterprise but not the individual countries in which its affiliates operate. Export market allocation and tied purchases affect the foreign exchange gained or saved by the host country. The attempts of host countries to raise taxes or to place limitations on foreign exchange remittances can be negated by vertically or horizontally integrated multinational corporations through transfer pricing and the use of tax havens.

Some host countries attempt to tackle such problems by insisting on participating in the decision making of the affiliates. Local ownership through joint ventures does not always affect the control mechanism. On the other hand if the multinational corporation loses effective control over the affiliate, some of the benefits stemming from its multinational character may be lost; technology flows may be reduced, made too costly or made subject to export restrictive clauses. Or again, if a host Government tries, through policy measures, to influence the activities of the affiliates of the multinational corporations and exerts a measure of control over their decision making, it may see its efforts frustrated by evading behaviour on the part of the corporations or by the lack of co-ordination of policies among host countries.

In all these processes, the host country's share of the benefits from the operation of the affiliate is affected. The generation of income, the provision of foreign exchange and the collection of tax revenue are influenced by the strategy of the multinational corporation and its response to governmental and international policies. At the same time, even if a host country increases its share of benefits from the activities of multinational corporations and enjoys high rates of growth, its income distribution may not improve or may even deteriorate. Welfare standards for workers may be kept low, owing to weak or non-existent trade unions. Consumers may not benefit from low prices. High income obtained locally from the activities of multinational corporations may accrue largely to domestic élites associated with foreign interests. The vigorous sales efforts of the affiliate on behalf of products usually consumed in high-income countries may cater largely to upper income groups and promote consumption habits beyond the means of a poor country and unsuitable for the development of local industries. Basic needs of the population, such as food, health, education and housing, may be left unattended. The location of activities of multinational corporations in the developing countries may be influenced by more stringent requirements for protection of the environment in development countries. As a result, there may be

some apprehension that pollution may be transferred to developing countries, even though multinational corporations can also be instrumental in introducing new means of combating pollution.

These are some of the factors that shape the impact of multinational corporations on development. They are discussed in greater detail in part Two. Nevertheless, it is already apparent that their impact on development does not relate simply to the division of gains between multinational corporations and developing countries. It relates to the whole development process and the purpose of development itself. In this connexion, we believe it is necessary for host countries - both developed and developing - to be certain of the degree to which they wish to rely on foreign enterprises for their growth and prosperity.

Because of the nature and orientation of multinational corporations, developing countries will not want to rely solely or excessively on them for their development, but will strive to create internal forces and institutions for development. This is all the more essential in a situation where "dependencia" already characterizes the economy, while the basic purposes of development, in terms of providing the minimum requirements of human life, are not being fully met. The contribution of multinational corporations will be enhanced by appropriate policies and institutions, but at the same time the international community must rededicate itself to providing increased public aid to developing countries. Where such countries consider it appropriate to develop indigenous industries, in competition with the affiliates of the multinational corporations, international aid-giving bodies should help to finance such ventures.

The Group therefore recommends that international public aid should be increased, as recommended by the International Development Strategy, and directed to the basic needs of the poorest part of the population in developing countries, especially with regard to food, health, education, housing, and social services, as well as the development of indigenous industries.

Improving the impact

The impact of multinational corporations on economic development, whether actual or just perceived, can be influenced in various degrees by the policies pursued by host Governments, and by the international economic environment in which the corporations operate. In this section the policies of host Governments, especially those of developing countries, are dealt with first, regional policies second and the international economic system third.

National policy framework

Host Governments may affect the contribution of multinational corporations to development by their specific policies towards and their treatment of foreign direct investment, as well as by their general economic and social policies.

(a) Negotiating with multinational corporations

The terms on which multinational corporations gain entry into a host country are obviously a matter of considerable importance. Influenced by the view once

widely held that developing countries should open their doors wide to foreign capital to enhance their development, many of these terms were not sufficiently carefully negotiated.

Many developing countries have felt that their bargaining position in dealing with multinational corporations is weak. There has been the assumption that multinational corporations, with the exception of certain resource-based industries, can choose their location for production according to the country offering them the most attractive environment and most favourable terms. The initial agreement concluded with multinational corporations thus tends to include a large number of special concessions. Later, as circumstances change, the concessions appear to be too onerous and the host country may deem it necessary to redress the situation. In such cases foreign affiliates could be treated in a discriminatory fashion or could even be expropriated. Such treatment, though it may be directed towards particular multinational corporations, inevitably creates an atmosphere of distrust which operates against the long-term interests of both host countries and corporations. Moreover, concern about future unfavourable treatment may lead multinational corporations to attempt to extract the most out of their investment in the least possible time. These, and other uncertainties, make multinational corporations reluctant to invest in some developing countries unless their prospects are distinctly more attractive than those expected in developed countries.

In fact developing countries are not always, in the initial negotiations, in such a weak position. Those which possess valuable natural resources, for example, are beginning to realize their vital importance to multinational corporations and their increased bargaining power. Several others, by forming regional groups among themselves and enlarging their markets, have been able to secure the collaboration of multinational corporations on more advantageous terms. The abundance of relatively skilled labour is also being used to induce multinational corporations to set up export-oriented, labour-intensive manufactures. Finally, a number of developing countries have evolved careful planning policies and foreign investment regulations which not only enable them effectively to control and monitor the operations of multinational corporations, but also offer those enterprises a stable and balanced environment.

However, a number of further steps must be taken. Developing countries should indicate precisely, as an increasing number of them are already doing, what, in general, they expect of multinational corporations. They need to elaborate the ways in which multinational corporations can fit into their over-all plans and priorities, and to identify the areas in which those enterprises should make a contribution. Governments should clarify questions of ownership and control as well as specify policies in respect of the activities of multinational corporations pertaining to the political field. When negotiating with a particular multinational corporation they should indicate more precisely the kind of policy that the affiliate should follow with respect to such matters as the choice of products to be manufactured, the degree of local processing, the employment of nationals, wage policy and other similar matters.

Among the particular points which should be covered in such an understanding is whether the multinational corporation should be treated differently from a national enterprise; for example whether special regulation will be introduced governing such activities of the corporation as the production and marketing of new products, the sources and ways of finance, remittances of profits, royalties

and capital, and the employment of expatriates. Maximum clarity on both sides is essential for better understanding and future good relations.

The Group recommends that host countries should specify as precisely as possible the conditions under which multinational corporations should operate and what they should achieve. They should also indicate the ways in which the activities of multinational corporations should be integrated into the local economy and fit into the over-all priorities of the country.

In considering specific investment projects, developing countries should take the initiative in exploring possibilities of obtaining the kind of external contribution they want in the selected sectors. This means seeking competitive offers from multinational corporations which seem to have the requisite technology and skills. Simultaneously, alternative forms of foreign co-operation with international institutions or public or private entities should be considered.

In evaluating the terms proposed by multinational corporations, the ostensibly most attractive offer may not be the most advantageous, since the impact of these corporations on the local economy can be far-reaching. Therefore their true costs and benefits should be carefully analysed.

Experience and expertise are crucial elements in conducting negotiations of this kind successfully. Yet those elements are often lacking in developing countries. Experience can be gained more quickly if the same group of people handle all such negotiations. And the international community should assist developing countries in strengthening their expertise.

The Group recommends that host countries should consider setting up centralized negotiating services or co-ordinating groups to deal with all proposals for foreign investment, especially from multinational corporations.

The Group recommends that the United Nations should strengthen its capacity to assist host countries, at their request, in such negotiations with multinational corporations, as well as to train their personnel in the conduct of such negotiations (see chap. III).

While a clear understanding on various issues at the time of entry is vital, it has to be recognized that conditions change, and that what may have seemed to be adequate and fair at the time of entry may prove unsatisfactory to either party over time.

A large number of agreements made in the past lack comprehensiveness and contain no provision for renegotiation. Developing countries have, of course, the power, through legislation, to modify the terms of agreements. But sometimes such actions, if carried out unilaterally, entail disproportionately high costs in terms of the future flow of investment. A willingness on both sides to renegotiate agreements which have been in force for more than, say, 10 years could help to avoid recourse to extreme measures.

The Group recommends that in the initial agreement with multinational corporations, host countries should consider making provision for the review, at the request of either side, after suitable intervals, of various clauses of the agreement. The review by the host country should be carried out by the negotiating services or co-ordinating groups recommended above.

In recent years, the multinational corporations themselves have done a great deal of rethinking about their role in developing countries. Many of them no longer insist on operating only through wholly owned subsidiaries, or even on a majority share-holding basis in the enterprises they set up. Yet many of them do wish to retain effective control over management, especially in the initial years.

The Group recommends that developing countries should consider including provisions in their initial agreements with multinational corporations which permit the possibility of a reduction over time of the percentage of foreign ownership; the terms, as far as possible, should also be agreed upon at the very beginning, in order to minimize the possibilities of future conflict and controversy.

Not only is there a need to review the terms and conditions of entry in the light of changing circumstances, it is also essential to keep under review the policies and performance of the multinational corporations. Knowledge of such conduct and performance would help to dispel mystery and distrust and contribute to credibility. An evaluation of such conduct and performance would constitute a basis on which developing host countries could formulate their policy.

The first requisite for a proper evaluation is the availability of information on a continuing basis. We make our recommendations on the subject in chapter XII.

We wish to make one final point in this subsection. The negotiating position of host countries is strengthened if broader options or alternatives are open to them. One alternative to the "package deal", implicit in foreign direct investment, is for the individual components of the package to be purchased separately. There is evidence that some multinational corporations are ready to accept new forms of operation in which ownership rights are reduced. Management and service contracts, turnkey operations, limited-life joint companies, are all being actively explored.

The agreements that multinational corporations have made with several socialist countries of Eastern Europe are also worthy of consideration. Contractual joint ventures, or co-production agreements, are based on national ownership, limited duration and explicit provision for renegotiation, and involve a reduction of many of the risks usually attached to foreign direct investment.

Developing countries would also enhance their bargaining power if they identified alternatives outside the realm of the multinational corporations. Enterprises jointly owned by Governments or firms of several developing countries or joint enterprises with Governments of developed market or centrally planned economies are possibilities which could be further explored.

Each of these arrangements may or may not be a suitable alternative to the package provided by the multinational corporation. Each case should be assessed on its own merits.

(b) Treatment of foreign investment

As a general principle, we believe that the affiliates of multinational corporations should be encouraged to identify, as closely as possible, with the interests of host countries, developed and developing. The links that multinational

corporations maintain with their parent companies and home Governments should not lead them to act in a way which conflicts with the national policy of the host countries. An essential counterpart is that the policies of host Governments towards foreign affiliates should be fair, and as closely as possible similar to those which they apply to their national enterprises.

The phrase "as closely as possible" is used because we recognize that there are many respects in which both the rights and obligations of multinational corporations or their affiliates cannot be identical with those of the national firms. Multinational corporations expect the right to repatriate their profits and, in certain circumstances, their capital. A national firm cannot be given the facility of transferring its profits abroad by countries which cannot afford the free outflow of funds.

Likewise, there may be areas in which host Governments might find it desirable to introduce policies which are favourable or unfavourable to multinational corporations. Such discriminatory policies may be necessary because of the special features of foreign direct investment. For example, since a country can protect its infant industries from foreign competition through international trade, it cannot totally deny itself the possibility of sheltering such industries from competition by foreign affiliates established by multinational corporations. It may consider that mergers and acquisitions involving domestic firms should be allowed, or even actively promoted, while those involving foreign firms should be prohibited. On occasion, the host country may deem it justified to impose special requirements on its foreign affiliates, for example, in respect of profit remittances, access to capital markets, or labour conditions.

We believe that the cases in which relationships between multinational corporations and host Governments have deteriorated sharply over time are often those in which clarity was lacking in host country policies or, no less important, those in which special exemptions from prevailing regulations and policies were sought and given as a price for the entry of the corporation. In general, we believe that if the framework of a country's policies is not acceptable to a multinational corporation, it may be better for it to stay out than to gain entry on exceptional terms.

To avoid these negative impacts, no less than to promote fruitful co-operation between themselves and multinational corporations, it is desirable for host Governments to treat the affiliates of the corporation as indigenous companies, unless specific exceptions are provided.

The Group recommends that host countries should adopt policies towards affiliates of multinational corporations similar to those applied to indigenous companies, unless specific exceptions are made in the national interest.

(c) General policies

The capacity to deal effectively and successfully with multinational corporations depends on the total development effort, of which direct measures concerning those corporations, or their alternatives, form only a part.

The kind of products produced by multinational corporations are obviously influenced by import substitution measures, as well as income distribution policies, or the lack of such policies, in the host country. The balance-of-payments impact of multinational corporations is influenced by trade policy. If protective tariffs are levied, a high cost structure may be encouraged, and exports may be inhibited. The type of technology introduced and the employment impact may be adversely affected by inappropriate interest rate and tax policies or by veiled subsidies to imported capital goods. The incidence of transfer pricing depends, to a large extent, on the efficiency of exchange controls and rules concerning remittances, as well as intercountry differences in tax rates and systems.

Some of these specific issues are discussed in part Two. Here we would simply emphasize that a proper policy by host countries towards multinational corporations cannot be evolved in a vacuum, but must form part of a network of policies which is based upon a well-conceived development strategy with adequate support from national institutions.

This, in turn, will only be possible if the host country possesses the technology of choice (as discussed in chapter VI), in other words, the ability to make the appropriate decisions based on adequate information about the alternative policies open to it and the costs and benefits involved in adopting one policy rather than another. The misuse of these resources may well be the most serious true cost of development. The importance of choosing wisely is especially crucial today, since the assets with which many developing countries find that they can bargain best with the developed world and with the multinational corporations are non-renewable natural resources. It is thus not only important for developing countries to obtain a just price for their resources, but to spend the proceeds in a way which will generate long-term and continuing economic and social progress.

The general environment which host countries provide is sometimes influenced by the actual implementation and administration of policies as much as by the nature of the policies themselves. We are very conscious of the fact that ostensibly sound policies may be undermined by bureaucratic red-tape or even rampant corruption. Regulatory machineries and discretionary administrative powers, including those concerning multinational corporations, may be used as avenues for bribery. Vigorous anti-corruption measures should be introduced by all Governments. Host countries, both developed and developing, should examine carefully the possibilities of corruptive practices in granting special permissions or concessions to multinational corporations. In particular, multinational corporations should not be allowed to give direct or indirect gratuities to office holders of host Governments and trade unions. Home countries could assist in this regard by strict measures against bribery committed by their nationals elsewhere. International efforts for exchange of experiences in the harmonization of anti-corruption provisions would also help.

Regional co-operation

Developing countries have a great deal to gain from measures of regional co-operation among themselves. Such measures would also greatly assist them in their dealings with multinational corporations.

The bargaining power of developing countries may be strengthened by co-operative action. Many of them in the past have engaged in competitive granting of tax concessions to multinational corporations and other incentives to attract foreign investment. Often these concessions, which involve a measure of sacrifice on the part of host countries, are not necessary to augment the flow of investment. Even the tax concessions, as is pointed out in chapter XI, transfer resources from poor host countries to rich home countries. In other instances, they only reduce the benefits which could be expected to flow from the operation of multinational corporations.

Regional co-operation not only strengthens the bargaining position of developing countries but also helps them to evolve appropriate techniques for dealing with the problems to which the activities of multinational corporations often give rise. Where regional co-operation enlarges the market to which the multinational corporation gains access, the inducement to invest is enhanced. In order to gain access to large regional markets, multinational corporations have been willing to accept terms and conditions which they would reject from small countries. Developing countries in such conditions not only secure the co-operation of the corporations on better terms but can also benefit from the economies of scale. A number of developing countries have attempted to achieve these purposes by regional co-operation of various forms and degrees of comprehensiveness, although progress has been uneven on the whole.

The Group recommends that developing countries should intensify their efforts for regional co-operation, in particular the establishment of joint policies with regard to multinational corporations. The United Nations should study the experience of existing regional groups as it relates to multinational corporations and should disseminate relevant information to developing countries and provide technical assistance to them.

The international economic system

The multinational corporations in their present form and dimension are products of the international economic system within which they operate. Their basic strategies evolve in response to the existing world situation as well as to policies at national or regional levels. The rules of the game of the international system thus affect the activities of the multinational corporations, as well as national and regional policies. The growing importance of these corporations has in turn affected the functioning of the entire system.

The response of multinational corporations to the basic orientation of the existing system is most apparent in regard to trade. When capital and technology are mobile but labour is not, they tend to turn to countries where relatively skilled labour is abundant and inexpensive. Whether this will generate much employment in many developing countries where unemployment is endemic depends on the readiness of the developed countries to accept their products. If instead they choose to raise tariff and non-tariff barriers against such exports from developing countries, the potential of multinational corporations to contribute in this regard will necessarily be reduced. Improvements in the existing international trade régime will thus enhance the potential of the multinational corporations to contribute to development.

The international monetary system also has an important bearing on the operations of multinational corporations, in areas such as choice of location and financial flows. Apart from its influence on national and regional policies on production and trade, the degree of stability of exchange rates and the adjustment mechanism provided by the system evidently affects the policies of multinational corporations. Events in the recent monetary crisis have directed attention to the possible role of multinational corporations in the volatile short-term movements that have occurred, in addition to the fundamental disequilibria in the balance of payments of several major industrial countries. Although the current convulsions in the international monetary system may not be caused by speculative activities of multinational corporations, the ability of these enterprises to move massive amounts of funds across borders is unquestionable and such movements can undoubtedly aggravate the situation. This potential has been greatly enhanced by dramatic changes in international banking and consortia arrangements. A vigilant monitoring or surveillance by central banks of movements of funds of multinational corporations across borders is thus indicated. Moreover, in evolving a new monetary system, the role of multinational corporations will need to be taken seriously into account, in contrast to the benign neglect it has received so far.

While the international division of labour is influenced by the existing international trade and monetary régimes, it may be strongly affected, intentionally or unintentionally, by multinational corporations. Their large capabilities for moving products and inputs across borders are important instruments in affecting the actual division of labour. At the same time, the apprehension that host countries may be turned into "branch-plant" economies may not be limited to developing countries. The organizational, productive and distributive networks created by multinational corporations often assign a peripheral and dependent role to affiliates in many host countries, while the centres of top decision making and scientific research remain in a few highly industrialized countries. Although the locational pattern of multinational corporations reflects the uneven distribution of the factor endowments, it is also moulded in many cases by artificial administrative devices employed by home and host Governments (tariffs, subsidies, etc.) as well as by the corporations themselves. There is no indication, as is sometimes suggested, that multinational corporations are evolving into real internationalized entities whose ownership, management and objectives are truly global, and within which all nations and their citizens are treated equitably and world welfare is truly maximized.

In today's complex economy, the "invisible hand" of the market is far from the only force guiding economic decisions. To a considerable extent, conscious planning, both public and private, has played an increasing role in decision making. Increasingly, basic decisions on the allocation of resources with respect to what, how and for whom to produce are being concentrated in corporate planning mechanisms. The growth of multinational corporations gives them increasing control over resources and thus augments their capacity to re-allocate them. Such decisions, when taken exclusively from the point of view of an interests of enterprise, again pose serious problems. The question of establishing public mechanisms, both national and international, to orient the planning of consumption, to choose among different alternatives and to generate awareness in respect of their implications for the strategy of development of a given country, or region, appears to be a basic problem demanding a solution.

Decisions regarding the rules of the game and the creation of institutions and machinery to deal with the operations of multinational corporations must therefore be made in addition to, as well as in the context of, current negotiations for the

improvement of the existing international trade and monetary systems. For unless a serious and united effort is made to formulate policies and programmes in respect of multinational corporations, which are most directly related to the actual international division of labour, considerations of money and trade reform appear to be somewhat empty and the world economic order lacks any firm foundation. There is no substitute for consideration of the various parts of the system in the context of the entire interdependent network.

II. IMPACT ON INTERNATIONAL RELATIONS

Concern over the impact of multinational corporations on the domestic and international affairs of nation-States has been voiced at the highest government levels, for example at the Fourth Conference of Heads of State or Government of Non-Aligned Countries held at Algiers in 1973, at the Conference of Commonwealth Heads of Government held at Ottawa in August 1973, at the meeting of Latin American foreign ministers at Bogotá in 1973, at the intra-American meeting of foreign ministers held at Mexico City in February 1974, and in various forums of the United Nations. While, in the main, the role of multinational corporations is economic in character and influence, it often extends in various forms into the political area, affecting in the process international relations. It is to these issues that this chapter is addressed.

On the positive side, multinational corporations may promote the exchange of knowledge among peoples and countries and contribute to co-operation among Governments. They can also influence, for good or ill, the mode of life, the socio-cultural fibre and political development within a country, as well as relations among countries. This report will concentrate on some of the areas in which multinational corporations can create, or be agents in creating - voluntarily or involuntarily - political tensions within countries or between home and host countries.

Political intervention

One of the reasons the subject of multinational corporations came to world-wide attention was the exposure of an attempt by one of the largest corporations to overthrow the elected Government of a developing country. Such incidents are uncommon but, in a number of cases, multinational corporations have actively promoted political intervention in the domestic affairs of host, particularly developing, countries. Many multinational corporations have themselves condemned such activities. But the bringing to light of such incidents has in general laid them open to suspicion, and has lent support to ideological objections to, and distrust of, their influence - especially that of multinational corporations originating in the major developed countries. It is obvious that such intervention is incompatible with the long-term existence of multinational corporations in host countries and clearly infringes upon national sovereignty.

Action by multinational corporations in the political field can take less direct and obvious forms. In home countries, they may attempt to influence foreign and domestic policy by utilizing their broad financial power and their often close relationship with government cadres. They can lobby for or against Governments of host countries, depending on whether or not they receive specially favourable terms of treatment.

In host countries, the affiliates of multinational corporations can seek to influence government policies in undesirable ways. Being closely connected with domestic groups favouring foreign investment, they can use their own or their parent company's resources to support particular political parties of their choice, and they can rally against groups advocating social reforms.

It is in the interest of the multinational corporations to avoid engaging in activities that would embroil them in indigenous political controversies, or identifying themselves with any political side. Nor should they lose sight of the fact that domestic policies for social and structural change which appear onerous to them may well be in their interest in the longer run, as well as that of host and home countries.

We believe that this is not a matter to be left solely to the multinational corporations acting on their own judgement. They must have a clear indication from the host Government of the type of public activity from which they must refrain. We feel that, as a general principle, their public activities should be confined to those having a direct relationship to the objectives set out for the corporation upon its entry into the host country; for example, representing their views to local authorities regarding policies that may affect their own companies. In order to avoid misunderstandings, host developing countries would be well advised to impose strict limitations and to make governmental policy quite clear. In case of infringements, sanctions should be established according to due process of law of the country concerned.

The Group recommends that host countries should clearly define the permissible public activities of the affiliates of multinational corporations and also prescribe sanctions against infringements. The financial contributions of multinational corporations as well as of others to interest groups, should be regulated and disclosed.

If permissible limits exist and multinational corporations overstep them, they naturally expose themselves to penal action. Multinational corporations which engage in illegal activities do so at their own risk.

Although in this report no reference is made to specific multinational corporations, it is not possible to refrain from mentioning by name the actions of the International Telephone and Telegraph Corporation in Chile. Such actions can only bring discredit to the business community and negatively affect the image of those corporations which do not resort to such unjustifiable methods. We feel very strongly that, where unquestionable evidence exists of such activities, strict sanctions should be imposed according to due process of law of the country concerned. We also feel that no distinction should be made for this purpose between national and multinational companies. The existence of home country investment guarantee schemes can have the result of making the burden of the sanction fall on the country's taxpayers rather than specifically on the multinational corporation itself. Thus, in order for sanctions to be effective, home countries should consider withholding investment insurance payments where warranted by adequate proof of political intervention, as was done in the case of the International Telephone and Telegraph Corporation.

The Group unequivocally condemns subversive political intervention on the part of multinational corporations directed towards the overthrow or substitution of a host country's Government or the fostering of internal or international situations that stimulate conditions for such actions, and recommends that, in such an eventuality, host countries should impose strict sanctions in accordance with due process of law of the host country concerned. Home countries are encouraged to consider ways of ensuring that their investment guarantee schemes do not make these sanctions ineffective. 4/

4/ Sicco Mansholt, a member of the Group, recommends that the sanctions imposed in accordance with due process of law of the host country may include expropriation without compensation.

The responsibility for political action by multinational corporations lies sometimes with Governments, especially home country Governments, which have on occasion used the corporations as instruments of their foreign policy and even for intelligence activities. This applies in particular to home countries which, through investment, trade, or post-colonial ties, occupy a dominant position in certain host countries or regions. As long as the fear persists that multinational corporations may be tools in the hands of Governments and that they may, through their affiliates abroad, seek to fulfil foreign policy objectives, for example through the supply of information and the promotion of political ideas and changes in policy orientations and Governments, the relationship between developing host countries and multinational corporations belonging to powerful countries will be uneasy.

The Group recommends that the Economic and Social Council, in the application of the concept of non-intervention, should call upon countries not to use multinational corporations and their affiliates as instruments for the attainment of foreign policy goals.

Intergovernmental confrontations

It is important to ensure that the activities of multinational corporations do not affect relations between countries or lead to confrontations among them. It is equally important that affiliates of multinational corporations should not become the victims of disputes between home and host countries.

The most frequent cause of acute bilateral tension between home and host countries is a situation in which the host country nationalizes the investment of a multinational corporation and the latter turns to the home country for protection and help. The right of a country to nationalize the assets of any company should not be questioned. The real bone of contention is the amount of compensation to be paid, the manner in which it should be determined, and the extent to which home countries should involve themselves in the issue.

It is clearly necessary for host countries to pledge themselves to pay fair compensation. The denial or reduction of compensation as a result of the violation by multinational corporations of particular regulations should be arrived at through due process of law of the country concerned. It is here that a clear enunciation by the host country of what the multinational corporation is expected to do or not to do assumes importance from the international point of view. While it is not possible to lay down any single yardstick regarding the amount of compensation, all factors relevant to the interests of the country and the multinational corporation should be taken into account and any impression of arbitrariness must be avoided. Ideally, the compensation should be determined by mutual agreement. Failing agreement, recourse should be had to appropriate host country legislative and judicial processes.

In actual experience - except where host countries have formed the conviction that the activities of a particular multinational corporation have been such as to cause them deliberate political or economic damage - host countries have been conscious of the importance of paying fair compensation in cases of nationalization. One of the factors that weighs with them is the knowledge that otherwise further investment would be jeopardized in most cases. Although transferable payment should be made within a short period of time wherever possible, there may be cases

where serious balance of payments problems call for a prolongation of the period or for the reinvestment of part of the compensation in the host country. In such cases, international lending agencies should consider making soft long-term loans available to countries facing this difficulty.

We have given careful consideration to the suggestion that investment disputes should be settled through international arbitration. If the parties agree, arbitration can be a good method of settling the matter. Sixty-five countries have joined the Centre for the Settlement of Investment Disputes established by the International Bank for Reconstruction and Development some years ago. Some host countries, however, both developing and developed, object to international arbitration on grounds of principle. They note that these disputes are not between nations. They relate to property situated within the national boundaries of a State. Often the same act of nationalization may affect both foreign and domestic investment. They maintain, therefore, that only national courts can have jurisdiction over such disputes. ^{5/} As a result, a number of countries have decided not to join the Centre for the Settlement of Investment Disputes.

The Group recommends that whenever there is occasion to nationalize the assets of a multinational corporation, host countries should ensure that the compensation is fair and adequate and determined according to due process of law of the country concerned, or in accordance with any arbitration arrangements existing between the parties.

The question arises as to what the role of the home country should be in cases of nationalization or of other serious disputes between the multinational corporation and the host country. Many countries in Latin America have adopted the doctrine of the Argentinian Carlos Calvo, according to which host Governments deny all local rights and remedies to foreign affiliates which, in cases of dispute, call for the support of their home Governments. They make acceptance of the Calvo doctrine by investors a condition of their entry. Some home Governments, however, have maintained that their rights cannot be written off by commitments made by investors on their own account and that States have an inherent duty and right to protect the interests of their nationals.

We feel that a national of any country has the right to request the assistance of his Government when confronted with problems in a foreign land and that indiscriminate support by home Governments for their multinational corporations regardless of the merits of the case should be discouraged, as should some of the

^{5/} This principle has been recognized in resolution 88 (XII) of the Trade and Development Board of the United Nations Conference on Trade and Development which asserts the sovereign power of each State to fix the amount of compensation and the procedures for nationalization measures, and recognizes that any dispute which may arise in that connexion falls within the sole jurisdiction of the courts of that State.

ways in which such support may be provided by powerful countries. ^{6/} Although it may be hoped that the days are over when even military force was employed in such circumstances, some of the measures which home Governments seek or threaten to employ go well beyond the limits of normal diplomatic representation and amount to the exercise of political pressure. As a result, international tensions are generated which, even from the point of view of multinational corporations in general, create more problems than they solve.

It is not easy to define in precise terms the limits of what home countries should do to protect the interests of their nationals. Trade or financial sanctions, particularly when applied by powerful countries against weaker ones, may prove effective in the short run, but will inevitably generate feelings of frustration and create unstable conditions for the future. In general, they should be ruled out. We strongly feel that in any case no attempt should be made to use international agencies as channels for exerting pressure.

The Group recommends that, in such contexts, home countries should refrain from involving themselves in differences and disputes between multinational corporations and host countries. If serious damage to their nationals is likely to arise, they should confine themselves to normal diplomatic representations. No attempt should be made to use international agencies as means of exerting pressure.

We believe that disputes of the kind discussed above are easier to prevent than cure. What is needed is a change in the whole environment in which multinational corporations operate in developing countries. Such a change will be helpful to both. The recommendations that we make in various chapters of this report will, we trust, go some way towards developing a sound, long-lasting relationship between multinational corporations and host countries, which must in the last analysis depend upon both parties finding the relationship rewarding. Here we believe that international bodies, such as the commission on multinational corporations proposed in this report, can be helpful in promoting understanding at the international level. As a starting point, a resolution by the Economic and Social Council would help greatly in clearing the air and making a break from the past.

Conflicts and jurisdiction

Quite often, problems affecting international relations arise out of a conflict of jurisdiction between home and host Governments. Legislation enacted by the home Government may be such as to compel a certain type of behaviour by the affiliates of the multinational corporation. Such behaviour may not be in the interests of, or otherwise acceptable to, the host country.

^{6/} In this connexion may be noted a statement by the Subcommittee on Multinational Corporations of the United States Senate Committee on Foreign Relations, to the effect that if such indiscriminate support were to be sanctioned as normal, no country could welcome the presence of multinational corporations, and "over every dispute, or potential dispute, between a company and a host Government in connexion with a corporate investment, there would hang the spectre of intervention". (International Telephone and Telegraph Corporation and Chile, 1970-1971, report to the Committee on Foreign Relations of the United States Senate by the Sub-committee on Multinational Corporations (United States Government Printing Office, Washington D.C., 21 June 1973) p. 18.)

Thus, if the home country's legislation restricts the freedom of affiliates to export to particular countries, host countries may legitimately feel aggrieved. If home country legislation prohibits a merger between a foreign affiliate of one of its companies with an indigenous firm, this also may cause friction.

We recognize that the problem of jurisdiction is complex. As a start, however, we believe that one general principle should be accepted. Home country jurisdiction should apply until the multinational corporations enters the host country. Home country legislation should cover the prohibition of investment in countries upon which sanctions are imposed by the United Nations Security Council, for example, those which violate human rights and follow racist policies. These sanctions can be circumvented if multinational corporations are allowed to produce in those countries the very goods which are denied to them under the sanctions.

The Group recommends that home and host countries should ensure, through appropriate actions, that multinational corporations do not violate sanctions imposed by the United Nations Security Council, for example, on countries suppressing human rights and following racist policies.

On the other hand, once an affiliate of a multinational corporation is established in another country, home country laws should cease to govern its behaviour, and only host country laws should apply. This broad division would avoid many of the conflicts of jurisdiction which currently arise, but would certainly not solve all of them. The question of what country's jurisdiction should apply for certain activities of a parent or affiliate would remain. Important disputes of jurisdiction also arise because Governments do not agree on whether a certain activity of a corporation in one country affects other countries or not.

Also, there are areas in which, if the economic policies of the home country are to be effective, collaboration with other Governments becomes necessary. This is the case of anti-trust legislation, which is discussed more fully in chapter IX. In such circumstances, consultations should be held between the countries concerned in order to avoid misunderstandings and recriminations. We believe that home and host countries should refrain from extraterritorial application of their domestic legislation, unless it is exercised under bilateral or, preferably, multilateral agreements. Home countries should recognize that affiliates are under the jurisdiction of the host country.

The Group recommends that home and host countries should explore, with the help of the appropriate United Nations body, the possibility of concluding an international agreement regulating the issue of extraterritoriality of jurisdiction. As an interim measure, formal consultative machinery should be established in cases of conflicts of jurisdiction.

Considering the nature of the issues discussed in this chapter and the importance of creating a proper international framework and atmosphere in which multinational corporations can operate without causing strains on international relations, we feel that it would be appropriate for the Economic and Social Council to consider these issues and the views we have expressed.

The Group recommends that the Economic and Social Council should give consideration to the adoption of a resolution embodying the recommendations in this chapter.

III. INTERNATIONAL MACHINERY AND ACTION

In this report we have analysed broad as well as specific issues and problems related to the activities of multinational corporations. On the basis of this analysis, we have made a number of recommendations. While the primary responsibility for taking action rests with individual Governments, we have pointed out on numerous occasions that many of the measures that we think necessary will be ineffective and frustrated unless they are accompanied by action at the international level which promotes co-operation and harmonization. Furthermore, on a number of issues, effective action can only be taken at the international level.

While multinational corporations are subject to the jurisdiction of individual Governments in respect of their activities within specific countries, the global character of these corporations has not been matched by corresponding co-ordination of actions by Governments or by an internationally recognized set of rules or a system of information disclosure.

Even though international production has become as important a fact of life as international trade, there exist today no international institutions dealing with the activities of multinational corporations comparable with the General Agreement on Tariffs and Trade (GATT) and the United Nations Conference on Trade and Development (UNCTAD) which are concerned with international trade. The absence of an international forum makes it very difficult to work towards the international arrangements and agreements which would harmonize relevant national policies and laws and provide a framework within which the global strategies of multinational corporations should operate.

The need to begin work promptly toward these goals has been recognized not only by the members of the Group, but also by the overwhelming majority of those who appeared before us at the hearings. It is widely felt that more information and analysis, as well as the gradual elaboration of internationally accepted "rules of the game", will not only help to remove misunderstandings and frustrations but will be of benefit to all concerned.

We have also repeatedly brought out the need to analyse this subject in a comprehensive framework and the necessity of viewing it within the context of the development process as a whole. It is only in this way that the role of the multinational corporations and alternatives to the resources provided by them can be properly appreciated, and that appropriate measures can be devised to maximize the positive effects of the presence of these corporations and to bring under control its undesirable consequences.

To fulfil these functions at the international level it is not necessary to create a new institution. The existing institutions can be geared and strengthened to respond to the requirements. Given the functions and responsibilities vested in the United Nations in Chapters IX and X of the Charter,

and the methods of conceptualization and negotiation that it has developed over the years, we believe that the Economic and Social Council itself, being fully representative of the membership of the United Nations, is the intergovernmental body in which, on the basis of adequate support, the subject of multinational corporations in all its ramifications should be considered and negotiated on a regular basis.

We are convinced that the deliberations and decision-making process of the Economic and Social Council would be greatly facilitated and enhanced if the Council were supported in its work in this field by a body specifically designed for this purpose. The complexity and breadth of the issues involved are such that effective action by the Council must flow out of a continuing elucidation and analysis of the problems involved, based on more information, professional studies and consultations with the various parties concerned. This is a formidable task that requires continuous and systematic attention.

We have carefully considered the kind of body which could best assist the Council in fulfilling its responsibility in this field, including the respective advantages of an intergovernmental body and one composed of persons acting in their individual capacity. We have come to the conclusion that the functions which need to be performed can best be carried out by a group of persons acting in their individual capacity. Our reasons are the following. First, the complexity of the subject requires that the members be selected on such a basis that together they possess a broad and varied experience and deep knowledge and understanding of the many aspects of the subject so that the question of multinational corporations can be covered in a comprehensive manner; secondly, experience indicates that members of a group selected in their individual capacity are able to devote more time and attention on a continuing basis to the questions under consideration by the group; thirdly, experience also suggests that a group constituted in this way may facilitate the consultation process which is necessary for it to discharge effectively its responsibilities to the Council.

Under the direction of the intergovernmental body (namely, the Economic and Social Council) the commission on multinational corporations proposed here would provide a forum for airing views and discussing issues, would guide and co-ordinate the programme of work and action that is required at the international level, and would provide a basis for further measures and the evolution of institutions.

The Group recommends that a full discussion on the issues related to multinational corporations should take place in the Economic and Social Council at least once a year, in particular to consider the report of the commission on multinational corporations.

The Group recommends that a commission on multinational corporations should be established under the Economic and Social Council, composed of individuals with a profound understanding of the issues and problems involved. The terms of reference, composition and working arrangements of the commission are suggested at the end of this chapter.

The Group regards this report as being the first step in a comprehensive programme of study, discussion, negotiation and practical action which will unfold in the years to come. It remains for the commission on multinational corporations, under the Economic and Social Council, to consider and give expression to the recommendations made by the Group.

In a number of specific fields, such as the transfer of technology, restrictive business practices, labour and legal questions related to multinational corporations and international trade law, work is already going on in a number of United Nations bodies. Such work represents an important part of the programme of action proposed by the Group and should be encouraged and intensified. In a number of other fields, such as information, new initiatives are required.

In addition, research is required to cover those areas mentioned in this report in which multinational corporations are active but which the Group was unable to deal with adequately. These include international banking, tourism and land development. Research is also required to clarify certain specific issues and to bring out more sharply their implications and interrelationships.

As one of its first tasks, the commission should review the kind of technical co-operation which may be most needed, the form in which it could best be provided, and the capacity of the various United Nations organizations concerned to provide such assistance at the request of Governments.

Information and research centre on multinational corporations

Just as we believe that a specifically designed body is required to assist the Council, so too at the secretariat level special arrangements are required to provide the necessary and continuous support.

Throughout its work, the Group was struck by the lack of useful, reliable and comparable information on many aspects of this subject. The availability of pertinent information is central to many issues, such as restrictive business practices, transfer pricing and taxation. Making available the right kind of information could well be a most important first step in assisting developing countries in their dealings with multinational corporations. Broad areas in which information should be gathered, analysed and disseminated to all interested parties should include legislation and policies of home and host countries; geographical and industrial distribution of activities of multinational corporations; transmission of technology and financial flows; organization, structure, ownership and global strategies of multinational corporations; the effects of the activities of multinational corporations on national and international development. In carrying out the work, the centre would have to devote considerable attention to reporting procedures (see the subsection entitled "Programme of work" below). In addition, the centre would carry out research as requested by the commission on multinational corporations.

Technical co-operation

While the work of the Commission itself should contribute significantly to improving the possibilities of host countries, particularly developing countries; the Group believes that direct technical co-operation with Governments requesting it is an important component of the total effort. Particular attention should be given to providing assistance to requesting Governments for strengthening their relevant machinery and for training local personnel through national or regional training programmes in negotiation and administration of governmental policies on foreign direct investments. Increasing their capacity to use information is another area where assistance should be provided. In addition, advisory teams

(including economists, engineers, lawyers, social scientists and others) should be made available to requesting Governments to assist them in evaluating investment proposals, and in analysing proposed contracts and arrangements and, if desired, to provide technical advisory support to Governments in connexion with their negotiations with multinational corporations.

In view of the mutually reinforcing characteristics of the informational, research and technical co-operation functions, the Group considers it advisable to incorporate the technical co-operation function within the information and research centre on multinational corporations.

The Group recommends that an information and research centre on multinational corporations should be established in the United Nations Secretariat or closely linked with it, which, under the general guidance of the commission on multinational corporations, would perform the following functions:

- (a) Provide substantive and administrative services for the commission on multinational corporations;
- (b) Collect, analyse and disseminate information, and undertake research along the lines recommended above.

The Group recommends that the technical co-operation capacity of the United Nations in matters related to multinational corporations should be significantly strengthened and expanded in the areas of training and advisory services.

Programme of work

The Group considers an appropriate longer term objective to be the conclusion of a general agreement on multinational corporations having the force of an international treaty and containing provisions for machinery and sanctions. The need for such an agreement was perceived as early as 1948 in the drafting of the Havana Charter for an International Trade Organization, 7/ which contained elements still being sought today.

We recognize that it is premature to propose serious negotiations on such an agreement and the machinery necessary for its enforcement. This requires careful and extended preparation and discussion. However, the world community should not have to wait until such a general agreement is finally concluded; in the meantime, many specific issues can be tackled and resolved. On certain specific aspects such as technology, competition and market structure, taxation and labour, the work going on in various United Nations bodies should be encouraged and intensified in line with the recommendations below.

Code of conduct

The Group has discussed extensively the now widespread notion of a code of conduct which would be addressed to both multinational corporations and Governments. It is recognized, however, that the term "code" itself is full of ambiguity.

7/ Final Act of the United Nations Conference on Trade and Employment, Havana, Cuba, March 1948 (United Nations publication, Sales No. 48.II.D.4, E/CONF.2/78).

A code may be the assembling in one document of laws, decrees and rules which are already adopted and being enforced. A comparable attempt would be the drafting of an international agreement which, as mentioned above, we hope can be ultimately negotiated and ratified. The same term is also used for a set of rules established by negotiations in international organizations such as the Organisation for Economic Co-operation and Development (OECD) and the International Labour Organisation (ILO), all or only some of which each country chooses to accept and apply. This apparently strong, but, in effect, loose notion does not represent what we are aiming at. Finally, a code of conduct may be a consistent set of recommendations which are gradually evolved and which may be revised as experience or circumstances require. Although they are not compulsory in character, they act as an instrument of moral persuasion, strengthened by the authority of international organizations and the support of public opinion.

It is the last-mentioned form of code of conduct that the Group has in mind; namely, a set of recommendations which could be prepared by the commission, and considered and approved by the Economic and Social Council. They should be addressed to both Governments and multinational corporations. The Economic and Social Council may wish to consider, with the assistance of the commission, the desirability of preparing a series of recommendations attuned to particular sectors or categories. The commission could keep under review not only how far Governments and multinational corporations abide by them, but also whether changing circumstances may render some of them obsolete or call for additional or revised recommendations to be devised.

Information and reporting procedures

We have noted in chapter XII the serious lack of both financial and non-financial information, in usable form, and the desirability of working out agreed international reporting standards in this connexion. To achieve this goal, the commission on multinational corporations should give consideration to the convening of an expert group on international accounting standards. The task of the expert group would be to identify the information needed, determine how and in what form it should be collected, and decide how it could best be used by all concerned. The proposed information and research centre on multinational corporations would provide the supporting work for the expert group and would subsequently be responsible, under the direction of the commission on multinational corporations, for collecting, analysing and disseminating information in the agreed form.

Technology

The importance of technology and the problems faced by host developing countries in this connexion was brought out in chapter VI. In particular, we have noted the difficulties faced by developing countries in obtaining technology that is appropriate for their needs at a reasonable cost. To this end, we believe the current work by such United Nations bodies as UNCTAD, UNIDO, UNESCO and ILO, should give special consideration to ways of improving the machinery for producing technology in both developed and developing countries which is appropriate for and readily available to the latter. The international organizations concerned should work towards revising the patent system and evolve an over-all régime under which the cost of technology provided by multinational corporations to developing

countries can be reduced. Consideration should also be given to establishing a world patents (technology) bank to which public institutions could donate for use in developing countries patents which they own or purchase for this purpose; and to finding ways of providing financial assistance, for example through existing international financial institutions, to developing countries for the acquisition of technology.

Employment and labour

The important impact which multinational corporations may have on employment, labour relations and labour standards has been stressed in chapter VII. Consideration should be given to ways of concerting national action at the international level, thereby rendering it more effective. Studies should be carried out to examine various forms and procedures for the participation of workers' representatives in the decision-making process of multinational corporations. To ensure that minimum health and safety standards are applied universally, the ILO and WHO should develop and keep under review international safety and health standards which should be ratified by Governments.

Consumer protection

As is made clear in chapter VIII, to achieve better consumer protection, we believe that consideration should be given to working out minimum international health and safety standards for various types of products, as well as international standardized labelling.

Competition and market structure

In chapter IX two areas are noted, market allocation and market structure, in which action at the international level is required to help in solving existing difficulties. As regards the former, an international agreement should be sought to prohibit unjustified export market allocations and provide the framework within which revisions of existing arrangements should be effected. With respect to market structure, an agreement should be sought which would harmonize existing anti-trust policies and national jurisdictions that may be in conflict.

Transfer pricing

In chapter X the problems raised by intracorporate transfer pricing across national boundaries and the need to evolve sound policies and practices to control them are noted. To this end, consideration should be given to preparing an international agreement on the rules concerning transfer pricing for purposes of taxation.

Taxation

In chapter XI is noted the variety of practices in taxation, which have created an unreasonable situation for home and host Governments as well as multinational corporations. Furthermore, unco-ordinated efforts by host developing countries to give tax incentives can result in unnecessary loss of tax

revenues. While, in the short run, we believe that bilateral treaties should be negotiated in accordance with the guidelines recommended by the United Nations Group of Experts on Tax Treaties, it also urges that work should be initiated by the commission on multinational corporations towards reaching an international agreement on taxation in order to harmonize taxation and protect the interests of developing countries.

Proposed terms of reference of the commission on multinational corporations

The commission on multinational corporations, acting as a subsidiary body of the Economic and Social Council, should assist the Council in fulfilling its functions with regard to multinational corporations within the United Nations system. In order to do so, the commission should:

- (a) Act as the focal point within the United Nations system for the comprehensive consideration of issues relating to multinational corporations;
- (b) Receive reports through the Council from other bodies of the United Nations system on related matters;
- (c) Provide a forum for the presentation and exchange of views by Governments, intergovernmental organizations and non-governmental organizations, including multinational corporations, labour, consumer and other interest groups;
- (d) Undertake work leading to the adoption of specific arrangements or agreements in selected areas pertaining to activities of multinational corporations;
- (e) Evolve a set of recommendations which, taken together, would represent a code of conduct for Governments and multinational corporations to be considered and adopted by the Council, and review in the light of experience the effective application and continuing applicability of such recommendations.
- (f) Explore the possibility of concluding a general agreement on multinational corporations, enforceable by appropriate machinery, to which participating countries would adhere by means of an international treaty;
- (g) Conduct inquiries, make studies, prepare reports and organize panels for facilitating a dialogue among the parties concerned;
- (h) Organize the collection, analysis and dissemination of information to all parties concerned;
- (i) Promote a programme of technical co-operation, including training and advisory services, aimed in particular at strengthening the capacity of host, particularly developing, countries in their relations with multinational corporations.

Composition

The commission should consist of 25 members, serving in their individual capacity, nominated by the Secretary-General and approved by the Economic and Social Council for a renewable three-year term.

In the selection of the commission, due regard should be given to geographical distribution, as well as to the respective backgrounds of its members, including politics, public service, business, labour and consumer interests and the academic professions. There should be equal representation of business and labour interests.

Working arrangements

The commission should hold one session a year; it may hold special sessions or establish working groups to deal with specific questions.

The commission should submit an annual report to the Economic and Social Council and issue reports on specific subjects.

PART TWO . SOME SPECIFIC ISSUES

IV. OWNERSHIP AND CONTROL

The capacity to make and enforce decisions is a fundamental issue for developing countries because multinational corporations can greatly affect the objectives of their national development plans through the control of strategic or key sectors of their economies, the control by the parent company of important decisions by the affiliate, and the impact of the affiliate on over-all monetary, financial and trade policies.

In many host countries, there is widespread concern over foreign control of key sectors of the economy. It is most keenly felt in developing countries, where multinational corporations often dominate the mining and manufacturing sectors. Even in developed countries such concern is quite common, though to a lesser extent, particularly where there is strong indigenous competition or where the countries are themselves important foreign direct investors. There is no simple formula for allaying these anxieties. They are particularly acute when they reflect the search for a sense of national identity or the desire to reduce a country's dependence.

Each host country, therefore, has to decide, in the light of its own needs and aspirations, those areas of economic activity in which it will permit foreign direct investment and those which it wishes to reserve for indigenous companies.

The United Nations resolutions concerning permanent sovereignty of countries over their natural resources command special attention in this respect. We feel that recognition of a country's right to dispose of its natural resources must be accompanied by adequate international conditions to enable it to exercise that right effectively. Experience has shown that this is not always the case. If the help of multinational corporations is needed in exploiting natural resources, it may be preferable to enter into leasing or other types of contractual arrangements with them rather than allow them to own the resources or control the use of them. Public utilities and defence industries are two other areas in which many countries at present do not allow foreign companies to hold any interests. The effect of a foreign presence in the advertising or communications industries should be carefully considered by countries that wish to maintain their cultural or sociological characteristics.

The Group recommends that host countries should clearly define and announce the areas in which they are ready to accept foreign investment and also the conditions upon which such investment will be allowed in those sectors. In particular, developing countries should be encouraged to retain ownership of their natural resources or control the use of them.

Decisions taken by large corporations - domestic or foreign - in key industries may have a significant impact on the economy of a country and on its goals. To ensure that the decisions of the companies conform to national plans, Governments can exercise economic controls through legislative and administrative means. However, many decisions which affect the economy are taken within an enterprise. In general, indigenous enterprises are aware of the domestic conditions

and national aspirations. Decisions taken by a local affiliate rather than by the parent company are usually more responsive to local conditions and national objectives.

There is a wide variation in the extent to which multinational corporations delegate authority to their affiliates. Many of them take centralized decisions on various matters concerning the production patterns and marketing policies of their affiliates in order to secure the maximum advantage from an appropriate division of labour and the most economic allocation of their resources. Sometimes these decisions work to the benefit of the affiliate. Inevitably, not every decision will satisfy each and every country in which the multinational corporations operate.

In some respects, the making of decisions outside the country in which they are to be implemented can introduce problems similar to those presented by dependence on international trade. In later sections, with the various areas of tension that can arise from control by multinational corporations over their affiliates in the matter of decision making, for example, in the fields of labour and exports will be dealt with. Many countries take measures to insulate themselves against the worst fluctuations in international demand and supply. Similarly, countries may wish to protect themselves against action taken by the parent firms of foreign affiliates when it appears to be contrary to their own interests.

Sometimes, an attempt is made to achieve this objective by insisting that certain key positions in the affiliates of multinational corporations should be held by nationals and not by expatriates. While such a policy may help to train nationals for positions of responsibility, it does not solve the problem of control. A better method might be to reach an understanding with the multinational corporation about the nature of the decisions which are to be taken locally. At the initial stage of the negotiations, the multinational corporation could explain its general decision-making network and the manner in which the affiliate would be affected by it. Such information would permit the host country to determine whether its basic policies would be likely to be affected by foreign control. Thus, an evaluation could be made and the appropriate decision taken. Experience shows that much frustration has come about because the host country did not at first perceive these issues properly.

On other occasions, countries seek control through local ownership. This is not always possible nor necessarily effective. Many multinational corporations prefer to retain full or substantial ownership of their affiliates because they believe that without it they will be unable to implement a global strategy of production and marketing that requires many important decisions to be taken centrally and with the group's over-all interest in view. In addition, they may wish to maintain control over the use of their technology and know-how. It should be noted, however, that control can also be exercised in many areas through a minority shareholding, if the majority of the shares are held by investors who have no common purpose and are not interested in exercising control, or if the majority of the shareholders are on such friendly terms with the multinational corporation that they do not wish to take a different view from it.

The search for ownership requires capital. This is not always readily available to developing countries and thus they need to decide where their resources can be used most profitably. Although we understand that, in certain key sectors, outright ownership is an important economic and political requirement for developing countries, the real issue is control. If control is obtained through other means, ownership merely influences the way in which the profits earned by an affiliate of a multinational corporation are divided between its parent company and domestic investors.

Ways of exercising control vary. As we have seen, serious conflicting interests are involved. Basically, host countries should define clearly the kind of policy the affiliates of multinational corporations should pursue with respect to such essential matters as continuous access to technology, agreement on marketing procedures, repatriation of capital and profits, and so forth. If the country feels satisfied with the performance of an affiliate, the question of control diminishes in importance.

On occasion, host countries ask for a majority shareholding not only as a means of strengthening their influence over the policies of the affiliate beyond that exercised through general governmental powers, but also in order to secure a larger share of the profits of foreign direct investment. Here again, there may be alternative ways in which the Government and the multinational corporation can modify the distribution pattern, for example, through the reinvestment of profits over certain fixed periods, or the limitation of capital and profit remittances abroad. Also, national tax laws are important in this context.

On the other hand, if the only factor that keeps a home Government from seeking part or total ownership of an affiliate is lack of available capital, it is important that it should have access to adequate credit from international financial institutions. A country should not be prevented by lack of domestic capital from reaching the ownership pattern that it feels is necessary for its development plans. In that context, joint ventures and the reduction over time of foreign equity interests should be given favourable consideration as one of the options available to both parties.

The Group recommends that where ownership is an important objective for host countries, consideration should be given to the establishment of joint ventures as well as to the reduction over time of the share of foreign equity interests.

We would like to make the observation that, in some developing countries at least, joint ventures between multinational corporations and domestic private enterprises may confer some benefits on a small elite group of nationals, but may make no material difference to the issue of control unless the national investors themselves are active and responsive to national priorities.

On occasion, arrangements with Governments may prove more attractive to multinational corporations since they carry a greater sense of security. It should be noted, however, that the conditions which gave rise in the beginning to a particular arrangement may not continue to exist over the long term. In the initial stages, for example, the host country may not be in a position to mobilize adequate capital, or it may be greatly dependent on the multinational corporation for technology and management. In time, all this may change.

If there is no possibility of the multinational corporation renegotiating or progressively reducing its equity interests, the relations between it and the host Government may begin to deteriorate. Since the costs and benefits of inward direct investment undergo major changes over time, host Governments and multinational corporations should, from the very beginning, provide for the possibility of renegotiation at later stages.

During the hearings, we were impressed by the account given of the work of the Atlantic Community Development Group for Latin America (ADELA). Formed by many corporations from a number of countries, none of which has a large share in the capital, its purpose is to engage in joint ventures with local private or public capital and to start new industries. It gradually relinquishes its investment once a project is well established and makes new investments with the resources thus released. Such an arrangement has favourable effects on the balance of payments of the host country: the capital, instead of being repatriated at the conclusion of an investment, is reinvested in the country. The technology and managerial skills which the investor provides are also switched to new fields as nationals take charge of the established industries. The formation of the Andean Group and the resulting enlargement of the market will provide an added stimulus for this sort of activity in that region.

Similar companies are beginning to operate in other continents. Such a scheme cannot be extended to the point at which it would replace other forms of private foreign investment, but we believe that some of its features can be usefully imitated: in particular, the multinational source of capital, the association with local, public or private interests and the gradual switch from well-established projects to reinvestment in new ventures.

V. FINANCIAL FLOWS AND BALANCE OF PAYMENTS

Aside from technology, multinational corporations may supply financial capital to the countries in which they produce. This is usually welcomed, particularly by countries with a balance of payments deficit. 8/

In considering the effects of the inflow of financial capital on the balance of payments, there is a tendency to examine the problem from a very narrow point of view. Thus, attention is often confined to the cost of servicing the investment by remittances of dividends, fees and royalties and the repatriation of capital over time. These figures have only limited relevance when the country has a choice between paying for capital goods out of its own export earnings and reserves or financing them against credits or grants, official or commercial, for the purpose. In practice this choice may not always be available. Other sources of finance may be under severe constraint, and the collaboration of the multinational corporation may be necessary for reasons of technology and know-how to establish the production facility.

The more basic issue with regard to balance of payments is whether the particular investment will mean a net contribution to the country's ability to meet foreign exchange requirements over time, after allowing for all the outgoings in servicing the investment as well as other consequential remittances, for example, through transfer-pricing devices.

In evaluating the effects of inward direct investment on the balance of payments, it must be borne in mind that developing countries have special international liquidity and cash-flow problems. While inward direct investment in the short term provides a measure of relief, the possibility that, in the long run, a problem it has failed to solve may be worsened is a constant cause of concern.

In our view, in order for correct decisions to be made, the problem should be considered not simply in terms of the impact of identifiable inflows and outflows attributable to the presence of multinational corporations, but in the wider perspective of the country's over-all development. The balance of payments is not an end in itself, and policies to deal with it must be part of an over-all economic policy. Except when imports are financed out of outright grants, any import must have an immediate negative effect in purely balance-of-payments terms. The form of financing, whether cash payment, or commercial or official credits, or against equity investment, affects the time over which the negative impact is felt as well as the magnitude of the impact. The more crucial question is that of ensuring that the totality of external finance available makes the maximum contribution towards the fulfilment of the country's primary goals, which may not be purely economic and may include concern over consumption patterns and income distribution.

8/ If the investment is made in the form of imported machinery and equipment and the multinational corporation inflates their prices, the financial inflow may be overstated.

In appraising foreign investment proposals by multinational corporations, host countries should thus assess their over-all contribution to development as well as their contribution to the country's ability to meet foreign exchange requirements, and compare them with possible alternatives.

Once a decision has been made to accept investment by multinational corporations on these wider considerations, a number of specific issues need attention. The question which often arises is whether multinational corporations should bring in the entire capital they need or whether they should have access to local sources. Apart from the fact that, in general, the larger the initial capital inflow, the greater the eventual outflow of interest and dividends, the structure of capital also influences the outcome. Interest on foreign loans is a fixed charge while dividends may be a flexible one. In so far as dividends may reflect higher risk of venture capital as compared with loan capital, they may be at a higher rate than interest. Borrowing from the local market may increase the return to foreign investment and lead to the remittance of profits which do not directly correspond to a previous inflow of foreign capital.

Other effects are no less important. There is, for example, the question of impact on the domestic capital market. If abundant domestic savings are available, the case for encouraging or even insisting that multinational corporations should tap them would be strong. On the other hand, this is not normally the case, and such a course would deprive indigenous industry of the capital it needs to fulfil national goals. Thus, it may be advisable to ask the multinational corporations to bring in all the capital they need.

Because of their concern with the balance-of-payments problem, developing countries sometimes restrict remission of dividends, royalties and so on. Nevertheless, multinational corporations are often able to circumvent such restrictions through transfer pricing and other devices. Moreover, to build up a backlog of current-account dues awaiting repatriation can in the long run also generate balance-of-payments problems. What is important is to ensure that the contribution of multinational corporations to the capacity to earn foreign exchange is as high as possible, bearing in mind other development objectives. Further attention should be focused on such practices of the multinational corporations, such as restrictions on exports and transfer pricing, which may harm both their contribution to income and the balance of payments.

Developing countries have frequently expressed concern over the amount of local capital borrowing by multinational corporations, both as a part of initial investment and for further expansion. They consider restrictions on remittance of dividends and other payments as one of the means at the disposal of Governments. For the reasons discussed above, however, host countries should consider carefully, even in periods of emergency, the negative effects of imposing any restrictions on such remittances.

Finally, it should be remembered that the system of trade and payments and the policies of national Governments may have a major influence on the behaviour of multinational corporations as well as on policies of individual host Governments. Tariff and trade policies of developed countries affect the level of exports from developing countries. Instability in exchange rates may lead multinational corporations to move funds across national borders in a way which tends to accentuate this instability.

The effective implementation by developed countries of the United Nations scheme for generalized preferences on processed and manufactured goods from developing countries and the reduction of non-tariff barriers will ease the concern of developing countries about the impact of investments by multinational corporations on their balance of payments. We urge that current efforts and plans of the International Monetary Fund for monetary reform should take full account of the role of multinational corporations. In the long run, we would hope that the general agreement on multinational corporations will also amount to an international agreement on capital and investment, since most of the investment is by multinational corporations.

Meanwhile, the Group feels that, in assessing the impact of multinational corporations, host countries should attach greater importance to the kind of contribution these enterprises can make to their over-all development, and should take into account their impact on the balance of payments primarily for the purpose of making a choice, where such exists, between alternative methods of financing a project.

VI. TECHNOLOGY

Technology is an essential input for production. It is bought and sold in the following forms: (a) embodied in physical assets as, for example, plants, machinery and equipment and, sometimes, intermediate products; (b) as services of skilled and often highly specialized manpower; (c) as information, whether of a technical or of a commercial nature. From the viewpoint of the individual firm, technology, together with the cost of labour and materials and the size and structure of markets, is the main determinant of the type of products produced, and the way in which they are produced; and, in the case of a vertically or horizontally integrated multinational corporation, the country in which they are produced.

Knowledge may be proprietary or non-proprietary. It may be the exclusive property of a particular institution or it may be generally available. It may be disseminated through the learned journals and trade publications, by word of mouth, by imitation or by example.

It is largely the ability of multinational corporations to generate and apply technology which accounts for their rapid growth in the past decades and their importance to economic growth.

The multinational corporations have become the most important sources of a certain type of technology. Their affiliates can draw upon the knowledge of the entire organization of which they are a part. This is one of their main advantages over indigenous firms, and one of their main attractions for host countries. In practice, however, the full transfer of knowledge may not take place; partly because it is not always suitable for use by the affiliate and partly because the parent company will not always wish to make it available.

By its very nature, the market for proprietary technology is highly imperfect. To begin with it is difficult to fix a precise price for technological information. Technological information is usually the most closely guarded aspect of modern production because imitation by others can eliminate profitable markets. Moreover, the buyer of technology needs to have information about what is available, at what cost and from what alternative sources, in order to decide what price he should pay. For all these reasons there is really neither a world market nor a world price for technology in the generally accepted sense.

In obtaining technology from multinational corporations, the enterprises of the developing countries are in a particularly weak bargaining position because of their lack of capital and necessary technical skills. More generally, the developing countries are in a vulnerable position because, unlike the developed countries, they do not participate in the two-way exchange of technology to any extent, so that the imperfections of an oligopolistic market are not even partially offset in their favour.

The developing countries are interested in obtaining wide, rapid and easy access to adequate technology in order to accelerate their rate of economic and

social advance. But this interest is not to be interpreted as being narrowly confined to continuing imports of technology from abroad. Equal importance attaches to the creation and strengthening of their own national technological capabilities so that they can continue their future development on a basis of self-reliance while participating, as equal partners with other countries, in the international advance and exchange of technologies.

Up to now, there has been no incentive for private enterprises to develop and disseminate production techniques which can be used by great masses of people without large and costly inputs of capital. Therefore, Governments of industrialized and developing countries should use public funds to develop such technology. Developing countries in particular should seek not only to acquire the capacity to select the most suitable technology for their purposes but also to develop the capacity to generate their own technology.

In addition, countries have to make a number of choices of great importance: choice of products, choice of technology and choice of sources and ways of acquiring it. This highlights the need for an adequate mechanism for doing so, what we have called the technology of choice.

Technology of choice

In bargaining with a multinational corporation, a host Government may have several goals it wishes to achieve: import substitution and export promotion to relieve a balance-of-payments deficit; the creation of a substantial number of additional jobs in an area of unemployment; a general improvement in the level of living; or perhaps all of these together. How these different objectives interact, and the way in which they affect the total cost of a given project, is fundamental in deciding on a certain technology.

The first and most important technology, then, may well be the technology of informed choice. This exists in bits and pieces throughout the developed world. Its potential is gaining rapidly, but in its totality it is used by scarcely anyone. Government or multinational corporation.

This technology consists of the ability to gather more relevant data of more kinds than ever before, to treat a whole situation as the complex system which it truly is, to calculate the effects of the interactions of the components of the system, of the ultimate trade-offs between conflicting goals, and of the inclusion within such systems of social, economic and cultural values.

While, in the last analysis, fallible human beings must make the choices, present-day technology as just described offers the opportunity to remove significant areas of ignorance and uncertainty, and to lessen the possibility of bad choices caused solely by lack of knowledge.

Since this technology of choice is far from mature, and is to be found in many places rather than in one place, an international institution such as the United Nations is well placed to aid developing nations in gaining access to it. The United Nations can certainly not be a leading source of such technology, but, through knowledge of the best practice in this field and of the growing and changing needs of developing nations, it can act as a conduit to channel the

technology more rapidly and effectively than any one nation could do on its own. A limited example of how the United Nations might function in this field is found in chapter XII of this report.

This technology of choice could be useful in tackling the variety of concerns about the technological effects of the presence of multinational corporations in developing countries. In this chapter five such concerns in particular will be discussed: the choice of products; the choice of technology; the source of technology; the cost and conditions of acquiring technology; and alternative means of acquiring technology.

The choice of products

As a firm diversifies its markets, it tries, as far as possible, to supply those markets with what it is already producing. However, even when exporting, it may find that different national tastes and needs require modifications in the product sold to domestic consumers. When it engages in international production, there are added supply constraints, caused for example by differences in the availability and price of materials, and governmental import substitution policies. Even here, however, firms may well decide, on grounds of cost, to market and advertise an internationally standardized product rather than produce something specially adapted to the requirements of the local markets.

The host country is concerned about the type of product supplied by an affiliate for two reasons. First, because of the resources which are needed to produce it: some products require labour-intensive methods and others more capital-intensive methods. Secondly, some products are more suitable to the needs of consumers, both industrial and household, than others. What is suitable may not always be easy to identify, particularly where consumption patterns are influenced by many pressures. Even if needs are correctly identified, there is no guarantee that firms will find it profitable to supply those needs. Often, the main constraint is the size of the market; sometimes it is technology. Firms are not always ready to engage in costly product innovation and development, unless they anticipate an adequate return on their expenditure.

Developing countries face a special problem in this respect. Products evolved for use in developed countries do not always answer their needs, and may even be undesirable. Their own research capacity may be limited or non-existent. In many instances, the smallness and fragmentation of the national market, at least in the initial stages, may create additional problems for developing the appropriate products.

The Group recommends that before a multinational corporation is permitted to introduce a particular product into the domestic market, the host Government should carefully evaluate its suitability for meeting local needs.

The choice of technology

Once the decision on what to produce is taken, it becomes necessary to choose among alternative ways of doing it. Parent firm technology introduced by multinational corporations is not always suitable to the needs of host countries.

Often, developing countries insist on the most up-to-date technology, although it may not, in fact, be appropriate to their objectives. At the same time, it should be recognized that there may be instances in which a capital-intensive technology would actually yield the best results, for example, where there are important spin-off effects on local industry, or where multinational corporations produce in export industries or in industries in which no labour-intensive technology is available or could only be used with considerable increase in prices. In such cases, labour-intensive operations may have only a peripheral use, for example, in material handling and transportation.

In general, multinational corporations tend to reproduce technologies which they have already developed and which they are using in their home countries. These are apt to be capital intensive. In many developing countries, the cost of capital is kept artificially low through accelerated depreciation and investment allowances, low interest rates and tax and duty exemptions for imported capital equipment. On the other hand, the market price of labour and social security provisions may overstate its true social cost.

The evaluation process is essential. It is here that local capacities must be strengthened. Unless a national infrastructure exists that is capable of choosing and weighing the total implications of the alternatives, the country cannot even begin to pose the problem. We feel strongly that international co-operation should be specifically directed to this end. We take note of the many worth-while efforts that are under way in this field and would like to stress our firm opinion that they should be intensified.

The Group therefore recommends that the machinery for screening and handling investment proposals by multinational corporations, recommended earlier, should also be responsible for evaluating the appropriateness of the technology, and that its capacity to do so should, where advisable, be strengthened by the provision of information and advisory services by international institutions.

The source of technology

A host country's undue dependence on the importation of technology may mean that it is in danger of never producing its own technology. Even developed countries, such as Australia or Canada, are faced with this problem.

No country in the world expects to be totally self-sufficient in technology; even the most advanced countries import as well as export it. But the fact is that basic research, which is the foundation of all technical advance, will for the foreseeable future be concentrated in those areas where the fundamental disciplines of knowledge are present in greatest profusion and where funds are available for conducting this increasingly expensive activity.

This appears to us to apply not only to universities and public institutes, but also, and especially, to the advanced research activities of private enterprises, national or multinational. Nevertheless, the capacity to invent and innovate is something which few countries can afford to do without. In seeking solutions to its own special problems, a country may use its own special resources, which may be abundant, but this necessarily calls for research, at the national level in the case of the larger developing nations, and at the regional level by the smaller ones.

The skills used in engineering and manufacturing processes are a different matter, however. To the extent that these processes are at present best performed in a labour-intensive manner, the host country can establish both legal requirements and incentives to assure that an adequate and growing body of skilled workers is developed and remains within its borders. There are examples of successful legislation and incentives in this regard throughout the world today.

However, a word of caution is due here. As wages and volume of production rise, the necessary skills of engineering and manufacturing processes tend more and more to be built into the equipment and instrumentation itself, and less into the individual worker. A carefully planned and phased programme to establish appropriate engineering skills within the country ought, therefore, to be a conscious aim of developing countries. The cost will be substantial, but it is well within the power of a host Government to regulate the scope and speed of such a programme, and hence its cost.

Here again, by offering access to the best experience and best practice throughout the world, an appropriate advisory service within the United Nations can perform a valuable function.

The Group recommends that host countries should require multinational corporations to make a reasonable contribution towards product and process innovation, of the kind most suited to national or regional needs, and should further encourage them to undertake such research through their affiliates. These affiliates should also be permitted to export their technology to other parts of the organization at appropriate prices.

The cost and conditions of acquiring technology

As emphasized in the introduction to this report, the transfer of technology takes place in a highly imperfect market in which the developing countries find themselves in a particularly weak position. The decisions which these countries make on the goods to be produced, on the type of technology with which to produce them, on the sources from which to obtain it, on the particular channels and mechanisms they employ for this purpose, and on the organizational forms through which this is done, have a major influence in determining the terms and conditions of the transfer, their current and future direct and indirect costs, and their impact on growth potential.

The sale of technology is a complicated transaction in which the charges are rarely, if ever, clearly stated. For subsidiaries of multinational corporations, most of the arrangements for the transfer of technology are implicit and do not usually form part of any written agreement. On the other hand, when joint ventures or individual enterprises of developing countries import a particular type of technology, it is usually done through an explicit contractual agreement, which may contain unfair or restrictive clauses and various limitations that work towards raising the costs of the transfer. For these reasons, the financial implications of the transfer process have always been most difficult to estimate.

Host countries, particularly developing countries, have been concerned about high expenditure for the acquisition of technology. For developing countries, one estimate (TD/106, p. 17) places the direct cost, consisting of payments for the

right to use patents, licences, process know-how and trade marks, and for technical services needed at all levels from the pre-investment phase to the full operation of the enterprise, at about \$1.5 billion in 1968, and further calculates the cost to be growing at a rate of about 20 per cent a year. These countries are naturally anxious to acquire technology at the lowest possible cost. There is no formula by which the fair price of technology can be determined. Developing countries argue that the technology provided by multinational corporations has already been produced and that the corporations have already derived ample reward from its use in the developed countries for which it was primarily intended. Hence, the transfer to the developing countries does not entail any significant extra cost.

The multinational corporations, of course, do not see the problem in quite the same light and seek to obtain the best possible price for their technology. However, since a high proportion of the multinational corporations' transactions are on a package basis, the precise cost of the technology to the host country is frequently unclear. Furthermore, the multinational corporations point to the fact that the production of technology is costly and also highly uncertain. The return for successful innovation has to cover the cost of unsuccessful attempts as well.

Many questions have also been raised about the working of the patent system, with a view to reducing its restrictive character while still protecting the inventor. For developing countries, the high cost of technology is of special concern since the flow is virtually in one direction. When dealing with multinational corporations on a package basis, they rarely know the price paid for the technology unless it is clearly and separately specified in the form of royalties and technical fees. Proprietary rights may be used not only to inflate the cost of transfer but also to add a number of terms and conditions which can adversely affect the development interests of the recipient country. This has led certain countries or groups of countries, such as the Andean Group, to declare null and void agreements or contracts containing clauses which, among other things, permit the supplier to regulate or interfere directly or indirectly in the management of the purchasing company, establish the obligation to transfer to the supplier innovations or improvements developed by the purchasing company, establish the obligation to acquire various inputs from certain suppliers only, or limit the volume of production. Such restrictions explain an ever-growing preoccupation with the working of the patent systems and the decisions taken by United Nations bodies to work towards a revision of them.

One problem to which the revision should address itself arises out of the fact that multinational corporations take patents in every country to protect their innovations, although in some of those countries the process may not be used or the product may not be available. In that case, the patent is in fact sterilized and prevents any competing line of production. It should be considered whether a country which needs the product and can produce it competitively should not be granted the right to obtain a licence from the multinational corporation.

It is against this background that the weak negotiating position of the developing countries vis-à-vis the multinational corporations needs to be strengthened by various types of action at the national and international level. 9/

The main lines of the action centre upon a revision of the international patent system, including both national patent laws of developing countries and the international patent conventions; the preparation of a truly international code of conduct in the field of the transfer of technology; and the establishment of institutions designed to help the developing countries in dealing with the complex tasks involved in the transfer process.

The Group draws attention to the work of the Economic and Social Council and UNCTAD on technology (including decision 104 (XIII) of the Trade and Development Board on exploring the possibility of establishing a code of conduct for the transfer of technology) and recommends that international organizations should engage in an effort to revise the patent system and to evolve an over-all régime under which the cost of technology provided by multinational corporations to developing countries could be reduced.

The Group supports the establishment of a world patents (technology) bank to which any public institution may donate for use in developing countries patents which it owns or purchases for this purpose.

Alternative means of acquiring technology

Many multinational corporations have already shown a willingness to supply technology to host countries without a direct investment stake. This is a welcome trend which may enable many developing countries to avail themselves of the services of multinational corporations, particularly in areas in which they wish to retain ownership and control. We would emphasize that such arrangements are not always of advantage to the host countries. Some of the benefits of the technology provided by the multinational corporations arise from their management and control over production. "Know-how" consists of the capacity to produce efficiently based on past experience and is much more than the technology which patents protect. The multinational corporations may often be providing both proprietary and non-proprietary technology, but, in many industries, technology becomes obsolete fairly rapidly and a constant supply of fresh technology based on continuing research is essential.

With this caveat, we believe that host countries, like any other buyer, should seek alternative ways of acquiring technology, and should also explore alternative sources of technology. These are many and varied. They include management and service contracts, turnkey operations, contractual joint ventures, co-production agreements and other variations. In each of these contractual arrangements, ownership is left wholly or in controlling part in indigenous hands. The duration

9/ The main lines of such action were set out in paragraphs (37) and (64) of the International Development Strategy for the Second United Nations Development Decade, and in UNCTAD resolutions 39 (III), on the transfer of technology, and resolution 73 (III) on restrictive business practices.

of the foreign firm's presence is limited, and explicit provision is made for the renegotiation of terms at specified intervals. We believe that multinational corporations should themselves be encouraged to form such relationships with institutions and Governments in host countries.

The possibility of acquiring technology from socialist countries on favourable conditions is widening. The experience of Japan, both as an importer and exporter of technology, is also very illuminating.

In the absence of any agreed norms for pricing new technologies, the best yardstick would be the market price for existing technologies. This means knowledge about the price at which the technology for different types of products and processes is being bought and sold in the world. Unfortunately, lack of information on the subject makes such an approach very difficult. We would hope that the setting up of an information and research centre on multinational corporations, recommended in chapter III, will help to remedy this deficiency.

Developing countries are also handicapped because they often do not know how to locate alternative sources of technology. Thus, there is a serious "information gap". Moreover, they are often unable to evaluate the alternatives or, by themselves, to use such technology effectively, which means that there is also a "capability gap". Here again, technical co-operation from appropriate international bodies would be of help. In the long run, however, only a sustained programme of indigenous education and training will suffice. In many cases, useful technical advice can also be obtained from independent consulting firms.

The Group recommends that host countries should explore alternative ways of importing technology other than by foreign direct investment, and should acquire the capacity to determine which technology would best suit their needs. It also recommends that international agencies should help them in this task.

VII. EMPLOYMENT AND LABOUR

The International Development Strategy for the Second United Nations Development Decade in paragraph 7 of the preamble emphasizes that "the ultimate objective of development must be to bring about sustained improvement in the well-being of the individual and bestow benefits on all. If undue privileges, extremes of wealth and social injustices persist, then development fails in its initial purpose".

This premise has guided our deliberations on matters of special concern to labour interests. Improved levels of employment, wages, conditions of work and distribution of income are indeed crucial in translating economic prosperity into the welfare of the individual. We recognize that the primary responsibility for achieving this rests with national Governments and the international economic system. However, labour unions, by the use of their bargaining strength, can contribute significantly to the improvement of wages and working conditions. It is therefore essential that host countries do nothing to reduce their strength, for example, by offering anti-union measures as part of the incentives to foreign investors. The impact of multinational corporations on the economies in which they operate must be viewed from these angles.

We have been greatly helped in our work by the report of the International Labour Organisation, Multinational Enterprises and Social Policy. 10/ In no uncertain terms, the report underlines the fact that for millions of workers, multinational corporations offer, on the one hand, opportunities for increased wages and better labour standards and, on the other, a threat to job security and to the effectiveness of collective bargaining.

Employment and wages

While in recent years, most developed countries have been able to achieve and maintain high levels of employment and rising wages, for most developing countries large-scale unemployment remains a chronic concern.

In developing countries, the creation of productive employment is a formidable task and multinational corporations in that respect play only a marginal role. In most of those countries, the urgent need is to make agriculture more productive and, by raising the income of the farmers, to retain on the land more of the manpower which would otherwise flow to cities, adding to urban congestion and concealed unemployment. Aid from developed countries should be directed to that effect.

Differentials in the availability, cost, productivity and skills of labour constitute critical factors which influence the investment decisions of multinational corporations, especially manufacturing enterprises.

Depending on the purpose and method of entry of the multinational corporations into the host country and type of technology used, the impact on the level of employment varies. Production based on labour-saving technology and concentrated

10/ Studies and Reports, New Series No. 79 (International Labour Office, Geneva, 1973).

in "enclaves", without backward or forward linkages -- that is, without creating further activities, upstream or downstream, in the rest of the economy -- may have little positive effect on employment; and where an investment takes the form of a take-over of an indigenous firm, and introduces more capital-intensive processes, the over-all impact may be negative. We wish, in this respect, to call attention to chapter VI on technology.

When such production is export-oriented, as part of the world-wide location of sources of cheap inputs by horizontally or vertically integrated multinational corporations, the effect on employment may be positive, particularly if there are important spill-over and training effects. On the other hand, protectionist policies of industrial countries may nullify some of these favourable effects.

Unless full employment policies and adjustment assistance measures are successfully pursued in the developed countries, pressure for trade barriers against labour-intensive products from developing countries will persist, and employment policies in the latter countries will continue to be vulnerable. We were impressed with the fact that certain smaller developed countries have largely abandoned protectionist policies because they have managed to shift domestic production from low-skill to high-skill industries, while retaining those affected.

We do not wish to imply that developing countries should be condemned to specialized permanently in low-skill industries, while developed countries should bestow on their labour the more advanced and more remunerative jobs. Some of the developing countries have already entered the field of sophisticated production. But this process takes time. At the earlier stages of development, it is a fact that only the simpler industries may be appropriate to the labour available. This division of labour should not be hampered by protectionist policies in the developed countries which would tend to retain less productive and less remunerative employment, rather than shifting gradually to the activities in which the workers can make their best contribution and obtain higher wages.

The Group recommends that home countries do not hamper the process of transfer by multinational corporations of the production of labour-intensive and low-skill products to developing countries; and that they protect the domestic work force displaced by this transfer, through adjustment assistance measures such as retraining and re-employment in more productive and higher paying jobs, and not through restrictions on imports.

It has already been noted that one of the distinctive characteristics of many manufacturing multinational corporations is their flexibility in choosing where to establish their production units, particularly where these are intended to serve regional markets. Production may be increased or decreased, or new production shifted in response to world economic forces, new strategies of multinational corporations or policies of individual Governments. In the long run, these shifts may operate to the benefit of the workers; much depends on what would have happened had the shift not taken place and on the ability of the domestic economy to redeploy resources efficiently. In the short run, however, they may cause serious structural difficulties, with the burden falling on the displaced workers and the Governments which have to finance their redeployment.

We recognize that individual home and host Governments are responsible for tackling the problem of unemployment. Because of their particular characteristics,

however, multinational corporations have a special responsibility to Governments and unions to keep them informed of their production plans.

The Group recommends that home and host countries develop plans concerning employment, and clearly inform the multinational corporations of their employment objectives.

The Group recommends that home and host countries, through general budgetary support, the normal working of the social security system or the establishment of social funds, provide for full compensation to the workers displaced by production decisions of multinational corporations. Recognizing that some developing countries do not possess adequate means for that purpose, the Group recommends that consideration should be given to the creation of an international social fund, including contributions by multinational corporations, which would supplement the resources available to such countries.

Some particular problems faced by host countries which arise from the entry of a multinational corporation from a high-wage economy into a low-wage economy will now be considered. They are all the more serious when the technology of the multinational corporation is the same in the host as in the home country and the other costs are no higher.

We do not wish to prescribe to the developing host countries how they should deal with the impact of the entry of firms with high productivity into an environment of general low productivity and low wages. But we believe that the over-all objective should be to avoid large inequalities in wages and earnings between the industrial workers and the poorer sections of the population, or among industrial workers themselves; thereby avoiding the undesirable creation of small "enclaves" of high-income groups.

However, a Government may choose to let the wages rise in the enterprises concerned in the hope that, through a demonstration effect or through the creation of other activities provoked by this increased purchasing power, the beneficial effects will spread throughout the population. On the other hand, a Government may wish to avoid disrupting the labour market and the ensuing inequalities, and thus it may prefer that multinational corporations should not pay wages higher than the local rates. In that case, a superior productivity could lead to very high profits. Through appropriate fiscal measures these profits may be syphoned off and the collected revenue or contributions allocated for development in general, or for the welfare of labour as a whole rather than simply of that of those who happen to be employed by a multinational corporation. Alternatively, where the production of multinational corporations is sold almost exclusively to the local market, price controls may be sufficient to prevent excessive profits and, through lower prices, to contribute to raising the real incomes of the population.

The Group recommends that host countries take appropriate measures to obtain the maximum benefit from the entry of multinational corporations into their countries for as large a section of the lower-income groups as possible.

Special problems arise concerning the employment of expatriates. Such personnel, mainly managers and technicians, expect not only to earn as much as they would at home but also something extra for serving overseas in what may be for them less congenial conditions. Here, we believe that multinational corporations should

be persuaded to pay their expatriate staff, in local currencies, such salaries as would be commensurate with an appropriate standard of living in the host country, while the balance of their emoluments should be credited to their home account. Furthermore, the training of nationals should be intensified so that they will occupy as many as possible of the managerial and technicians' posts at salaries broadly in line with those paid in comparable posts within the country.

Labour relations

Because of both the immobility of labour and the fragmentation of its organization across national boundaries, the greater transnational flexibility and the centralized decision making of many multinational corporations tilt the balance of bargaining power sharply in favour of the corporations. Decisions having repercussions on working conditions and the social rights of the employees are often made outside the country in which they are implemented, and the employees usually have no access to the decision makers.

Various forms and procedures have been introduced and followed in order to involve labour in the decision-making process of enterprises. They vary from country to country and labour unions among countries or even within a country do not have a common position on the most appropriate ones. The Commission of the European Communities addressed itself to this problem when it was considering the creation of European enterprises and the framework in which they should operate. In brief, a particular problem raised by multinational corporations for labour is the dual responsibilities of local and central headquarters.

The Group recommends that the proposed commission on multinational corporations study the various forms and procedures that could be evolved to ensure the participation of workers and their unions in the decision-making process of multinational corporations at the local and international level. 11/

The impact of national labour unions can be weakened or neutralized, and strikes may be circumvented by the threat of or by an actual shift of existing or new production to other countries, where unions are less effective or government policies prohibit or restrict free labour associations. Since labour organizations do not have means of international co-ordination comparable to those of multinational corporations, they find themselves in a weakened bargaining position.

The Group recommends that home and host countries permit free entry to unionists from other countries representing international or national organizations, engaged in legitimate investigations or other union missions, including entry at the invitation of the workers concerned or of their unions to assist them in their negotiations with multinational corporations.

11/ Such participation, as well as other joint negotiations referred to below, can only be effective if the means of communication at the disposal of labour are comparable to those of multinational corporations. The latter should allow the representatives of the workers reasonable leaves of absence and travel expenses appropriate to that purpose.

The Commission of the European Communities, noting the anxiety created among workers as a result of the advantages possessed by the multinational enterprises, concluded that it "... considers the setting up of a trade union counterweight as essential for a balanced solution to this problem: however, it is not its task to organize this but certainly to encourage it".

Considering that labour problems involve employers and employees, often within the framework established by Governments, we believe that the parent company should delegate full powers to its affiliates in respect of wage bargaining.

In some instances, however, bargaining at a local level will not ensure the protection of labour's interests. First, if decisions concerning wages are taken centrally, labour organizations from the various countries affected should be free to bargain jointly at the headquarters of multinational corporations.

Secondly, as has already been described, many important decisions taken at the head offices of multinational corporations vitally affect the welfare of workers in other countries. Yet often, local unions are powerless to deal with the situation. For example, multinational corporations may use their capacity to shift existing production or to relocate new production when bargaining with local unions, or actually transfer it from one country to another. This makes it all the more imperative that multinational corporations give advance notice to the workers and their unions of any plans for investment, and of the closing down or the shifting of production facilities which might affect jobs, and that they enter into full prior consultations with them, as well as with the governmental authorities, to consider alternative employment opportunities. Indeed, we believe this is an obligation, which should apply to all enterprises, whether multinational or national, large or small.

Thirdly, in the case of strikes by workers in one country, multinational corporations may be able to deal with the problem by asking their other affiliates to increase their production. International solidarity of labour is one of the means by which such practices are counteracted. Labour unions have a tradition of the stronger and more experienced helping the weaker. We have noted that in a great many countries the right to strike is not subject to particular limitations as regards sympathy strikes in support of workers in another country. This does not mean that such strikes are more widespread or frequent. In some countries, however, there is a ban on such action either by legislation or judicial decision.

The Group recommends that in the matter of sympathy strikes or other peaceful forms of concerted action, Governments should follow liberal rather than restrictive policies.

Such expression of labour solidarity may be contrary to the terms of wage settlements or too costly for the workers, particularly in the developing countries. Then the only countervailing power to compensate for the special ability of multinational corporations to circumvent strikes in a particular country would be action by other Governments which may be prepared for the duration of the labour conflict to prohibit the export or import, by the parent or affiliates of a multinational corporation, of products and parts which could be a substitute for the interrupted production.

Again, although we have argued that, in the interests of national policy, wage negotiations should be conducted at a local union level, we believe that there are cases where matters should be dealt with on an international basis. Perhaps the most obvious of these is the protection of safety and health standards. In such cases we believe home and host Governments should facilitate transnational bargaining by the labour unions of all countries in which affiliates of a multinational corporation operate.

Moreover, home and host countries should enlist the co-operative efforts of the ILO and WHO to develop and monitor international occupational health and safety standards, which should be binding upon all multinational corporations, wherever they operate. Until ILO-WHO standards are developed, those organizations should review promptly existing national standards with a view to establishing fully adequate temporary international standards.

Finally one of the difficulties labour faces in bargaining with multinational corporations is that it is inadequately informed about their activities or financial position. Reference has been made elsewhere to the need for an international standard accounting and reporting system of the activities of multinational corporations.

The Group recommends that the international standards of disclosure, accounting and reporting, as provided in chapter XIII, should include the data which are of special relevance for the purpose of collective bargaining.

Labour standards

Many multinational corporations have good records in the field of labour standards. We believe that, through their affiliates, they have the opportunity to transmit those standards to countries where conditions are currently unsatisfactory. Reference was made earlier to the special case of the many developing countries poorly endowed with natural resources which have to rely on labour-intensive technology and products for their development; we also recognize that countries are free to ratify or not to ratify international labour conventions. Nevertheless, we believe that the international community should bear major responsibility for eradicating racist policies, inhuman working conditions and violations of the human rights of workers.

In this connexion, we support the idea that home countries, both individually and collectively, should insist upon the adherence by the multinational corporations under their jurisdiction to certain internationally accepted basic principles and standards, as conditions of their investment abroad, and should impose certain sanctions on corporations that disregard them. Particularly important in this connexion is the question of health and safety standards already mentioned. Many jobs carry certain hazards to the health and safety of workers. To guard against them, various measures have been adopted in the advanced countries. Developing countries, particularly if a line of production is being introduced there for the first time, may not even be aware of the hazards, much less of the measures taken in other countries to guard against them. Then, there are operations which result in a high element of fatigue which tells upon the health of the worker or his efficiency and output in the long run. The measures taken by developed countries to

adjust working conditions suitably in this respect should be made known to developing countries.

The Group recommends that home countries should require multinational corporations to declare in all countries in which they operate, all measures of safeguards and special working conditions which they observe in their home countries to protect the health and safety of workers and to observe those measures in similar production processes in host countries with such changes and adaptations as the host Government may specify.

It is our strong belief that multinational corporations operating in developing countries, could act as spearheads in the drive for good labour practices. In some countries, for example, there is a flagrant disregard of labour's right of free association, scant respect for the labour code of the ILO and even policies of racial discrimination. The multinational corporations could either take advantage of such degrading conditions to obtain an undue competitive edge; or they could contribute to an improvement of the situation and even a reversal of such practices.

The Group recommends that, through appropriate means, home countries prevent multinational corporations from going into countries where workers' rights are not respected, unless the affiliate obtains permission to apply internationally agreed labour standards, such as free collective bargaining, equal treatment of workers and humane labour relations.

The means at the disposal of home countries to that effect go from outright prohibition to the denial of tax credits for the taxes paid to host countries which violate human rights, to a ban on the entry into their own territory of the products produced in such countries, to the refusal of the benefit of investment insurance and guarantees.

In this connexion, the Group wishes to recall that article 29 of the General Agreement on Tariffs and Trade requires the Contracting Parties to respect the principles of the Havana Charter pending its ratification. Such ratification may never take place. Thus, consideration should be given to the possibility of amending the GATT rules to include the text of article 7 of the Havana Charter, 12/ which provides for respect for and the means of enforcement of fair labour standards.

The multinational corporations operating in developing countries can also act as spearheads in a drive for training in technical, managerial and marketing skills. The Group recognizes that a number of multinational corporations have introduced training programmes in developing countries, utilized local personnel in managerial positions and followed wage and labour standard policies which compare favourably with prevailing local conditions. The international community should encourage the adoption of more comprehensive efforts in this area.

12/ See foot-note 7, above.

VIII. CONSUMER PROTECTION

The aim of consumers is to obtain the best possible goods and services at the lowest possible prices. To a significant extent, these aspirations can be realized under competitive and efficient marketing conditions that are sensitive to local needs. However, as is pointed out in various parts of this report (see especially chapter IX), these conditions exist only in different degrees of imperfection. The constraints upon multinational corporations to be sensitive to consumer interests in all the countries in which they operate are likely to be inadequate.

Competition among multinational corporations and other large corporations often takes the form of sophisticated marketing techniques rather than real differences in price and quality. Thus, it is advisable for Governments to consider whether, and in what manner, advertising by multinational corporations as well as by national firms could be controlled to prevent the exploitation of consumers through false or misleading publicity. Multinational corporations in particular should be requested to explain the reasons for significant price differentials, whenever they occur, between identical products in comparable markets.

Producing the goods which respond to the real needs of individuals in the light of their social and economic conditions is a general problem. It is particularly important however, in developing countries. Since products of multinational corporations are often geared to the consumption patterns of advanced countries, the needs of the majority of the population in poor countries may not be fulfilled. Consumers may be induced through intensive advertising to buy goods which otherwise they would not have felt they needed. Given the limited financial means of the great majority of the population of developing countries, such practices may lead to the diversion of scarce resources from basic needs to less basic ones. We believe that Governments have the right to discourage, or even prohibit in some cases, the importation or local manufacturing of certain products which they consider socially undesirable. For this purpose, host countries may consider it advisable to require prior authorization for the manufacture of products which are not otherwise imported or locally produced.

Since multinational corporations operate in different countries and sell across national borders, the issue of quality control and safety is also relevant in this context. In most developed countries, standards of quality and safety are prescribed for the sale of drugs, food and machinery, and environmental controls have been put into effect. Developing countries do not have always adequate facilities for prescribing their own standards, which need not be identical with those required by home countries.

The Group recommends that host countries should require the affiliates of multinational corporations to reveal to them any sales prohibitions and restrictions in manufacturing imposed by home or by other host countries with respect to the protection of the health and safety of consumers. They should then decide whether similar restrictions or warnings should be imposed on the

sale and manufacture of these products in their countries; in such cases, these measures should apply to similar products regardless of their origin.

To complement the disclosure of restrictions aimed at protecting consumers, home countries could adopt appropriate methods for publicizing product bans, warnings and environmental standards on a regular basis. This is particularly important because multinational corporations can manufacture in other countries products made with ingredients that have been prohibited in home countries as having been proved to be hazardous to health and life.

The Group recommends that home countries should publicize prohibitions and restrictions on products, or ingredients of products, found to be hazardous to health, and should consider whether their export should also be prohibited or made conditional upon specific approval by the importing country.

National consumer organizations in developed countries play an important role in bringing to the attention of the public and the Government practices by multinational corporations and other firms which may mislead the consumer or expose him to serious hazards; we believe that national consumer organizations in both developed and developing countries should be encouraged and given the necessary facilities to work towards achieving their goals.

IX. COMPETITION AND MARKET STRUCTURE

We recognize that the nature of multinational corporations dictates certain patterns of behaviour which may restrain competition. While the allocation of markets may be rational from the viewpoint of an enterprise, when it is engaged in activities across national boundaries it is almost certain to clash with the interests of some countries. Mergers involving foreign firms may be beneficial to the enterprises involved, but the resulting changes in industrial structure may be contrary to the domestic or international public interest. In establishing affiliates in host countries, multinational corporations may find themselves competing with local firms. This increased competition may be beneficial, but it may also result in the take-over or elimination of local firms, which for various economic, political and social reasons may be an undesirable development. The problem is complex: on the one hand, there is the variety yet lack of information about the business practices of multinational corporations, and on the other, the differences in principles and procedures followed by individual countries in dealing with these practices.

Competition and intracorporate practices

In our deliberations on this issue, we were greatly helped by the report of the Ad Hoc Group of Experts on Restrictive Business Practices (TD/B/C.2/119). We wish to emphasize the importance of this report, which is not limited to the case of multinational corporations but lists a broad series of conditions attached to the international use of patents, licences, know-how and trade marks, as well as methods of pricing which may indirectly have the same effect; and it classifies such practices according to the degree of detrimental effect they may have on development. These undesirable practices relate chiefly to the prohibition of exports, tied sales, payments for technology which is of no use to the licensee, or royalties that extend beyond the life of a patent.

The Ad Hoc Group of Experts observed that the work of the World Intellectual Property Organization was chiefly directed towards ensuring the legal protection of patents and know-how, rather than limiting their abuse. They also noted that, although some developing countries were introducing screening procedures to control such abuse, others lacked the expertise necessary to do so. They advocated technical assistance for this purpose and called for an international agreement to ban the most undesirable restrictive practices and define those countervailing advantages which might justify an exception. They also established the principle that the same rules should apply to concealed practices resulting from the internal policies and directives of integrated multinational corporations.

While generally subscribing to the analysis and main conclusions of this report, we wish to make some additional observations.

A network of parent and affiliate companies differs in an essential respect from an independent company: the latter disregards the losses which its actions may provoke for its competitors; a multiplant company, seeking to maximize its

over-all profit, has an interest in limiting the negative impact of one of its subsidiaries on another or on the parent company itself and will normally tend to suppress competition within its network.

The problem of allocation of markets arises typically in the case of corporations that produce similar and competing products in several countries. It should not be confused with various forms of specialization or with the establishment of branches to serve local markets. Thus, the problem seldom arises when a corporation chooses to produce different products in different countries, each being addressed to the world market, or produces various parts of the same product in different countries, to be assembled in one of them, in order to take advantage of the lowest possible costs. Avoiding the duplication of manpower, materials and plant capacity is not the same as imposing restrictions. Nor, with few exceptions if any, should the allocation of markets be confused with the establishment of affiliates which make use of local resources to produce for local markets.

Market allocation within a multinational corporation, however, is more difficult to detect than where there are explicit agreements, concerning, for example, the transfer of technology to independent licensees. On the other hand, the drawbacks of market allocation from the viewpoint of particular countries may be more difficult to disentangle from the advantages of large organizations, technology and marketing that are associated with multinational corporations.

In this case most countries should be careful not to discourage the transfer of technology by rejecting a measure of control over its use which may be inseparably linked to its wider advantages. Such advantages usually accompany wholly owned or majority-controlled affiliates rather than minority-owned ventures. In the latter case, export restrictions are tantamount to a cartel agreement.

The judgement of host Governments will be enhanced if, upon entry, multinational corporations detail clearly the conditions of their operations; that is, the extent and duration of, and the reasons for, possible export limitations, or tied purchases. The bargaining power of individual host countries would be strengthened if there was some harmonization of policy between them to this effect.

The Ad Hoc Group of Experts on Restrictive Business Practices notes that the prohibition of cartels, even in the developed countries, is largely ineffective as far as exports and imports are concerned; indeed, cartels are sometimes officially encouraged in this field. Nevertheless, we wish to emphasize that an allocation of markets should be prohibited if it is achieved through cartel agreements between independent companies. This is recognized in the legislation of the United States as well as in the evolving European legislation. Such a principle should not be circumvented by linking together various plants and substituting a multinational corporation for a cartel.

We believe that it is legitimate for host countries to insist that affiliates of multinational corporations should not, through restrictions on their exports, provoke a loss of potential foreign exchange earnings. One of the means at the disposal of host countries, which should be internationally accepted, is to relate profit available for remittance by an affiliate to its export performance.

We also believe that the restriction of export markets of an affiliate by a parent company should be considered prima facie contrary to the interest of the

host countries, unless it can be shown that, in the absence of restrictions, the total benefit of the affiliate to the host country would be reduced.

Lastly, we believe that the question of market allocation can be effectively dealt with only by an international agreement containing some of the above provisions. Although some host countries have developed screening procedures to eliminate export restrictive practices, if the principles discussed above were to obtain an international consensus and preferably were incorporated in an agreement, the bargaining power of developing countries would undoubtedly be strengthened.

The Group recommends that host countries should require multinational corporations to declare, upon their entry, their intentions concerning purchasing and export policies and to make clear the extent, duration and justification of any possible restrictions.

The Group recommends that host and home Governments, preferably through an international agreement, should prohibit the market allocation of exports by multinational corporations, unless it can be shown that such allocations are necessary to secure other benefits to the countries concerned.

Export restrictions and tied-purchase clauses commonly accompany licensing contracts for transferred technology. In many cases, the licensor would continue to export from the home country and would not sell the technology to the licensee if he were not protected from competition with him. Sometimes, export restrictions occur de facto when the licensor distributes exclusive licence agreements in each country. Outright prohibition of such clauses might retard or make more expensive the commercialization of technology. On the other hand, in view of the critical role that export earnings play in the development process, host and especially developing countries cannot be prevented from taking advantage of their export capabilities.

International licensing agreements are normally registered in the countries where they are concluded. Notice of registered agreements should be given to other countries concerned and to the United Nations information centre recommended in chapter III.

We understand that several developing countries have already introduced policies for deciding whether the acceptance of restrictive clauses is compensated by a lower price for the technology acquired or by other advantages. Such policies are on the whole worth while.

The situation that faces host countries in respect of already existing contracts is different from that with new ones. It may be difficult to renegotiate the former. It is highly advisable, however, that for new contracts host countries should make provision for future review in case circumstances change substantially or after some agreed period. A renunciation of exports which might not appear to be a real sacrifice at the beginning of an operation could prove frustrating later.

In cases of regional integration, restrictive agreements may become serious obstacles to the free flow of goods and to industrial restructuring in the area. Although we believe that retroactive measures are generally ill-advised, we feel that, in the case of an agreement for close regional integration, even

long-standing contracts should be renegotiated and export restrictions eliminated, whether or not renegotiation clauses were provided for in the initial contract. This should apply in cases of restrictions involving the sale of technology to licensees, as well as to market allocation among affiliates. The advantages of a broader market are compensation for the annulment of restrictive clauses.

The Group recommends international recognition of the principle that restrictive clauses and market allocation by multinational corporations should be eliminated within regional groups of countries.

Market structure

Governments of developed and developing countries are often concerned about the size of multinational corporations and their control over substantial sections of their markets. Because of their nature, multinational corporations can both combat competition and abuse their dominant positions more easily than national companies. On the other hand, multinational corporations are concerned lest they become the subject of conflicting anti-trust policies by different national jurisdictions.

Measures to control concentration, that is, to control the domination of any market by a small number of producers, were first introduced in the United States and are now common practice in various European countries and in Japan. In the absence of uniform national anti-trust laws or an international agreement and machinery, the spread of international production poses a serious dilemma. Either domestic concentrations are controlled only by the Government concerned and no action is taken on concentrations beyond the country's frontiers, or action by one Government has extraterritorial application and affects other countries.

Anti-trust provisions can even be abused by a country to prevent the joint association of subsidiaries of its multinational corporations in other countries which would make them more competitive, or the association of foreign companies which would increase their ability to compete in the domestic market of the country applying the legislation.

In the absence of international regulations, countries cannot altogether be denied the right to act if they consider that a concentration would be detrimental to their own economies, even though other countries may be affected.

These various considerations lead towards a practical formula: a country taking action to stop a concentration which also affects other countries, whether merger, take-over, partial acquisition or establishment of a joint affiliate by two or more companies, should do so only on a provisional basis, and should postpone the final decision until full consultations have been held with the other Governments concerned.

The difficulty remains, however, that the criteria and procedures of the Governments concerned may still diverge. Action to prevent undesirable transnational concentrations will be possible only if an international agreement is ultimately worked out on principles and procedures. The anti-trust policies and machinery of the European Communities, based on a supranational authority, the unratified Havana Charter, and the United Nations draft articles of a proposed

agreement on restrictive business practices drawn up in 1953 by the Ad Hoc Committee on Restrictive Business Practices 13/ and based on international agreement, are examples of the various ways in which Governments have attempted to deal with this difficult issue.

We believe that an international agreement is still the most effective approach. Certain basic principles applying to the activities of multinational corporations outside their home countries should be developed, with a view to obtaining broad acceptance.

One difficulty is that neither the United States procedure of forced divestment, without warning at the time the concentration was made, nor the European scheme of prior authorization for operations above a certain size, which by the delay it causes may disrupt the financial markets, may be generally acceptable. A possible formula, which would avoid some of the objectionable features of either the United States or European schemes, might contain the following points. First, mergers or acquisitions could take place only through outright purchases or take-over bids; secondly, any transnational association of firms above a certain size should be accompanied by a declaration of objectives of general interest, such as the rationalization of production or research and development, the increase of export capability, the improvement of working conditions and so on. The association could proceed without delay, but if it was found to work against these declared objectives, which should conform to generally accepted criteria, forced divestment could take place.

The Group recommends that preparatory work, through appropriate United Nations bodies, should be undertaken for the adoption of an international anti-trust agreement.

The Group recommends that, until an international agreement on the issue is implemented, home countries should show restraint in applying their anti-trust policies if other Governments are affected, and that unilateral action should be taken only on a provisional basis pending full consultation with these Governments before the decision is final.

13/ Official Records of the Economic and Social Council, Sixteenth Session, Supplement No. 11, annex II.

X. TRANSFER PRICING

One of the practices of multinational corporations which gives rise to particular concern among the countries in which they operate is the fixing of prices of goods and services traded between the corporation and its affiliates located in different countries. Intracorporate transfer pricing by a multiregional company within a country may matter little to a national Government, since all the benefits of the transaction are retained domestically. When engaged in by multinational corporations, however, it affects the distribution of the benefits of their activities between countries, and may stifle local competition.

Research has shown that, although intracorporate trade in goods within multinational corporations is concentrated within certain industries, such as motor vehicles and chemicals, more than one quarter of the value of all international trade in goods appears to be of an intragroup character. In addition, although much less well-documented, there is the provision of intracorporate services, for example, research and development, rentals of equipment, administration and loans. The scope for price manipulation is therefore quite extensive.

We recognize all the difficulties inherent in the setting of the proper price in such intracompany transactions. The principle of "arm's length" prices can only be applied if there are outside transactions and a market. The principle of "cost plus", that is, the cost of production plus a margin for each supplier within the network of the corporation, allows an appraisal of the profitability of each branch, but is not always easy to apply. There is uncertainty about the best allocation of overhead costs, particularly of extensive and expensive research, and even more so when it is of a risky nature and is only successful in few cases.

Apart from these intrinsic difficulties, transfer prices may be distorted either in pursuance of goals which are internal to the working of the multinational corporation concerned or as a response to "external" factors. Among "internal" motives the following may be listed: the varying degree of ownership in its subsidiaries may induce the parent company to make profits appear where its ownership is relatively large; there may be an incentive to reduce the apparent profits in a particular affiliate for purposes of wage bargaining; transfer pricing may be an indirect way of allocating markets, for instance, if the prices charged to an affiliate are such as to make its exports non-competitive.

The manipulation of prices may also respond to such "external" factors as the following: the diversity among countries in the rates of taxation or in the rules of assessment; the difference of taxation even in the same countries on the various forms of remuneration of capital, dividends, interests and royalties, and the ensuing tendency to transform taxable income into non-taxable costs; the varying rules of exchange control by some host countries regarding the remittance of those various types of remuneration; the risk of changes in exchange rates; and finally, the risk of nationalization or expropriation.

The conditions under which multinational corporations will wish to take advantage of these situations will vary between countries and in the same country over time. For instance, the higher the rate of corporate taxation in a country, or the greater the risk that its currency may depreciate, the more inducement there is to lower the profits appearing in that country either by raising the prices charged to the affiliate or lowering those of its sales to other affiliates. Such manipulations amount to a transfer of income from country to country.

Individual countries may thus stand to gain or lose by the activities of price manipulation. In some cases, they may lose on one side and gain on the other; the higher the prices charged to an affiliate, the lower its taxable profits, but at the same time the higher the tariff duties it may be subject to.

The problem is an exceedingly difficult one for Governments to tackle; first, because there is a serious lack of data about its extent or effects, and secondly, because there are many ways in which a company can use this mechanism to switch income.

In the long run, a fair amount of research and fact-finding is necessary for the evolution of sound practices and policies. We note with satisfaction that transfer pricing has been engaging the attention of the United Nations Group of Experts on Tax Treaties, the International Fiscal Association, the Organisation for Economic Co-operation and Development and the Commission of the European Communities. We trust that, as a result of their efforts, it will be possible for the international community to agree upon a code which home and host countries alike will find practicable and advantageous to enforce.

Meanwhile, some action is clearly necessary. Some countries have begun to regulate transfer prices, chiefly in order to prevent tax evasion. Such legislation is particularly advanced in the United States Internal Revenue Code 482; in other countries, tax authorities are also developing their inquiries and the formulation of rules. The general principle is to refer to "arm's length" prices, that is, prices as they are or would be charged by an independent seller to an independent buyer. In case the nature of the product - the components of a machine, for instance, or new drugs - is such that there is no comparable independent transaction, the usual principle applied by tax authorities is a reference to the general practice of the company concerned.

The Group recommends that home and host countries should enforce "arm's length" pricing wherever appropriate; and should elaborate rules on pricing practices for tax purposes.

We recognize the special difficulty which besets co-operation between countries in this field: some countries may have legal and other objections to making the data derived from tax returns available to others, in particular when they derive special benefits from some transfer pricing practices. The proposals for the harmonization of taxation in chapter XI aim in particular at eliminating some of the elements which induce distorted transfer prices.

The Group recommends that home and host countries should introduce provisions into bilateral tax treaties for the exchange of available information, and should consider the feasibility of an international agreement on the rules concerning transfer pricing for purposes of taxation.

Host countries should also review their exchange controls in order to reduce differences of treatment as regards remittances abroad for remunerations which are broadly equivalent, such as dividends and interest.

The basic solution for protecting the interests of the countries concerned as well as those of the various parties involved in the operation of a multinational corporation - affiliates, partners, customers or workers - rests on the principle of disclosure, which we emphasize throughout the report and in particular in chapter XII. The transfer prices at which a multinational corporation deals with or among its affiliates, as well as the prices in transactions with outside suppliers or customers, should either be publicized or made known to the interested parties upon request. This obligation would have a self-policing and self-restraining effect. Moreover, it would make possible the application of the principle of non-discrimination as expressed, for instance, in the United States by the Robinson-Patman Act: ^{14/} a seller is prohibited from charging different prices to different buyers unless the difference can be justified by differences in the quantity or regularity of supply. Such a rule does not preclude different rates justified by markets, distances or costs, or the sale of technology on concessionary terms for development purposes. The general rule, however, would go a long way towards eliminating undesirable practices, and in particular forestalling the unequal treatment by multinational corporations of their various affiliates as well as other interested parties.

^{14/} Public Law No. 692 in United States Statutes at Large, vol. 49, part I, p. 1526.

XI. TAXATION

Multinational corporations by their nature are subject to the tax laws of different countries. As these laws have been framed primarily to serve domestic needs and objectives, and also are subject to the play of political forces, they differ significantly from one country to another. The absence of co-ordination among Governments in tax policy matters has created a most unsatisfactory situation for home and host countries and multinational corporations alike, and, to a considerable extent, distorts the allocation of resources on a world-wide basis.

There is no standard rule to define the home country of a company; it may be based on the location of its head management, the country in which it is incorporated, or other criteria. Rates of corporate taxes vary widely, particularly among developing countries, as do the definitions of income and of deductible allowances. There are also wide differences in the treatment of income at the corporate and shareholder level: some countries tax both, others apply a reduced rate at the corporate level on the profits distributed, or on the contrary, a reduced rate on the income received by the shareholders in consideration of the tax already paid at the corporate level. The relief given on this account is neither uniform nor universal and may be limited to residents. Remittances to non-residents are commonly subject to a flat rate of withholding tax, which each country prescribes at its own discretion, except as agreed on in tax treaties.

For multinational corporations, however, the most serious divergencies stem from differences in the taxation of income from local sources and income from foreign sources. One extreme approach is based purely on the territorial principle: income is taxed where it originates, thus when it originates in the host country, the home country does not have any claim on it. Another extreme approach is the taxation of world-wide profits by home countries. Usually, however, this taxation takes place only at the time of repatriation; this deferment is an inducement to reinvest in the host countries if their rates are more favourable. On the other hand, the avoidance of dual taxation is not a matter of principle but is in many instances achieved either unilaterally through the relief granted by home countries or through the application of bilateral tax treaties; in the absence of such provisions, foreign investment is strongly discouraged.

Home countries that forgo the taxation of corporate profits earned abroad until they are repatriated stand to lose revenue on the profits channelled to tax havens where tax rates are low or nominal. Holding companies formed for the purpose of tax avoidance are proliferating. Host countries, especially developing countries, are encouraged to compete against each other in granting tax concessions to attract foreign capital, only to find that these concessions are sometimes nullified by home-government taxation of the higher income earned by multinational corporations.

Tax treaties are a common feature among developed countries, because there is normally a two-way flow of income between them, and each country is willing to give relief from double taxation to the residents of the other in exchange for the same advantage in return. Between developed and developing countries there are at

present few such treaties, since income generally moves in only one direction. Thus, multinational corporations, which see their activities complicated by differences in the assessment of taxable income and in rates of tax, may be exposed to double taxation. They have, on the other hand, frequently found ways to minimize their burden at the expense of the revenues of either home or host countries (and occasionally both) through transfer pricing, including the allocation of overhead and other expenses between their affiliates, and by taking advantage of tax havens.

Clearly, the tax laws of nation-States, at least in so far as they affect companies originating or operating outside their territories, are in need of major change. Ideally, we believe there should be an international standardization of tax arrangements which would be neutral in their impact on foreign investment, or have only such directional bias as may be agreed upon. To this end, we believe that a concerted international effort is urgently needed to explore alternative approaches and reach a consensus on broad general principles.

We note with satisfaction that the United Nations has sponsored meetings of a Group of Experts on Tax Treaties, and that substantial progress has been made in their five meetings at Geneva. Their aim is to develop guidelines to facilitate the establishment of a network of bilateral treaties between Governments of developing and developed countries for the avoidance of double taxation and the elimination of tax evasion, as well as assisting developing countries to increase their tax revenues. Guidelines have already been agreed upon by this Group of Experts (which consists largely of tax officials from developed and developing countries) as regards the tax treatment of interest, dividends, profits, royalties and fees, and other income and expenses. The work of the experts is expected to be helpful to all countries, and especially developing countries, in the negotiation of bilateral tax treaties.

Concern was, however, expressed in our Group that such a network of bilateral treaties would entail a large number of treaties which might take a very long time to negotiate and implement. Moreover, they might differ, for instance, as to the amount of withholding tax on the remittance of earnings. Some of the present distortions in the activities of the multinational corporations, therefore, would not be removed. If, through the work of the Group of Experts on Tax Treaties, the provisions of these treaties could be standardized, with only a small number of clauses to be negotiated in particular cases, they would in fact amount to an international agreement on taxation, which we consider to be the final objective.

The Group recommends that the work of the Group of Experts on Tax Treaties should be speeded up, and that the bilateral treaties should be as uniform as possible so as to prepare the way for an international tax agreement.

The Group further recommends that developed countries should, without delay, embark on a policy of entering into such treaties with developing countries, bearing in mind the importance of increasing the flow of capital to and strengthening the revenues of the latter.

As this may not be achieved for some time, we consider it our duty to state the fundamental, and largely interrelated, objectives which should guide future action in this field: the avoidance of dual taxation; the avoidance of tax evasion, particularly through tax havens; the promotion of development, in the sense not only of growth but of reduction of inequalities.

In the light of such objectives, we have examined not only the existing practices - the territorial approach, and the taxation of repatriated income - but also alternative approaches which have been proposed or which might be applied by some countries.

An ambitious approach, which might appear ideal in theory, is that the world-wide profits of multinational corporations should eventually be allocated among the countries in which they operate according to an agreed pro rata formula. We noted that even in a federal union, such as the United States, no agreement could be reached between the states. The task of bringing about an agreement on these lines at an international level would be even more formidable, since the amounts of corporate taxes involved in central budgets are much more sizable than in the local budgets of some states. Moreover, what would be allocated between countries would be the income, not the tax; thus competitive tax concessions between host countries could proliferate to a point which would be contrary to an equitable sharing of the tax burden between the corporations and the average citizens in a developing country. For reasons of practicability and equity, we cannot recommend such a system.

We have considered at length another scheme which is advocated by many economists and is contemplated in legislative proposals in the United States and in the European Communities. It calls for taxation by home countries of the global profits of their multinational corporations as if they were earned within their borders, while providing full relief for taxes paid to other countries. In other words, the principle of taxation of world profits would apply on an accrual basis and would not be deferred until such time as earnings abroad were remitted to the home countries. In this case dual taxation would be eliminated as a matter of principle; and thus it would not have to be dealt with on a case-by-case basis, through unilateral action or bilateral tax treaties. This proposal would tend to make taxation less important in decisions by multinational corporations to invest in one country rather than another. It would further tend to induce countries with low tax rates on corporate income to increase them to the level which is broadly common to the developed countries; and in this way increase the government revenues available for development and reduce inequalities. It would also tend to eliminate competitive tax concessions between countries for the purpose of attracting foreign investment. It might even go too far in this direction. While we have doubts about the advisability of special concessions to foreign corporations, we recognize that tax incentives may be necessary to encourage investment by national or foreign companies for growth or anti-cyclical purposes, to overcome the initial obstacles to investment or to put over-all planning or regional policies into effect. Unless some additional provisions are introduced, the scheme would cancel out most of those incentives in the case of foreign corporations, and would also offset the inducements to the reinvestment of profits in the host developing countries.

We do not believe it advisable to prescribe a unique solution for such complex issues, but rather to insist on the objectives which have to be met and the supplementary provisions that would be required in each scheme for these objectives to be attained.

The strongest means to eliminate tax havens would be the taxation of world-wide profits on an accrual basis. The present widespread system of tax deferment should be amended so that earnings become subject to tax by home countries as soon as they are remitted abroad from the host countries; thus even if they are remitted

to tax havens they will be taxed just as though they are repatriated into their home countries, unless there is proof that they are being reinvested, without delay, in another host country. Provision should be made to guard against the risk of corporations choosing tax havens as their headquarters in order to avoid home country tax on accrued or repatriated earnings. A powerful weapon in this regard would be to deny the right of establishment in other countries, particularly the main industrialized ones, to corporations operating from such a base; the consequent loss of markets would more than outweigh the attempted saving on taxes.

We have also considered the effects of standard tax practices on the form which the flow of capital assumes. Interest on capital brought from abroad is subject to withholding tax when remitted, while equity investment is subject to both withholding and profits tax. This entails a distorted inducement to resort to lending rather than equity. Host countries must insist on a proper debt-equity ratio for revenue purposes. This obligation, however, may be difficult to define and even more so to enforce, and may run contrary to what is required in terms of the most appropriate forms of inflow of capital. The distortion is not corrected when the territorial principle applies. The taxation of world-wide earnings by home countries, with a credit for taxes paid to the host countries, may tend to eliminate such distortion, since the less that is paid to the host countries the more is usually taxed by the home countries. In the standard practice of today, however, this is only partly corrected, as the taxation of earnings from abroad by home countries takes place only when they are repatriated, if ever, and the elimination of dual taxation is not provided for on a general or complete basis. The taxation of world-wide earnings on an accrual basis, with full deduction of taxes paid to host countries, would in most instances provide a full solution.

As regards the impact on development, the present system of deferred taxation of world-wide profits until the time of remittance suffers from defects which should be corrected. It encourages competitive tax concessions in a way which increases the bargaining power of the multinational corporations as against the least powerful host countries - which may aggravate social inequalities. Host countries should agree to limit the extent of such tax concessions. The system, moreover, deprives some of the host countries of the benefits of the tax concessions which they allow: home countries should agree to grant credit to the multinational corporations for the taxes legitimately spared. The system of taxation on an accrual basis with full tax credits would encourage an increase of corporate taxes¹ in host countries. It should, however, avoid taxing away the concessions given by host countries for legitimate purposes of general or regional development, by granting credit for spared tax, or by the granting of such tax concessions by the home country itself in favour of the developing host country. Whatever the scheme applied, developed home countries should refrain from granting excessive tax concessions in favour of their own development or their regional policies, such as can hardly be matched by poorer countries and may contribute further to steering foreign investment to developed rather than developing countries.

The Group recommends that the various schemes which are or may be applied for taxation of multinational corporations should be supplemented by the provisions which it has suggested in each case to meet the various objectives which it has analysed.

Given prompt and consistent action, reform of taxation in respect of multinational corporations could be a powerful tool in a concerted strategy for development.

XII. INFORMATION DISCLOSURE AND EVALUATION

The pivotal importance of information disclosure and evaluation has been emphasized throughout this report. They are central to many issues discussed in the previous chapters and to the proposals for dealing with those issues, whether in connexion with the promotion of labour welfare, the monitoring of volatile short-term capital movements, the choice of appropriate technology, the protection of consumer interests, the regulation of monopolistic practices, or the prevention of artificial transfer pricing and tax evasion. Progress in this area is thus essential for a wide range of policies and programmes concerning multinational corporations, as well as for general development. The present chapter concentrates on a few concrete steps in this direction.

Standard accounting and reporting

Corporate accounting today is designed mainly for reporting to shareholders and for internal profit controls. The form varies from country to country, and reports of their various corporations are rarely comparable.

However, Governments need corporate reports which are comparable, regardless of national origin, and which will disclose, in usable form, the economic and social information they require for effective decision making. We believe that an international, comparable system of standardized accounting and reporting should be formulated.

Among the types of information which would be particularly useful to Governments and other interested bodies are: valuation and revaluation of assets and currencies in which they are denominated, inventories, research and development expenditure, start-up expenses, transfer prices, pension and other reserves, sources and timing of income, wages and other workers' benefits. The form in which the information is supplied would be designed primarily to suit the needs and uses of Governments and thus may not correspond to the usual custom and practice of corporations.

For the foreseeable future, we envisage that corporations will continue to report to their countries according to the various standards required of them. The international standard, together with a reconciliation, might then constitute additional data to be included in the annual reports of multinational corporations.

The Group recommends that an expert group on international accounting standards should be convened, under the auspices of the commission on multinational corporations.

The composition of the expert group should include representatives of finance and planning ministries of developed and developing countries, chief executives of multinational corporations, labour officials, lawyers, economists and professional accountants. The work of this group would need to be supported by the United Nations Secretariat, and more specifically by its information and research

centre on multinational corporations, as soon as this becomes operational. Its mandate should be to determine the kinds and the forms of information for which host and home Governments as well as other interested bodies have the most urgent need. On the basis of experience, the system can be refined and extended.

To implement the system, once devised, an attempt should be made to secure the voluntary agreement of a significant number of multinational corporations to add a column, based on international standards, to their present statements. They would set an example and provide an opportunity for experimenting with the international standards. Governments have an interest in obtaining such a form of reporting according to international standards from the corporations operating in their territory as it would facilitate comparisons. Moreover, in the case of corporations that operate transnationally, they are interested in obtaining an over-all picture of the operations with a proper breakdown between countries and with explanations of the method of consolidation.

Given the complexity of the subject, the expert group would require to hold a series of sessions, probably extending over a two-year period, in order to complete its task. Periodic reports should be submitted to the Economic and Social Council through the commission on multinational corporations proposed above. As experience is gained, further refinements and revisions of the system should be made by expert groups constituted on similar lines.

Disclosure of agreements

Agreements concluded between Governments and multinational corporations contain information useful for many purposes. The importance of formulating appropriate terms and conditions in such agreements has been emphasized elsewhere (see chapter I).

Both national Governments and multinational corporations should overcome their concern about confidentiality. We believe that the public disclosure of the principal terms of agreements between Governments and corporations should be the rule rather than the exception. Such disclosure would assist enormously in increasing the confidence of both parties, in diminishing the present tendency towards too rapid obsolescence of agreements, and in reducing the variations which now exist between similar arrangements in different countries.

The Group recommends that Governments should, as a rule, disclose the principal terms of agreements between them and multinational corporations; the information and research centre on multinational corporations should serve as the depository for information on such agreements. The centre should also prepare digests and summaries of such information.

Other, non-financial reporting

In addition to standard accounting information, and terms and conditions of agreements, Governments and social groups have a natural interest in corporate performance in respect of such items, as the number of nationals employed at various levels, the percentage of materials from local sources, the structure of multinational corporations and the nature of their affiliations with other

corporations. The public disclosure and collection of such information is subject to the same considerations as the disclosure of agreements.

The Group recommends that the machinery for formulating and implementing government policies towards multinational corporations, recommended earlier, should devise procedures for the collection of information about the performance of multinational corporations in specific areas.

System for evaluation by host Governments

Even if all the above recommendations are implemented, the kind and form of information available to developing countries is likely to be insufficient for an in-depth evaluation of the costs and benefits of alternative decisions. Such an evaluation would have to take into account social costs and benefits, which would include external as well as international economies, and indirect as well as non-economic effects. For example, an evaluation of investment proposals would have to be based on world prices, especially where the domestic price structure is distorted by high tariffs or monopolies; it would also have to be concerned with environmental effects.

Thus, a selective approach is also needed in many cases, so that the relevant information can be obtained in sufficient detail, when it is needed, without being overburdened with an unmanageable mass of extraneous information. This approach necessitates the setting up of a machinery in which particular projects may be evaluated (for example, costs and benefits of foreign investment) or specific problems investigated (for example, monopoly, transfer pricing, tax evasion).

Moreover, increased access to information is of little use to Governments unless they possess adequate systems and capacities to interpret and evaluate it. Such an evaluation is not limited to specific projects at the micro level, but must be related to the general framework at the macro level as well. Host countries, in particular, must place emphasis on developing the necessary expertise as well as machinery for evaluation. The United Nations should be prepared to assist host, especially developing, countries, upon request, in acquiring and improving this capacity.

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PART THREE . COMMENTS BY INDIVIDUAL MEMBER
OF THE GROUP

I. COMMENTS BY EMERIK BLUM

I should like to take the liberty of using this opportunity to set out some interpretations of the report as I see it.

Without going into details, I do feel it is necessary to stress that multinational companies are a component part of the present system of international economic relations which, as is generally accepted today, rest on inherited privileges and relationships of exploitation, on neo-colonialism. The recent special session of the United Nations General Assembly emphasized that in those frameworks, "The gap between the developed and developing countries was widening steadily", and that this system perpetuated inequality. At the same time a decision was taken to work urgently for the establishment of a new economic order on terms of equitable and sovereign co-operation based on the growing integration and interdependence of the world.

I feel it is important to underscore this, as regulating the operations of multinational corporations should be placed within the context of establishing a new system based on equality. In these frameworks, many dilemmas associated with the principle of sovereign disposal of national resources, including the right to nationalize, as well as categories such as vested rights, negotiating power and so on, should be dealt with and treated more adequately.

I think that for the developing countries, multinational companies are not only one among other partners in economic co-operation, but above all a specific instrument constantly aggravating their position in the world economy, reducing their share in world trade, leveraging the disproportionate outflow of their financial resources, and posing a ceaseless and real threat to their economic independence, and often even an instrument of gross interference in their internal affairs, as stated in the report. This would lead me to conclude that actions by the United Nations for regulating the activities of multinational corporations should above all contribute to transcendence of this situation in which the developing countries find themselves and assure respect for and full implementation of their sovereignty, as that was the basic motivation for the initiative which led to the forming of the Group of Eminent Persons. In the first place, I feel that the code of conduct, the elaboration of which has been proposed, should assure elimination of all interference by multinational companies in the internal affairs of countries where they conduct their operations if it leads to removal of restrictive business practices, that it should also assure that their operations are in conformity with the plans and objectives of the host developing country and establish possibilities for re-examining and revising contracts and arrangements concluded in the past. The extent to which the recommendations of the Group contribute to the achievement of these objectives will be the measure of the vitality and true value of those recommendations.

In conclusion, I should like to express my conviction that the United Nations can and should be the forum for finding the most fitting and effective solutions to the current problems with which the report deals.

II. COMMENTS BY TORE BROWALDH

I. GENERAL OBSERVATIONS

For obvious reasons the present report and its recommendations do not in every respect represent the unanimous opinion of all members of the Group. It is rather the outcome of skilful compromising with all the risks this involves: the temptation to find formulas that tend to hide rather than bring out the real issues, the avoidance of spelling out the political valuations that individual members hold and that have influenced the various recommendations. These observations must, however, in no way diminish the importance of the document nor dim the fact that the Group supports the following main conclusions:

1. We must seek ways of strengthening the bargaining position of the developing nations vis-à-vis the multinational corporations;
2. A Commission on Multinational Corporations should be set up to work out a code of conduct for Governments and multinational corporations and to provide a forum where Governments, trade unions, multinational corporations and international organizations may exchange views;
3. The creation of an Information and Research Centre on Multinational Corporations.

II. COMMENTS ON THE ANALYSIS OF THE PROBLEMS

Just like the other members of the Group I have formed my views of the problems and their possible solutions against the background of personal valuations and experience which in my case is Swedish government administration, business and banking. Undoubtedly, too, my opinions on what recommendations to make have been coloured by my preference for "the welfare State, based on the free market economy", to quote Sweden's former Prime Minister, Tage Erlander.

A basic cause of the present concern with the impact of the multinational corporations is that nations are confronted by a radically new world, where international integration in the cultural and economic field continues at a very rapid pace, while Governments hang on to old policies that are increasingly divorced from reality. Many of the so-called multinational corporation problems can be solved by appropriate national legislation or by Governments stating in the form of long-term development plans what their economic and social aims are and what they expect of those enterprises that operate within their borders. Other issues call for joint efforts and international collaboration on the part of Governments, who still are more apt to think in nationalistic terms.

In this connexion it should be pointed out that multinational corporations like other institutions in society depend on their social, political and economic environment. Their essential object is to conduct their business as efficiently as possible, all the time adjusting to the sanctions, the stimuli and the moral pressure that this environment exerts. The responsibility therefore lies

ultimately with society, who shapes this framework. What is considered as wrong in the behaviour of an institution can often be attributed to Governments that by their policies - or lack of policies - reward the wrong kind of behaviour pattern.

The unwillingness to recognize these considerations - and the time pressure under which we have been working - may explain why the multinational corporation in the report comes out as a stereotype, with few shades and nuances. The attempts to compress the complicated and many-sided relationship between the international operations of the multinational corporation and the political-economic goals of the national Governments into a schematic pattern limit the value of the analysis. It is assumed that there is an inherent and irreconcilable conflict between the multinational corporation and the host country, because the sole and exclusive motivation of its activity is the desire for highest possible profits. First of all, if this is so, there can in this respect be no difference between the multinational corporation and the purely national corporation. In the same way the trade unions and other interest groups which also have a limited criterion for their decisions and actions must inevitably come in conflict with society's overriding goals.

But secondly, to depict the multinational corporation as an institution, driven only by economic expediency is contrary to what sociology and psychology teach us. Why should human beings, just because they take a seat in the management of a multinational corporation, abandon all other considerations except the desire for economic gain? In fact business decisions and behaviour are determined by a complex of many values, including a desire for the corporation to be considered as a "good citizen" and the quest for profit. Much of the criticism of the multinational corporations is due to the fallacy of interpreting human affairs in terms of a mechanistic philosophy.

Finally, the analysis of the report suffers from the failure to recognize that multinational corporations are by no means a homogenous group. They range from giant corporations operating from the world's biggest homemarket, the USA, to small companies with total sales of 10 million dollars and only one subsidiary outside Sweden. More attention will, hopefully, be devoted to the situation of the medium-sized and small multinational corporations by the proposed Commissions.

Nor can host countries be grouped under one heading. The capacity of dealing with multinational corporations is obviously much greater in socialist countries like the Soviet Union and Poland or in highly industrialized countries like Germany, the United States or Canada than in Mali, Jamaica or other developing nations.

III. COMMENTS ON CERTAIN RECOMMENDATIONS

Nations like individuals often pursue aims that in themselves are contradictory. Inevitably this same tendency shows up in the specific recommendations that are made in the Group's report. On the one hand it is recognized that the multinational corporation is a unique instrument for transferring technological knowledge, management abilities and capital to countries aspiring to rapid economic growth. On the other hand it is - quite understandably - assumed that nations want to control their own destiny and therefore wish to introduce various restrictions and regulations on the activities of the multinational corporations. The difficulty lies in striking the right kind of balance between the two conflicting aims.

Certain recommendations, in my opinion, go too far in the direction of intervention and regulation, creating an economic climate that will definitely discourage multinational corporations from investing in countries that apply the proposed measures.

In particular I doubt the wisdom of recommending developing nations to include in their agreements with multinational corporations provisions which permit local groups or the Government to gradually take over complete ownership of the multinational subsidiary.

The recommendation to revise the patent system and to evolve an over-all régime aiming at reducing the cost of technology provided by multinational corporations, seems to be based more on beliefs and less on actual facts and evidence.

Research and development is a costly activity, full of economic risks. The revenues from a successful new technology will also have to cover the cost of the many unsuccessful attempts at innovation. It cannot be the task of multinational corporations to grant economic aid, this is the obligation of Governments in the industrialized world.

And this leads me to a concluding remark. Some problems referred to in the Group's report may ultimately be caused, not by the existence of multinational corporations but by the failure of the rich industrialized countries to increase their economic aid to the developing nations. This has in many ways reduced the possibilities of Governments in the poor countries to cope with the problems stemming from the industrialization process as such.

III. COMMENTS BY AHMED GHOZALI

It is unfortunate that the basic document, 1/ which was prepared by the United Nations Secretariat and of which all the members of the Group appeared to have a high opinion during the first session, appears to have been abandoned. However, as I myself had pointed out, it contained a number of facts and figures which greatly helped towards an understanding of the problem of multinational corporations. For that reason, it should, in my opinion, have been part of the final report.

Since the establishment of the Group, a number of political and economic events have occurred in the international field: the Chilean tragedy, the Fourth Conference of Non-Aligned Countries, upheavals in the field of energy, the reactivation of the problem of raw materials, and, more recently, the special session of the General Assembly of the United Nations. All these events appear to have been ignored by the Group of Eminent Persons, although they throw essential light both on the role of multinational corporations and the machinery of their operations and on the problems and aspirations of the developing countries. It is unfortunate that the Group of Eminent Persons has not drawn sufficient inspiration from these historic events to include elements which would have been a valuable addition to the final report.

1/ Multinational Corporations in World Development, United Nations publication, Sales No. 73.II.A.11.

IV. COMMENTS BY JACOB K. JAVITS

The Report of the Group of Eminent Persons represents a great effort by talented and diverse individuals, who bring to this report substantially different perspectives on the role of multinational corporations in world development. In such a group it would be utterly unrealistic to expect unanimity of views or overwhelming agreement on the report produced.

The report seeks to limit the scope of disagreement by expressing several viewpoints, even if these may be somewhat contradictory, while it also attempts to strike a balance among the views expressed. This format, however, permits the expression of fears voiced by various groups about the adverse effects of multinational corporations without thoroughly examining the charges and assumptions to determine whether there is substance to the fears. Hence, the report proliferates the initial error by skipping from the expression of a particular fear, based upon various hypothetical situations, to proposing a recommendation - but without an adequate factual basis. Thus, I find that the report contains a significant number of recommendations from which I must dissent.

My other fundamental reservations regarding the report are caused by its high level of generalization - unsupported in numerous cases as I have said, by documentation or even argumentation, its bias in favour of governmental as opposed to private decision making, its lack of a clear definition of the problems resulting from multinational corporation investment, and its inability to set out a reasonable list of priorities for action to be taken to deal with them.

The major priority recommendation of the report is to provide a continuing role for the United Nations through a Commission on Multinational Corporations and an Information and Research Centre under Economic and Social Council auspices. I am in full agreement with this recommendation of the Group. It is important that the United Nations effort be conducted in harmony with work on the multinational corporations also being carried on by the OECD, the World Bank, the EEC and others and will give consideration to parallel national inquiries like those of the United States Congress.

The report assumes that the central problem is a conflict between the economic power of the multinational corporations and the political power of the host Governments and sets out various concerns expressed about multinational corporations by various groups, without any attempt to assess their validity. Nevertheless, from these generalizations, the report concludes on page 8:

"fundamental new problems have arisen as a direct result of the growing internationalization of production as carried out by multinational corporations. We believe these problems must be tackled without delay".

This type of easy conclusion could undermine the authority of all of the Group's recommendations.

Because the report sees the central problem as one of conflict between the economic power of multinational corporations and the political sovereignty of nations, the fundamental solution advocated by the report is to increase the bargaining power of host countries. Furthermore, the two implicit assumptions of the report are that governmental involvement is preferable to private initiative, and that Governments know best and will act always in the long run in the interest of their citizens. Based on long experience, I seriously question both assumptions.

Although witnesses before the Group clearly testified that there is no direct equivalence between the power of a multinational corporation and the power of a sovereign State, the report nevertheless proceeds to devise various ways by which host countries can strengthen their bargaining position, or power, against multinational corporations. However, since many of the recommendations are concerned with exercising greater political control over multinational corporations without taking sufficient account of the economic realities - for example, why multinational corporations choose to invest in less-developed countries - the result is likely to be a suffocating surveillance of multinational corporation activities by the host country Government and discrimination against multinational corporations compared with indigenous private enterprise. Excessive regulation and control will actively discourage multinational corporation investment, and therefore deprive less-developed countries of capital and technology, which for all practical purposes, may well be unavailable in adequate amounts except from multinational corporations. This is clearly in the interest of neither the multinational corporations nor the developing countries.

Nor am I convinced that there need be any conflict of interest between multinational corporations and host countries. Private foreign investment plays a crucial role, along with public aid flows, both bilateral and multilateral, in providing critically important inputs to developing countries and both are needed.

Multinational corporations as a group have played more of a major role in creating a more prosperous world economy, to the benefit of all nations, and therefore have been more of a major force for progress and peace than is generally recognized. This need not and does not beg their deficiencies or the political machinations of some multinational corporations.

Indeed, Arnold Toynbee finds multinational corporations have a major historical role to play in an increasingly interdependent world; in fact, he asserts that most of our global economic problems "are due to the misfit between the antiquated political setup of local states and the real, global economic setup". 1/

Also many corporate multinational corporation leaders have shown an interest in co-operating with the United Nations and other international agencies studying the multinational corporations. But it is essential that the rules of the game be clearly stated; nothing discourages private investment more readily than frequent changes in government policy and consequent uncertainty regarding the

1/ "Arnold Toynbee: Are Businessmen Creating a New Pax Romana?" Forbes, 15 April 1974, p. 68.

policy to be expected. A large number of multinational corporation executives testified before the Group, and many of the suggestions they made have found their way into the report. However, since multinational corporations exist as profit-making enterprises, Governments cannot continually diminish their profit-making capacity and expect them to continue to invest in these circumstances. The important point is to be sure that it is in the public interest of the host countries to have multinational corporation investment, while allowing sufficient profits to make their continued existence worth while.

I deplore as strongly as the other members of the Group, political interference by multinational corporations, i.e. ITT's attempts to interfere in the internal affairs of Chile. Probably, other multinational corporations have engaged in similar abuses, which must also be condemned and their repetition prevented. However, the report as a whole represents a reaction to highly atypical behaviour by a few multinational corporations, and glosses over entirely a number of examples of serious abuses by developing country Governments of multinational corporations, such as vindictive nationalization, arbitrary and capricious rule making and procedure, abrogation of contracts and other discriminatory treatment (as against indigenous enterprise). The report would have been far more valuable had it achieved such a degree of balance, and had it sought to bring about a harmonization of interests between multinational corporations and developing countries.

Raymond Vernon of Harvard University has stated a view of multinational corporations which I find revealing and lucid:

"It is not the chosen instrument in an international conspiracy for grinding the faces of the poor; neither is it mankind's salvation in a parlous world of hostile nation states.

"It is one more Human institution, at the same time fallible and useful, whose benefits can be increased and drawbacks reduced by appropriate public policies." 2/

It is in the long-term interest of developing countries to welcome foreign private investment that will provide infusions of capital and technology on terms suitable for the host country and that will accommodate indigenous aspirations for participation in management and ownership. It is possible to devise policies that will establish a harmonious relationship between private foreign capital and internal development needs. A number of countries have succeeded in developing such policies, and more effort should have been expended in identifying these policies. It would be regrettable in a world of decreasing aid and sharply increasing oil and other resources prices to shut off flows of private capital in the guise of regulating multinational corporations.

There follows a more detailed analysis of the report, with my comments on individual chapters. Although I am not necessarily in total agreement with all parts of the report not mentioned specifically below, I have limited my comments to the more important points.

2/ Vernon, Raymond. "Multinational Enterprises: Performance and Accountability". (Unpublished paper), November 1973, p. 14.

Finally, I am conscious of the genuine efforts of the Group to reach a unanimous report, and to accommodate all the various opinions expressed. Because of the complexity of the subject and the differing perceptions of the persons comprising the Group, it was not possible to reach a unanimous report. While the report is deficient in the respects stated below, I have joined the other members of the Group in submitting it to the Secretary-General. I do this in the expectation that deficiencies in the report will tend to come under review in the further work of the United Nations on multinational corporations and that the publication of the report will develop public discussion of the subject in a way that will be further self correcting.

Chapter I. Impact on development

1. On page 38 the report recommends that host countries give precise instructions to multinational corporations regarding the conditions under which they should operate and what they should achieve. Although the objective sought - maximum understanding between the developing country Government and the multinational corporation on the conditions of investment and operation - is clearly worth while and to be encouraged, it may be both impractical and even counter-productive to give precise instructions on every aspect of multinational corporation operation. Certainly, it is entirely appropriate for the developing country Government to establish general guidelines for the multinational corporation to follow, and to work out a mutually agreed set of guidelines for the more detailed aspects of the multinational corporations operations.

2. On page 38, the third recommendation is somewhat unclear regarding the role of the United Nations in assisting the host country Government in negotiations with multinational corporations. The recommendation states:

"That the United Nations should strengthen the capacity to assist host countries, at their request, in such negotiations with multinational corporations, as well as to train their personnel in the conduct of such negotiations (see chapter III)."

The United Nations should not be a party to adversary negotiations between a host Government and a multinational corporation; such a role is highly inappropriate, and also unrealistic, considering the wide spectrum of expertise that would be required.

3. The fourth recommendation on page 38, suggests that:

"in the initial agreement with multinational corporations, host countries should consider making provision for the review, at the request of either side, after suitable intervals, of various clauses of the agreement".

The recommendation would have been improved by the addition of the 10-year period, mentioned on page 38. This would ensure that the host country would not ask for re-negotiation after a very short period of time.

4. The recommendation on page 39 is acceptable in principle. It states:

"that developing countries should consider including provisions in their initial agreements with multinational corporations which permit the possibility of a reduction over time of the percentage of foreign ownership; the terms, as far as possible, should also be agreed upon at the very beginning in order to minimize the possibilities of future conflict and controversy".

Developing country Governments and citizens are certainly entitled to participation in the ownership and thus the profits made by multinational corporations in their countries. However, it should be recognized that a requirement ab initio for phased disinvestment can work to discourage many investments, particularly in high technology areas. Such stringent initial terms might encourage multinational corporations to attempt to amortize all their investment during the early years of the investment, resulting in higher prices and more wasteful development of resources.

5. I object to the poor logic represented by the paragraph at the top of page 43 which calls attention to:

"the possible role of multinational corporations in the volatile short-term movements that have occurred (in the international monetary system) in addition to the fundamental disequilibria in the balance of payments of several major industrial countries".

Even though the report agrees that the convulsions in the international monetary system were probably not caused by multinational corporation activities, the report nevertheless finds that the potential movement of funds is sufficient to require vigilant monitoring by central banks. ^{3/} Policy recommendations, even in a form other than "The Group recommends", should be reached with greater attention to the basic facts.

Chapter II. Impact on international relations

1. The issues discussed in this chapter are central to the report, and therefore it is most important that the issues be examined with great impartiality and care. I do not feel that the report has achieved the appropriate degree of objectivity. For example, it is stated on page 45 that in a number of cases:

"multinational corporations have actively promoted political intervention in the domestic affairs of host, particularly developing, countries".

Since ITT is the only example mentioned in the report, is it not fair to require that other examples be documented to substantiate this charge?

As another example, the report rather vaguely charges, without substantiation, that multinational corporations, being close to domestic groups favouring foreign investment, can "rally against groups advocating social reforms". On page 47 the report states that:

^{3/} For an analysis of multinational corporation activities in the international money markets, see "How the Multinationals Play the Money Game", an interview with Sidney Robbins and Robert Stobaugh, Fortune, vol. 88, No. 2, August 1973, pp. 59-60.

"governments, especially home country governments ... have on occasion used the corporations as instruments of their foreign policy and even for intelligence activities".

Again the charge is not substantiated, although on the contrary the world has recently been treated to numerous examples of oil-producing countries forcing their foreign policy objectives on oil-consuming countries through multinational corporations headquartered in those same consuming countries.

Again, this chapter represents a reaction of the Group to the activities by ITT in attempting to intervene in the affairs of Chile rather than a case strengthened by adequate examples. While ITT's action in Chile was a reprehensible affair that resulted in the denial of ITT's claim for OPIC insurance compensation for its expropriated Chilean properties, it has not been established that it is the norm for multinational corporations. Therefore, the report tends to feed the fears of those who believe that multinational corporations are subverting Governments of developing countries, without the faintest shred of evidence beyond the ITT example to prove that this fear is justified.

2. The report correctly points out on page 47 that it is clearly necessary for host Governments to pledge themselves to pay fair compensation. For compensation to be fair and adequate, it must also be prompt and effective. Compensation long delayed will be often of little value.

3. The report states on page 47 that while compensation for nationalization should ideally be determined by mutual negotiation, the host country Government, by failing to agree to this, can force recourse to the host country legislative and judicial processes. No reference is made to the requirements of international law that nationalization be non-discriminatory, for a public purpose, and that prompt, adequate and effective compensation be paid. UNCTAD resolution 88 (XII) is cited, but not United Nations General Assembly resolution 1803 (XVIII), which affirms the obligation required by international law to pay fair compensation for expropriated property.

4. The report on page 48 suggests that, in cases of countries with serious balance-of-payments problems:

"international lending agencies should consider making soft long-term loans available to countries facing this difficulty".

While one may sympathize with the plight of countries having balance-of-payments problems, their very condition ought to cause them to proceed with great caution before using their limited capital resources to acquire ownership over existing assets. Developed countries are not likely to approve the use of soft, long-term loans, which should be used for the development of new productive capacity or infrastructure, for purposes of nationalization of multinational corporation properties.

5. The report is deficient in its treatment of international arbitration on page 48. Most developed countries accept international arbitration, and the majority of the 65 countries which have joined the World Bank's Center for the Settlement of Investment Disputes are developing countries. In this particular case the Group erred on the side of caution in not making a recommendation that would encourage international arbitration.

6. On page 49, the Group recommends that:

"home countries should refrain from involving themselves in differences and disputes between multinational corporations and host countries. If serious damage to their nationals is likely to arise, they should confine themselves to normal diplomatic representations. No attempt should be made to use international agencies as a means of exerting pressure".

This recommendation is not realistic. It is entirely proper for a home country to review its aid programme, for example, in the case of a country that has expropriated unfairly the property of home country nationals. No Government should be asked to accept the principle that it should limit itself exclusively to "normal diplomatic representations" in the case of serious damage being inflicted on their nationals by the host Government.

I should point out that I have worked in the United States Senate to remove the mandatory character of United States law requiring the termination of United States foreign aid to a country expropriating a United States national's property without fair, adequate and prompt compensation. This amendment has been achieved with respect to bilateral aid, and it is my hope that it can now be achieved with respect to multilateral aid. However, the President should retain the discretion to cut off aid if he thinks the situation warrants it. I should also point out that the United States business community clearly opposes the mandatory nature of United States law requiring aid termination, and supports the position I have outlined.

Chapter III. International machinery and action

1. I have previously stated my agreement with the recommendation of the Group that a Commission on Multinational Corporations be established under the Economic and Social Council. This is a most worthy objective. The Commission should work in the closest harmony with other international bodies engaged in similar activity.

2. On pages 53-54 the report suggests that,

"advisory teams ... should be made available to requesting governments to assist them in evaluating investment proposals, and in analysing proposed contracts and arrangements, and, if desired, to provide technical advisory support to governments related to their negotiations with multinational corporations".

I have previously stated (comments on chapter I) my objections to United Nations advisory teams providing technical support to developing countries' Governments related to their negotiations with multinational corporations. The training efforts proposed are to be commended.

3. The discussion of a code on conduct on pages 54-55 is rather unsubstantial for so important a subject. A code of conduct should be developed from the widest possible variety of sources over a period of time and the task of preparation cannot be entrusted alone to the Commission on Multinational Corporations.

4. The report notes on page 55 the serious lack of both financial and non-financial information on multinational corporations, but the Group seems to have no clear idea of what information should be sought, or in what order of priority. It is possible to inundate the United Nations with flows of information without any of it being reduced to a comprehensible form of use to developing country Governments. It should be recognized that careful standards of confidentiality would have to be devised, as in the case with "confidential" corporate data collected by the departments of the United States Government, for example. Multinational corporations are reluctant to release some kinds of information because it is developed at considerable cost to the individual multinational corporation and could be useful to competitors. Without the greatest care and mutual co-operation in this sensitive matter, Governments will regard failure to release certain types of information as evidence of wrong doing rather than the legitimate preservation of corporate know-how and financial data. On the other hand, there is growing pressure on multinational corporations from all Governments to provide more data for public policy purposes, and the multinational corporations must be prepared to co-operate in this definite trend.

Chapter IV. Ownership and control

1. On page 62, the example of ADELA as a corporate model for other multinational corporations to follow is misleading, because ADELA's aims are those of an investment bank, taking minority equity participations in new ventures for development purposes, with a view of revolving the investment once it has reached the stage of maturity. This is not the ordinary intent of a multinational corporation, and cannot be held up as an example to the average multinational corporation. But it shows a need for a global ADELA for private enterprise just as the International Bank for Reconstruction and Development has a soft loan International Development Association.

2. The recommendation on page 62, that multinational corporations gradually switch from involvement in well-established projects to reinvestment in new ventures seems to be fairly impractical; it would exclude the multinational corporation from the benefits of a ripening situation, while leaving it only with all the costs and the risks of the initial stages of a new enterprise.

Chapter V. Financial flows and balance of payments

1. This chapter takes a sound over-all approach to the question of financial flows. The report makes the proper point on page 65 that developed countries should provide greater access to their markets for the manufactured and processed goods of the developing countries. I agree on the necessity for a scheme of generalized preferences for the developing countries.

2. On page 64 the report states,

"Because of their concern with the balance-of-payments problem, developing countries sometimes restrict remission of dividends, royalties and so on. Nevertheless, multinational corporations are often able to circumvent such restrictions through transfer pricing and other devices.

The second sentence implies that multinational corporations in fact do circumvent dividend restrictions through transfer pricing mechanisms, although there is little information on this subject and none before the Group.

Chapter VI. Technology

1. Chapter VI contains much useful material on technology. There is no doubt that it has been largely the ability of the multinational corporations to generate and apply technology which accounts for their rapid growth, as each affiliate may draw upon the knowledge of the entire organization. The real problems stem from the fact that the market for technology is an oligopolistic one and the bargaining position of the developing countries is obviously weak. While developing countries would like to create and strengthen their own national technological capabilities, it is not clear how this may be accomplished in a practical way. A major concern should be to encourage the transfer of technology, but this is unlikely to be accomplished through the highly simplistic formulation contained in the last paragraph beginning on page 70. After stating that "there is no formula by which the fair price of technology can be determined", the paragraph concludes with the statement that "the transfer to the developing countries does not entail any significant extra cost". Although this presumably is an argument advanced by the developing countries, the reader is left with the implication that technology transfers should be a virtual gift.

2. In the section entitled "The Choice of Products", the report recognized that the interest of developing countries is often that of having labour-intensive methods of production used, as well as having national tastes and needs recognized in designing the product to be sold to domestic customers. The usual position of multinational corporations, based on costs, is often in favour of internationally standardized products. On this issue, not enough weight has been given to the positive effect of standardization the world over, in order to achieve economies of scale at a global level and to use them for the purpose of raising the standards of living in developing host countries.

3. On page 69, the Group recommends that developing countries set up "machinery for screening and handling investment proposals by multinational corporations ... for evaluating the appropriateness of technology". This recommendation is both impractical and unworkable. Government officials are likely to be unqualified to pass judgement on multinational corporation technology, and may opt for a labour-intensive technology for domestic political reasons, thereby shutting off more advanced technology inflows. This is even more likely in the case of the more technologically advanced multinational corporations.

4. It is certainly worth examining alternative means of acquiring technology as outlined on pages 72-73, although it should be pointed out that what is actually reinforcing the position of the multinational corporations is two facts. First, technology becomes obsolete fairly rapidly and a constant supply of fresh technology is essential. Second, know-how concerning the capability of producing efficiently is much more than the technology which patents protect. Nevertheless, it is proper for host countries to consider ways other than foreign direct investment for acquiring technology and to favour these alternative solutions: management contracts, joint ventures, and turnkey operations, which permit ownership and control to remain at least partly in indigenous hands.

Chapter VII. Employment and labour

1. On page 76 the report recommends that,

"home and host countries, through general budgetary support, the normal working of the social security system or the establishment of social funds, provide for full compensation to the workers displaced by production decisions of multinational corporations. Recognizing that some developing countries do not possess adequate means for that purpose, the Group recommends that consideration should be given to the creation of an international social fund, including contributions by multinational corporations, which would supplement the resources available to such countries".

Adjustment assistance for workers under certain conditions, such as those contemplated in the proposed United States Trade Reform Act of 1973, is quite important. Moreover, the Government of each developing country can properly give adjustment assistance for whatever purpose it chooses. However, it is improper to attempt to compel a private company (multinational corporation) to pay for such assistance. Such a recommendation is discriminatory against multinational corporations as compared with other business enterprises. To the extent that a State can afford adjustment assistance measures, they should apply equally to national and multinational enterprises. Otherwise the displaced workers formerly employed by the multinationals would receive more favourable treatment than their fellow countrymen. The idea of an international social fund would entail very difficult questions of distributive fairness.

2. In an environment of under-development and chronic unemployment, developed countries should favour the upgrading of their domestic production through appropriate retraining of their workers and should leave the doors open to imports of labour-intensive and low-skill products manufactured in developing countries. This can also be an effective way to restrain inflation in the developed countries. One must, of course, recognize the political obstacles to such a policy.

3. The report recommends on page 80 that,

"through appropriate means, home countries prevent multinational corporations from going into countries where workers' rights are not respected unless the affiliate obtains permission to apply internationally agreed labour standards, such as free collective bargaining, equal treatment of workers and humane labour relations".

This seems to invite home countries to interfere in the affairs of sovereign nations. Although such policies may have worthy objectives, multinational enterprises should not be used for the purpose of imposing one Government's attitude upon another. International standards of behaviour, applicable to both national and multinational enterprises, can only be arrived at and implemented by the consent of sovereign Governments.

Chapter VIII. Consumer protection

1. My only comment on this chapter concerns its underlying assumption that Governments have the wisdom necessary to prohibit the importation or local production of socially undesirable products. For example, on page 81 the report states,

"We believe that governments have the right to discourage, or even prohibit in some cases, the importation or local manufacturing of certain products which they consider socially undesirable."

While one can understand the desire of Governments to control the abuses of certain types of advertising, the suggestions contained in this chapter are likely to lead to the development of yet another developing country bureaucracy aimed at maintaining the social purity of its citizens - a path more likely to lead to totalitarianism than freedom.

Chapter IX. Competition and market structure

1. A substantial portion of this chapter constitutes an explicit endorsement of a report to UNCTAD by the Ad Hoc Group of Experts on Restrictive Business Practices (document TD/B/C.2/119), which contains various allegations of multinational corporation misconduct without sufficient factual proof. Both the UNCTAD report and the Group's report focus on various types of "possible" multinational corporations' misconduct, without a factual base or examination of the behaviour alleged.

2. On page 84, the report states that,

"one of the means at the disposal of host countries, which should be internationally accepted, is to relate profit available for remittance by an affiliate to its export performance".

Many multinational corporations invest in a country in order to serve the local market, while others investing in raw material extraction may export their entire production. Thus export performance may be completely irrelevant to the object and size of the investment and hence irrelevant as a criterion for profit remittance.

Chapter X. Transfer pricing

1. Transfer pricing is a real problem. It has been used largely for reducing taxation, and sometimes to decrease profits in less than 100 per cent owned subsidiaries, through the shifting of the profit from one country to another. Other reasons include protecting the multinational corporation from risks of currency depreciation, and taking advantage of different rules of exchange controls regarding various types of remittances. Section 482 of the United States Internal Revenue Code is an example of an attempt to regulate transfer pricing, in order to prevent tax evasion, based on arm's length prices.

2. On page 90 the report suggests that,

"the transfer prices at which a multinational corporation deals with or among its affiliates, as well as the prices in transactions with outside suppliers or customers, should either be publicized or made known to the interested parties upon request".

While full disclosure of information on transfer pricing is a worthy principle, it should be recognized that for multinational corporations selling hundreds of products in dozens of markets, this would be extremely difficult to do. Also quite legitimate questions of business confidentiality are involved. Often such information is highly competitive and may involve confidential proprietary information.

Chapter XI. Taxation

1. The question of taxation is extremely important and deserves the highest priority for study. It would indeed be useful if international agreement could be reached on essential tax matters, such as the use of tax incentives and inducements. The report recognized that tax reform in the treatment of multinational corporation earnings could be a powerful tool in a concerted strategy for development.

2. On page 93, the report calls for

"taxation by home countries of the global profits of their multinational corporations as if they were earned within their borders, while providing full relief for taxes paid to other countries. In other words, the principle of taxation of world profits would apply on an accrual basis and would not be deferred until such time as earnings abroad are remitted to the home countries".

There are undoubtedly strong arguments for the elimination of tax havens, but this proposal would require a complete reworking of the international tax system. This proposal requires far more study, and cannot be accepted on the basis of the facts before the Group or the Group's arguments in the report.

3. The recommendation on page 94 states that,

"the various schemes which are or may be applied for the taxation of multinational corporations should be supplemented by the provisions which it has suggested in each case to meet the various objectives which it has analysed".

This recommendation is extremely vague and should not have been included in the report in so imprecise a form.

Chapter XII. Information disclosure and evaluation

1. The inadequacies of existing information on multinational corporations and information gathering and evaluation systems are a frequent theme of the report. The convening of an Expert Group on International Accounting Standards, as recommended on page 95, is a sound suggestion which should be implemented. It is important to recognize the legitimate confidential character of much of the information sought about multinational corporation activities. The United Nations needs to define more precisely the type of information needed and develop safeguards necessary to preserve its confidentiality.

V. COMMENTS BY L. K. JHA

If the report is looked upon not as a beginning but as an end of the exercise which the Economic and Social Council had initiated, it may cause disappointment to many - particularly the developing countries. No doubt we devoted a good deal of our time, as well as space in our report to the relationship between developing countries and multinational corporations - in keeping with the emphasis in our terms of reference. The report addresses most of its recommendations to developing countries themselves, telling them what they can do to strengthen their bargaining position and to ensure that multinational corporations' participation helps in their development. These surely cannot be accepted by developing countries as a final answer to the problems which have often marred their relations with multinational corporations and have resulted in disappointment, disillusion and distrust on both sides.

I am not trying to minimize the value of these recommendations. They should help developing countries make the right choices and to avoid making some of the mistakes which they made in the past when the simplistic view, which was once fashionable, that since developing countries need capital and foreign exchange they must woo private foreign investment - often supported by a certain amount of pressure from aid-giving countries and agencies. This led many developing countries to invite multinational corporations into areas and on terms which later they regretted.

This emphasis on being selective should not be confused with being restrictive towards or biased against multinational corporations' operations and motivations as a few of my colleagues thought. None of us was naive enough to believe that multinational corporations would go to developing countries if their opportunities, earnings and growth are not as good as they are in developed countries. The basic point which should not be lost is that if developing countries make the right choices after exploring the alternatives then the the relationship which they forge with multinational corporations will be more healthy and more stable and therefore more rewarding to both.

However this is but the beginning and not the end of the story. For right choices to be made, a good deal of further information and research would be needed. Many developing countries may also need the assistance of international agencies. Hence the importance of the programme of further international action which the report recommends.

This programme must also include further studies on the issues which have only been barely touched upon in the report. Thus in the introduction as well as in chapter I of the report reference has been made to the sharing of the benefits that flow from the operations of multinational corporations. This indeed is the crucial question. No one had doubted the great contribution of multinational corporations to raising the levels of world production. But the impact of multinational corporations on distribution - between countries and within countries - has been a matter of concern. Clearly a viable relation must be

beneficial to all parties concerned, the host countries, the home countries and of course multinational corporations themselves. The report had not, for lack of time and data, examined the way in which the benefits are or should be apportioned between them.

Developing countries have been repeatedly emphasizing in the United Nations, the United Nations Conference on Trade and Development and elsewhere that changes in their terms of trade affect their growth potential more profoundly than aid. An examination of the effect of multinational corporations' operations on a country's terms of trade to see whether it is positive, negative or neutral is certainly of the greatest interest to developing countries.

Even while the Group was at work, far reaching changes, affecting the economy of different countries differently, took place. What had been referred to as the oil crisis led to a searching re-examination of many issues at the sixth special session of the United Nations General Assembly. Multinational corporations have for decades been dominant in the exploration, refining and marketing of oil. But it was impossible for the Group to attempt any assessment of the role of multinational corporations in these developments.

Finally, the political problems which arise between multinational corporations and host countries and which have their repercussions on international relations cannot be resolved by the publication of one single report. It is only if the international community gives continuous attention to the subject and creates a wholly new climate of opinion sustained where necessary by international agreements that the objectives can be achieved.

The work of the Group and the report it has presented has therefore to be viewed as the basis for future action rather than as an exercise which is complete in itself. The Economic and Social Council will, I hope, agree to set up a commission on multinational corporations which the report has proposed. As regards its composition the report, after discussing pros and cons of an intergovernmental body and one composed of knowledgeable people acting in their individual capacity, has recommended the latter.

I should like, if I may, to add a few further considerations in support of this view. If the commission consists of governmental representatives it would be but a replica of the Economic and Social Council itself. All the members would have a similar background - except that some would come from developing countries and some from developed countries. What impressed me most about our Group was the way in which economists, businessmen and those with a background of trade unionism drew attention to different facets of the problems and contributed to the evolution of ideas. Further, through a free and frank discussion unhampered by any briefs, we were able to reach such a wide measure of agreement which then very appropriately is considered by the representatives of Governments in the Economic and Social Council.

VI. COMMENTS BY RYUTARO KOMIYA

I sign the report as I support the majority of its recommendations. The report as a whole is, in my view, an important first step in the right direction. However, I have a number of reservations. Also, the general tone of the report is a little out of tune with my own views on the subject, and I have a few supplementary remarks of a general nature to make. Thus, my signing the report is subject to the remarks and reservations that are set out below.

The Responsibilities of the Host Government

So long as we uphold the basic principle that the sovereign right of States must be fully respected in all circumstances, the central figure in formulating the development strategy of a country in the long term, in establishing appropriate policies with regard to investment and technological transfer by multinational corporations in the country and in taking the measures necessary to deal with the economic, social and cultural consequences of development and foreign investment must be the Government of that country. It is the Government of the host country, and not the Governments of home countries, or the multinational corporations, or the obscure entity called the international community, that is primarily, or one might say almost solely, responsible for development and investment policies and for whatever consequences they may have. Home countries and international organizations can help the host country to make better decisions, but the final responsibility must rest squarely with the latter. Multinational corporations can contribute to the development of a country and to the welfare of its people only when the Government of that country consistently pursues appropriate national policies on development, investment and technological transfer.

One popular view of the role of multinational corporations in world development is that, although they possess superior technology, management expertise and financial resources, with which they can contribute to world development, they are the chief villains in the many conflicts and tensions that arise involving host and home countries, labour, consumers and multinational corporations, as well as in such developments as monetary crises. Such a view, which seems to be at the back of some of the statements in the report, is, by and large, unrealistic and is not helpful in solving the problems we are now encountering.

Undoubtedly, there are cases in which some multinational corporations have acted in an ill-intentioned way and are to be condemned as the chief villains. But there are cases in which conflicts and tensions connected with multinational corporations in the developing countries are caused by inappropriate, vacillating government policies and unstable political conditions in the host developing countries. The Government of a sovereign State must be prepared to accept full responsibility for whatever happens in its territory: that is the duty of a Government.

Jurisdiction and Extraterritoriality

On the matter of jurisdiction and extraterritoriality the report reflects two contradictory philosophies. On the one hand, it states that "once an affiliate of a multinational corporation is established in another country, home country laws should cease to govern its behaviour, and only host country laws should apply", and that "home countries should recognize that affiliates are under the jurisdiction of the host country" (p. 50). On the other hand, when the end is thought to be desirable, the report tends to require home countries to exercise control over the activities of their multinational corporations in other countries. For example, it is proposed with regard to labour standards that home countries should not only "insist upon the acceptance of certain internationally accepted basic principles and standards as conditions of foreign investment by multinational corporations under their jurisdiction", but should also "impose certain sanctions on corporations that disregard them" (p. 79). Or, the report recommends that "home countries prevent multinational corporations from going into countries where workers' rights are not respected, unless the affiliate obtains permission to apply internationally agreed labour standards, such as free collective bargaining, equal treatment of workers and humane labour relations", and suggests as means for this purpose "the denial of tax credits for the taxes paid to host countries which violate human rights, a ban on the entry into their own territory of products produced in such countries", and others (p. 80). The proposals that home countries should take "strict measures against bribery committed by their nationals elsewhere" (p. 41), and that the home countries should consider unilaterally prohibiting the exportation of products that are prohibited in home countries for reasons of consumer protection (p. 82), are based upon the same idea.

The matter of jurisdiction is not a simple, black and white one, and there is often a grey area in which one country's jurisdiction is bound to overlap and even conflict with another's. But such matters as labour standards, labour relations, consumer protection, pollution control and the punishment of bribery are all internal affairs, over which in this case host countries should have exclusive jurisdiction, although they have to observe those international agreements, if any, that they have entered into in each area. As far as these matters are concerned, affiliates of multi-national corporations should be subject to the exclusive sovereignty of the host country. The recommendations and proposals of the report cited above would result in clear examples of extraterritoriality, which must be strictly avoided.

In order to impose sanctions in a lawful way on corporations disregarding internationally accepted labour standards or on those practising bribery in other countries, the home country must establish some sort of tribunal to pass judgement on the activities of multinational corporations in other countries. Moreover, what constitutes bribery and what does not, or what should be prohibited in order to protect consumers and what need not be, differs from country to country depending on social customs and other factors. Such matters are to be decided by the Government of each country.

The proposal that "home country legislation should apply until the multinational corporation enters the host country" (p. 50) involves certain difficulties. Here again the home Government must pass judgement on the policies of other Governments. Moreover, the Government policies and conditions in host countries may well change over time. Thus, if the home country is to deny tax credits for taxes paid to

host countries that violate human rights, or to ban imports of products produced in such countries, it must pass judgement on each incident of violation of human rights taking place in other countries. Unfortunately, there are many Governments that violate human rights from time to time.

Considering all these points it should be obvious that the Government of the home country should not exercise its legal power in order to supervise the activities of the affiliates of its multinational corporations in other countries, as long as the matter is concerned with the latter's domestic affairs. At most, what the home Government can do in this area is to set up guidelines for its multinational corporations to which the latter adhere voluntarily.

Certain policies of a host country's Government may appear inappropriate or undesirable, and home countries and international organizations may want to help the host country to improve them. But, as already stated, the final responsibility in its internal affairs must rest squarely with the host country.

Power

The report emphasizes that "multinational corporations possess considerable power and influence", and tends to lean to the view that they are more powerful than most of the developing host countries. However, it may be noted, that the power of the sovereign State and the power of multinational corporations are of conceptually different dimensions, and cannot readily be compared. In fact, a sovereign State, however small, can be more "powerful" than multinational corporations, except possibly when multinational corporations use their financial resources for subversive political activities. The smallness of the size of a country does not impair in any way its ability to lay down the conditions under which multinational corporations may establish subsidiaries within its borders, to restrict and regulate their operation when they are established, or to nationalize them. There are many instances in which relatively small developing countries have nationalized the subsidiaries of multinational corporations.

It may well be misleading to state that multinational corporations are generally in a more powerful position than developing host countries when negotiating on investment and technology transfers. It is sometimes asserted that developing host countries are at a great disadvantage, since multinational corporations with their monopolistic power are in a position to play one host country off against another. This is generally not true nowadays. If a developing country wants a computer, an aircraft or a colour film industry, there are only five to seven companies in the world with which it can negotiate. But few developing countries want such industries. In the field of fertilizers, tyres, electrical appliances, petroleum refining and so on, there are in the world at least 20 or so firms that can set up and run efficient plants and that are competing with each other.

The sovereign power of developing countries is, if used wisely and properly, potentially much greater than is often considered.

Impact of Government Intervention

Some of the statements of the report would appear to be based on the assumption that multinational corporations will continue to bring in the same amounts of capital, technology and management expertise into developing countries even when extensive intervention is undertaken and various restrictive measures imposed by the host Government. The report seems to ignore the fact that the amounts and types of private investment and technology flowing into a country are easily affected by Government policies. Some of the policies and measures recommended by the report will work to increase the investment and technology inflow into developing countries through multinational corporations, but many of them will tend to diminish investment incentive.

For example, although it is understandable that many people should recognize the need for a provision for reviewing and revising the original contract in certain situations (pp. 38 and 85) requiring renegotiation at certain intervals will increase the uncertainty and risk for multinational corporations and generally diminish the inflow of foreign investment and technology, unless the corporations feel they can trust the host Government. It may encourage a quick profit-making type of operation instead of those that will be closely integrated into the local economy. Or, some multinational corporations will find the requirement of prior authorization of each new product (pp. 68 and 81) ^{1/} too cumbersome and may decide not to operate in countries where that obtains.

Another point the report tends to overlook is that under different types of investment arrangement, such as wholly-owned subsidiaries, joint ventures, turnkey operations, "fade-out" arrangements, and so on, different kinds of investment projects will be undertaken, and the kinds of technology and management expertise supplied and the benefits accruing to the host countries will differ substantially. It may in certain circumstances benefit developing host countries to consider including in some agreements with multinational corporations the so-called "fade-out" provisions (p. 38). But if this idea is pushed too far it will almost certainly result in a substantial decline in investment inflow. It is true that an increasing number of multinational corporations are now entering into fade-out, turnkey and similar types of arrangements. But the fact that there are multinational corporations accepting such arrangements in certain circumstances does not mean that they will accept them in other situations, nor that they will, or can, supply the same kinds and amounts of technology and expertise under such arrangements as they do through wholly-owned or majority-owned permanent subsidiaries.

Multinational corporations are private, profit-seeking institutions and are highly sensitive to profit prospects, risks and Government attitude, all in the long-term perspective. If Governments of developing countries implement to the letter all the recommendations and suggestions in the report that propose extending Government intervention or establishing restrictive regulations, many multinational corporations may well decide to turn away from developing countries and shift their attention to relatively free developed economies. It could happen that

^{1/} I do not see the merit of this proposal. New medicines, processed foods or certain other groups of products may have to be approved one by one by a Government, whether produced by multinational corporations or indigenous firms. But, there is no need to require prior authorization of, say, each new book.

the flow of private investment and technology into developing countries would diminish substantially. This may well not be in the interests of the developing countries.

This is not suggesting that as liberal an approach as possible to multinational corporations maximizing investment and technology inflows with little intervention is the best policy. On the contrary, most developing countries need to adopt a selective approach to foreign investment and the importation of technology as an integral part of their development policy. The appropriate degree and type of Government intervention depends on the stage of development of the country in question, on the area of investment and the kind of technology transferred. Moreover, some countries may prefer a certain degree of economic and cultural independence, even at the cost of immediate economic gains. Short-term losses resulting from restrictive policies towards multinational corporations might be offset in the long-run if they helped to build up domestic managerial experience and to strengthen the self-confidence of a country's citizens.

Nevertheless it is important to consider the probable impact of Government intervention on the amounts and types of investment and technology inflow. It is misleading and illusory to assume that the amounts of inflow will remain unaffected by extensive Government intervention.

International Relations

I have some difficulties with two recommendations made in chapter II which deals with international relations. The first recommendation in the section concerning intergovernmental confrontations in chapter II implies that international laws except those concerning arbitration arrangements may be disregarded in determining the compensation for nationalizing the assets of a multinational corporation. This recommendation is not acceptable from a legal point of view, since besides arbitration arrangements there are certain provisions in various bilateral agreements that clearly have some bearing upon measures to be taken in case of nationalization, not to speak of more disputable customary international laws. It is contradictory to assert that existing international laws may be disregarded in this case, while proposing to conclude new international laws such as the general agreement on multinational corporations.

What constitutes international law is admittedly a controversial matter, on which people have different views. But whatever they are, existing international laws should be observed, in principle. So long as we propose new international agreements we are in a position to urge all nations to observe not only the new agreements but also the existing international laws that bind them. Therefore, it should be stated explicitly that compensation is to be determined in accordance with both the host country's national law and international law. The same applies to the recommendation at the bottom of page 46.

The recommendation on page 49 states that home countries should confine themselves to "normal diplomatic representations" even when serious damage to their nationals arises as a result of nationalization. However, although what is meant by "normal diplomatic representations" is unclear, it may be pointed out that diplomatic representations are largely meaningless if it is made clear at the outset that the protesting Government will not have recourse to any other

appropriate measures whatever happens. For example, in the event of extensive nationalization without compensation being paid to the subsidiaries of multinational corporations in a host country, it may well be natural in a democratic society that the shareholders in the home country will move as taxpayers to cut aid to the host country. Both investment and aid must be based upon at least some mutual trust, and the home country or some of its citizens cannot be prevented from reacting to cut aid when that basis is lost.

I feel strongly that the home country, especially a powerful one dominant in the region to which the host country belongs should exercise much restraint in bringing economic and political pressure to bear on the host country, even in case of nationalization of the subsidiaries of its multinational corporations. I also believe that multinational corporations as private enterprises should assume the full risk by themselves when investing in other countries, taking all possible consequences into account, and should not count upon the home Government for help. Nevertheless, the recommendations cited here are unacceptable from a legal and diplomatic point of view.

Information Gathering

The report recommends that an information and research centre on multinational corporations should be established. Gathering pertinent information is obviously an important step in any rational decision-making process, and undoubtedly it is desirable to have more information on multinational corporations. But one of the first things to do in this area is to have an ad hoc expert group study what kinds of information on multinational corporations are really needed and for what practical purposes, how such information can be collected effectively, and how information so gathered can be used. To illustrate some of the problems involved here, let us consider the following examples.

It was suggested that information on transfer pricing is an example of the kind of information badly needed. But how can it be obtained? Suppose the proposed centre sends questionnaires to a couple of hundred multinational corporations asking about their policies and practices with regard to transfer pricing. Probably the majority of them will reply. Almost all of them will state that they use market prices wherever applicable. Many will also state that they use cost-plus-margin prices according to the internal accounting formulae or principles in use in their organization and so on. No company will admit that they deliberately over-invoice or under-invoice in order to evade tax laws or exchange controls. What is the use of information obtained in this way?

Or, as an example of areas in which artificial transfer pricing may be practised, take the case of the pricing of second-hand machines between parent and subsidiaries on which some people say information should be obtained since the parent corporations tend to overcharge subsidiaries. One way of collecting information on this matter is to ask each Government's customs offices to report the necessary data. But what kinds of statistics are really needed? Even when it is shown that the second-hand machines in question tend to be priced at higher than normal market prices, what practical use can be made of the results of such a survey? What might be done in this area would be to give technical assistance on customs assessment to Governments that want it, and to let them apply reasonable and consistent prices in customs valuation as well as in corporate taxation. Information gathering on this subject does not seem necessary or useful, even if feasible.

The gathering of critical information on transfer pricing or restrictive business practices is an undertaking that comes very close to investigation of crimes. It is likely that only the tax or antitrust authorities of the countries concerned can have access to the relevant sources of information. It is most important that the Governments agree on their joint efforts in information collection. The kinds of information that the proposed centre can collect directly without the help of Governments are likely to be of relatively minor value.

In any case the ad hoc expert study suggested above of the kinds of information to be collected and of the ways of obtaining it should be among the first studies to be undertaken under the commission on multinational corporations. International organizations are no exceptions to Parkinson's Law, and are liable to unlimited expansion and ramification. One should not establish a vast machinery collecting all kinds of information related to multinational corporations, most of which may well be of little practical value.

Balance of Payments

The report proposes that, in appraising foreign investment proposals by multinational corporations, host countries should assess not only their contribution to development but also "their contribution to the country's ability to meet foreign exchange requirements" (p. 64). Such a proposal is based upon a mistaken notion of the balance-of-payments problem.

The balance-of-payments problem is a liquidity or cash-flow problem. The primary objective of the liquidity or cash-flow management of a country or a private company is to facilitate those transactions that offer advantages in themselves. It may often be necessary or desirable to restrict imports or international investment for reasons other than the balance-of-payments, but restricting imports or investment or artificially encouraging exports or inward or outward investment in order to improve the country's balance-of-payments is at best a short-term expedient and is not an appropriate policy if carried on for many years.

For the purpose of balance-of-payments adjustment, the Government should use macro-economic means, such as fiscal and monetary policies, and/or an appropriate exchange rate policy. Interference with individual transactions for balance-of-payments reasons or the evaluation of investment projects from the point of view of their probable effect on the balance-of-payments almost amounts to putting the cart before the horse. Especially, relating the profit remittance of an affiliate of a multinational corporation to its export performance (p. 84) is not an internationally accepted means of balance-of-payments adjustment and is not to be recommended.

Technology

The views on technologies expressed in chapter VI of the report are somewhat different from my own. It is stated on page 66 that "the market for proprietary technology is highly imperfect", and that "developing countries are in a particularly weak bargaining position because of their lack of capital and necessary technical skills", and because the technology flow is in one direction - from developed to

developing countries. But it should not be overlooked that the developing and selling of new technologies is often a competitive process and that many new technologies become obsolete rather quickly because of competition from still newer ones. Although it depends on the kind of technology involved, the medium-sophisticated technologies that the developing countries need most can usually be supplied by a number of firms that are competing with each other.

Undoubtedly developing countries, indeed all buyers of technologies for that matter, are anxious to acquire technology at the lowest possible cost. But reducing the price of the technology provided by multinational corporations to the developing countries (p. 72) should not be considered as the most important policy target in this area, since it is equally important that superior technology be made available to them in large quantities and that they acquire those kinds of technology that are most appropriate to their needs and most likely to benefit them. If the benefit from superior technology is great enough, buying it even at a high price is to the advantage of the buyer. Buying cheap technology may be merely wasting money. The fact that developing countries pay a large amount in royalties, an amount which is increasing rapidly, should not be a concern in itself. The proper question to be asked is: what are they obtaining for the money spent?

For example, in recent years Japan has imported a great deal of technology from abroad, and the flow of royalties has been almost entirely one-way until recently, with only a very small amount of royalties received from abroad by Japanese firms. Moreover, about 70 per cent of all contracts for the importation of technology have been accompanied by some territorial restrictions. Yet the benefits from the technology imported in this way have been incalculable and far larger than the royalties paid.

Also, when contemplating revision of the patent system, it is important to ensure that multinational corporations continue to spend large amounts on research and development, since they are still the most important source of new technology for industrial purposes. It should not be overlooked that the development of technology is a costly and risky undertaking.

Efforts should be made to improve the patent system and to check abuses of patent rights. Also the developing countries should consider revising their national patent laws to their advantage. But such efforts should not be based upon wrong premises and faulty analysis.

Labour and Employment

Some of the statements in chapter VII reflect the interests of labour in the high-wage, developed countries, and not so much those of labour in the developing countries. Especially, I have a strong objection to one recommendation stated in the text at the end of chapter VII concerning what is called "fair labour standards". The notion of fair labour standards is related to an attempt to equalize what is called the "unit labour cost" all over the world. It will, if implemented, kill most of labour-intensive, low-skill manufacturing industries in the developing countries which depend on exports to developed countries. This is contrary to the liberal spirit on which the recommendation on page 75 is made.

In overpopulated developing countries poorly endowed with land and natural resources, labour is the only abundant resource. For such a country to develop it is necessary to export labour-intensive products, taking advantage of low wages, whether the products are produced by multinational corporations or indigenous firms, or even when major industries are nationalized, in order to obtain in exchange necessary imports of foods, raw materials and capital goods, and to accumulate capital and human skills.

In the early stage of industrialization, the cost of capital, prices of capital goods, rents on land and the prices of most raw materials all tend to be higher in overpopulated developing countries than in developed countries. Industries cannot enjoy economies of scale in the beginning. Consequently, unless wages are lower than in developed countries, even after adjustment for differences in productivity, and hence the unit labour costs are also lower, such developing countries cannot export any manufactured products.

In such countries it is important from the point of view of national employment policy to keep wages as close as possible to levels commensurate with the social opportunity cost of labour, until open and disguised unemployment drops to a tolerable level. This is because artificially high industrial wages limit the expansion of employment opportunities in industry. Even with wages and working conditions that are very low and poor by the developed countries' standards, the employment opportunities and wage income created by the multinational corporations in developing countries may be vital, not just "marginal" (p. 74) ones, for the working populations.

There is a popular notion that the use of low-wage labour with high-productivity technology results in high profits. But low wages, accompanied by high productivity results not in high profits but in low product prices, provided that the market forces of competition are at work. Of course, the Government should watch for excessively high profits earned by multinational corporations by virtue of their monopolistic position.

Dissemination of Information Relating to Health and Safety

According to the first recommendation on page 80 and the recommendation on page 81, very important information on measures relating to safety and other working conditions and on measures to protect the health and safety of consumers should go from the home to the host countries through multinational corporations. It would be better for it to go through the International Labour Organisation and the World Health Organization, or directly from Government to Government.

Market Allocation by Multinational Corporations

In discussing market allocation by multinational corporations, one of the main subjects of chapter IX, I think it is most important to distinguish conceptually between three types of market allocation arrangements: namely, (a) arrangements involving only wholly-owned or majority-owned affiliates (including the parent) of a multinational corporation; (b) arrangements among independent companies or minority-owned affiliates which are not a part of patent and know-how licensing; and (c) arrangements accompanying patent and know-how licensing.

The report seems to propose prohibiting or at least discouraging even the first type of market allocation arrangement mentioned above. But one cannot ask a majority-owned subsidiary of a multinational corporation to compete with its parent or with other majority-owned subsidiaries of the group. The branch offices of a bank cannot be required to compete with each other or with the head office, whether in one country or internationally. There is no country whose antitrust laws require that the parent and its majority-owned subsidiaries compete with each other. The host Government may be concerned about the market allocation arrangement between affiliates located in the country and their parent corporations, but they are so from the point of view of export performance of the subsidiaries, and not from the competition point of view. On the other hand, the second type of market allocation arrangement should be made illegal.

The third type of market allocation arrangement, namely territory arrangements accompanying patent and know-how licensing, is very different from other restrictive practices, since it is based upon the proprietary right to patents and know-how. The main difficulty here is that a prospective licensor is often unwilling to let a prospective licensee use the technology and wants simply to export products from the home country, unless he is somehow protected at least to some extent from competition with the licensee. Thus, total prohibition of territorial restriction accompanying patent and know-how licensing will certainly retard, rather than promote, the transfer of technology, and will not be beneficial to the developing countries. Moreover, exclusive licensing arrangements are generally not illegal in most countries.

Such territorial arrangements should be made illegal, however, if they represent abuses of the proprietary right to patents and know-how. What is an abuse and what is not should be stated in the patent and antitrust laws of each country, according to which individual cases should be judged. There is no need here to discriminate between multinational corporations and domestic companies.

VII. COMMENTS BY J. IRWIN MILLER

The importance of this report is to be found neither in breadth of coverage, nor in originality, but rather in those matters to which the Group has given emphasis.

The Group was not able to meet for a long enough period of time to resolve its own varieties of opinions, and where there is agreement, it is quite often for very different reasons. Nevertheless, the report is valuable. It reflects much of the present (confused) state of thinking about multinational corporations, and it probably covers most of those actions which might be usefully undertaken now by nations and by the international community.

My own purpose in contributing to this section is to give added emphasis to some matters which seem to me of more importance than the treatment given them in the report would imply, and in a few cases to express points of disagreement.

Appropriate international action

Let us consider first the relative emphasis which the report gives to the international as against the national role in dealing with multinational corporations today.

For some of our members the need for new and continuing United Nations action in the field of multinational corporations is the single most important conclusion we have reached, because it sets in motion machinery which may some day lead to enforceable international regulation. They see multinational corporations as a necessarily disruptive and exploiting force for which national Governments acting individually are no match. International regulation therefore becomes essential. Since effective institutional machinery will take time to establish, the process must be set in motion now.

For others international action is only a supporting part of a broader programme in which the principal role is played by host Governments. These persons see relationships between multinational corporations and host Governments as imperfect. Both have acted in ways that produce defensiveness and tension in their dealings. Much has been learnt from these experiences which can be put to use immediately. A set of principles and practical actions promise better, more effective relations. International bodies can persuade and assist, but today only national Governments based on legitimacy and law have power to control the operations of multinational corporations.

For those who feel international regulation is urgently needed, Chapter III is a satisfactory result. For those more concerned with action at the national level supported by appropriate international action, the emphasis given by Parts I and II to the international role over the national role is troublesome.

In the world as it seems likely to exist for the remainder of this century, it appears to me wise to place first emphasis upon the importance of national action,

strengthened by better information, better communication, and with appropriate international support. If that be true, what, then, might be essential elements of such a programme, beginning with international support?

Improving the context

The single most worrisome condition in the world today is imbalance: starvation in large areas, surfeit in others; wealth in some parts, gross poverty in others; capital shortage in some nations, capital accumulation in others; raw material scarcity in some areas, raw material surplus in others.

Given today's mix of these imbalances and the fact that they appear to be generally increasing rather than diminishing, a historian could conclude only that they are a very real threat to global peace, and a provocation to revolution.

One would suppose that the growing scarcity of raw materials (not alone oil) would underscore the fact of economic interdependence. Instead the threat which it poses to consumption habits in developed countries seems to have intensified their determination to be "independent" wherever possible. For developing countries, on the other hand, seeking an end to dependence is not a struggle to be "independent" but to be interdependent.

There is a clear case to be made today for accelerated economic growth among developing nations, coupled with slower and restrained growth among the developed (high consumption) nations, but co-operation and self-restraint are not the characteristics of our day. Rather we see everywhere reductions in the flow of aid, reluctance to remove trade and monetary impediments, and continuing import restrictions imposed by developed nations upon third world products. A growing need for co-operation is being met with increased competition.

The single most important action which the United Nations might take concerning multinational corporations today, therefore, is that of persuading developed nations to reactivate and to fulfill their early commitment to developing nations for improving their legitimate access to wealth, food, education, research, and other resources.

Scarcity of non-renewable resources ought to give developed nations a very immediate (and selfish) reason to address anew the whole subject of development. In pursuit of access to supplies, however, they cannot concentrate solely on those countries which have what they want. The need for assistance is strongest in respect to those developing countries who do not possess an abundance of the natural resources which are in highest demand, and hence have few tools at their disposal for meeting a world situation which is rapidly placing them at ever greater disadvantage.

Unless accompanied by substantial increases in development aid, and major advances in co-operation on trade and investment, the contribution that multinational corporations can make to development is minimal. Foreign investment is only one of the means for development. Developing countries also need aid and new skills in order to manage industrial growth well. Otherwise, the world climate becomes adverse to multinational corporations, and there is little that they, acting on their own, can do about it. Governments of developed countries must take a new initiative. Success of United Nations action in persuading developed

countries to rededicate their own resources and skills to this subject dwarfs the importance of all other specific action recommended herein.

Restraint of extraterritorial reach

Restraint by Governments in extraterritorial application of their jurisdiction is another step toward improving the context in which multinational corporations operate. This is by no means a simple request to make. On the one hand, there is a natural inclination to reject extraterritoriality. On the other, when its use becomes the way to achieve a strongly felt purpose, there is often a national clamour for its application. This conflict in attitude is most clear between Chapter II and Chapter VII of our report.

In Chapter II the Group feels that "home and host countries should refrain from extraterritorial application of their domestic legislation, unless it is exercised under bilateral or, preferably, multilateral agreements". In Chapter VII the Group feels that extraterritorial demands should be placed on multinational corporations in respect to health and safety conditions, free collective bargaining, racial discrimination, without concern for bilateral or multilateral agreements.

Any group's judgment about what is best for everyone, however compelling the case, must be weighed against the dangers of trying to extend sovereignty beyond a nation's borders and the benefits of restraint in advancing international co-operation in today's world. Again, the United Nations has a major role in supporting national efforts to restrain extraterritorial reach.

Beyond its primary continuing role in convincing developed countries of the great need for improving international co-operation, the Group recommends to the United Nations three new initiatives in respect to multinational corporations:

- (1) Establishment of an international information centre;
- (2) Improving technical assistance to developing countries on bargaining;
- (3) Convening periodically a forum for dialogue.

I would like to offer the following supplemental comments:

Information and disclosure

In reading the report, the importance of information and disclosure can be missed. Some will be inclined to dismiss the recommendation as innocuous and proceed to seemingly more important issues. In fact it is most important precisely because it is a first practical step - about the only one that can be made effective now. Furthermore its impact may be greater than suspected.

(a) Increased disclosure would have an immediate self-policing effect on managers of multinational corporations. There is no more effective regulating device than requiring performance to be in public view. It is fair, if all competitors operate under the same condition.

(b) Governments of developing countries will be enabled to make better choices. While this does not assure best choices, it offers protection against making very bad ones.

(c) Tension would be reduced. Suspicion would be replaced by fact, much of which will be less offensive than imagined.

Effective management of the proposed information centre is more important than we have implied. There is considerable risk that the centre will never develop the capacity for adequate response. With large amounts of information to be processed, correct choices about what to do first will not be easy. This will require great insight and technical competence. People with such skills are rare and in highest demand. They are not likely to reside now within the United Nations organization. This suggests both the payment of competitive salaries and the widest possible search among Governments, academic institutions, and private enterprise to assemble a team of highest calibre. Short of a committed effort of this nature, the information centre will be only another bureaucracy.

Technical assistance

Technical assistance is a promising adjunct to the work of the information centre. The preparation and presentation of truly useful advice to Governments of developing countries on dealings with the present great variety of industries and firms may, however, prove more difficult than anyone imagines. The standards of competence for people chosen to perform this function can be no less exacting than for the information group. A service not mentioned in the report and perhaps even more promising and closer to the core of United Nations expertise would be technical advisory teams to multinational corporations on their entering a developing country.

A continuing forum

The deliberations of the Group have been a clear demonstration of the need for continuing discussion. Each of us came with preconceived views. These have undergone revision as we talked, and not all of this is captured in our report. Similarly, the world situation has changed dramatically during the period of our discussion, and the probable effects of these changes are not adequately represented in the report.

All this is illustration that today's formulations and recommendations become quickly obsolete and ineffective. For this reason, as long as multinational corporations remain a cause for concern, continuing dialogue is necessary.

The Group feels for varieties of reasons that a first order of business for such a forum is drafting a code of conduct, which, if wisely written and continuously amended by experience, could give helpful direction to efforts of host countries. It could also serve to put multinational corporations on notice as to probable future developments.

To date attempts at such codes have suffered from two major shortcomings:

(a) They reflect all too clearly the interest and bias of their authors -- a pitfall the Commission here proposed should strenuously endeavour to avoid.

(b) Too often these codes state desired ideals. Such statements usually are too broad to be useful and often result in endorsement of conflicting aims.

Instead, serious consideration should be given to a code which states minimum acceptable standards for both Governments and multinational corporations. Such a code might well be of immediate benefit, and its provisions could begin to appear in national bodies of law.

Appropriate national action

Multinational corporations' role in development

That multinational corporations do have some role in development has nearly universal acceptance. The exact dimensions of this role and its limitations are less well recognized. Too often multinational corporations are criticized for not accomplishing what is clearly outside their area of interest or competence. The report points out that multinational corporations produce products which do not serve priority welfare needs, and which may increase the maldistribution of wealth, that multinational corporations fail to do sufficient local research and development.

A multinational corporation cannot for long or in major degree act contrary to its own economic interests or outside its own fields of expertise in a given circumstance. If it does, it serves poorly; it suffers competitively; and ultimately it invites action from its shareholders.

Multinational corporations must act responsibly and sensitively in each situation, but, for them to be of maximum value to a developing country, the host Government must accurately appraise the specific strengths of each multinational corporation and construct a situation and set terms of entry which guarantee, on the one hand, that the multinational corporation is attracted to enter, and, on the other hand, that its activities truly advance the national programmes of the country involved.

The first page of Chapter I describes the contribution multinational corporations can make to development. Their capacity for accelerating economic growth and for technological transfer are unequalled. For this reason they are highly sought after by developing countries.

However, technological "know-how" transferred from person to person should be distinguished from knowledge embodied in books and from technology designed into machines. People who know how to get things done are a multinational corporation's most valuable resource. It is misleading, therefore, to suggest that the price of technology can be reduced. In a world of growing scarcity, know-how is in terribly short supply. Multinational corporations will not sell it cheaply.

Furthermore, know-how is not static but is instead constantly changing and advancing. Its transfer is often a long-term process and may conflict with national desires to control and to employ only national managers. Control of local affiliates, in so far as it means keeping them responsive to national objectives, is of great importance to the host country. Control of local affiliates, in so far as it means keeping the level of production quality, profitable management, and compatibility up to the world-wide standards of the multinational corporation, is also vitally important to the multinational corporation itself.

The report does not give adequate recognition to complexities of the

interrelations between cost of know-how, nature of know-how, importance of control both to the host country and to the multinational corporation, and the difference between control and ownership.

There is also the matter of genuine research. As wages and volumes rise, the necessary skills of engineering and manufacturing processes tend to be built more and more into equipment and instrumentation itself. Even when technological know-how becomes eventually embodied in machinery and capital investment, the technology of genuine research will continue to be embodied in men and women.

The urgency felt by developing countries for possessing their own research capability will continue for some time to be a frustration to them. A half billion dollars can erect and probably place in operation anywhere a sophisticated oil refinery or a truck plant. But all the money in the world cannot within a decade create a new MIT, or Cambridge, or Bell Laboratories.

Basic research, which is at the bottom of all technical advance, will for the foreseeable future be concentrated in those areas in which the fundamental disciplines of knowledge are present in greatest profusion and quality, and where also the funds are available for conducting this increasingly expensive activity.

This statement applies not only to universities and to institutes of government, but especially to research activities of the most advanced private enterprises, national or multinational. There is a logic for gaining supporting funds from as broad a volume base as possible. Without the economic base of American Telephone and Telegraph, Bell Laboratories could be supported only by means of excessively heavy charges to customers.

Centralization of research may well change over the next century, but it will not change much in the next 20 years. Developing countries need to begin now the prudent development of institutions which in the very long view may, if guided with foresight and intelligence, become the equal of any.

Bargaining power

Multinational corporations have a valid but limited role in development, but with the exception of extractive industries, it is not at all clear that they have been or will be eager to invest in developing countries. Many of the recommendations in Parts I and II call in one way or another for constraint, regulation, or special conditions for operations of multinational corporations. Taken one by one most of them merit consideration by host Governments. The cumulative effect of all these recommendations, however, implies, as the basis for effective enforcement of controls, that developing countries can count on the indiscriminate eagerness of all multinational corporations to invest in any developing nation.

This eagerness is considerably overstated. Developed countries with their larger markets, greater per capita consumption, and sometimes more stable Governments, will usually offer a more attractive home for a multinational corporation affiliate than will a developing country. Hence the importance to the host country of offering attractive conditions for entry, if it is to be in a strong position to bargain for those specific services of the multinational corporation which it desires to obtain.

Bargaining strength of any host Government rests primarily on the quality, size and stability of the market it offers. The more attractive and important the opportunity, the more effectively a developing country will be able to bargain.

(a) Stability - If a multinational corporation feels an investment prospect is subject to high risk of loss, it is obliged to seek both a commensurately higher rate of return and a means for assuring that the return is not lost to it. Such an investment must promise more sooner. When long-term prospects are perceived to be predictable and stable, the anticipated return can be lower, and the incentive is often to reinvest earnings rather than to draw them out.

Stability rests on the wise and able performance of host Governments in managing effective and fair societies. Governments, to maintain a broad level of support, must conduct well their economic affairs; they must give some voice to differing points of view; they must be responsive to urgent needs, and they must show concern about inequality of wealth distribution and about social justice and injustice. Stability in today's world means that inequalities are perceived to grow less and injustices to diminish.

Degree of stability is not an easy judgement for multinational corporations to make today. Apparent stability is too frequently coupled with repressive policy and terrorism. Too often there is insensitivity to the problems of wealth distribution and excessive emphasis on growth first. Recent history seems to make it clear that without change in such policies, apparent stability may be short lived - a fact that multinational corporations will have to weigh increasingly in their decisions.

(b) Size - Broader distribution of wealth also results in larger, more attractive industrial markets. The larger the market which is as yet unsatisfied, the greater the incentive to invest. Sufficient size of market also allows room for competitors, increasing the responsiveness of each firm to the needs of the market.

Where a country does not, within its borders and without exports, present a market sufficient to justify a minimum investment by a given industry, no amount of short-term incentives will attract that industry. In bargaining with multinational corporations, therefore, developing countries must be careful not to "give the shop away" with special tax exemptions and closed borders, or enter into ruinous competition with their neighbours.

In such cases, regional groupings with regional bargaining, while not without their own considerable demands for co-operation among Governments and not without their present unsolved problems, nevertheless hold promise of immediate benefit to the nations involved.

Need for sophisticated understanding

Calling for increased understanding appears too obvious to be very helpful. Insufficient efforts at understanding remain, however, a major short-coming in relations between multinational corporations and developing countries. Neither party can escape criticism.

A good negotiation is one that is good for both parties. With insensitivity,

indifference and presumption on both sides, it is not surprising that poor decisions, unsound policy, and eventual tensions result. Need for greater sophistication can be demonstrated in many ways. To name a few:

(a) Rapidly obsolescing contracts - The meaning of a contract varies between cultures. For some it is a fixed and binding agreement governing relations over a protected period. For others it is a general statement of intention, with specific terms to be worked out as experience unfolds. If such differences are not understood, each party finds the other's behaviour unreasonable, and mutual trust disappears.

The most wisely constructed terms are unlikely to stand for long against today's rapid pace of change. Hence provision for periodic renegotiation makes good sense, a fact which western enterprises in particular find most difficult to understand.

(b) Inappropriate policies - Without detailed insight and knowledge about how a multinational corporation operates, a host Government cannot hope to establish sound policy. Too much emphasis, for example, has been given to ownership as a means of guaranteeing responsible performance by the multinational corporation. While it may have symbolic value, stock ownership may not in many cases assure what the host country seeks. A sophisticated combination of law, agreement, and share ownership is required to assure that an affiliate is responsive to national goals without cutting off the flow of benefits that accrue from being part of a multinational corporation.

Multinational corporations, however, can be expected to become increasingly responsive to demands for local ownership. During the past decade multinational corporations have increased their debt to record, and in many cases maximum, levels. There is currently insufficient capital to undertake some very promising ventures. Creative divestment may be a necessity for multinational corporations in the coming decade; they may also in many cases require the presence of local equity in new ventures - if they are interested in them at all. These developments tend to equalize bargaining positions, and may well work to the advantage of host Governments in coming years.

(c) Lack of concern for development - The principal reason a developing country asks a multinational corporation to operate within its borders is to aid its development - a deceptively simple assertion. Yet few executives of multinational corporations are familiar with the development strategy and plans of host Governments, and fewer still take into account the national strategy and plans in the conduct of their own affairs. To what extent are local goals a factor, as the multinational corporation designs its venture? As it evaluates its performance? Without concerning itself with such questions how likely is it that its operations will benefit development, and in the longer run will make the multinational corporation continuously acceptable to the host Government? Multinational corporations, for their own survival, need to identify more strongly and intelligently with national plans and priorities.

Planning and controls

The Group has been a strong advocate of national planning as a prerequisite for production relations with multinational corporations. In actual fact, however,

efforts at State planning have not in history been outstandingly successful, and have often been disastrous. The report does not give adequate recognition to the difficulties of successful planning, nor to the very considerable competence required, if one is to commit to it.

Nevertheless, developing nations with scarce resources and expensive choices must clearly persevere in their pursuit of effective national planning, simply because there is no other option.

Indiscriminate economic growth can be dangerous to a developing country. The best international, large corporation in the world, pursuing with complete freedom its own goals and objectives, will not necessarily and automatically serve the objectives of a given host country. For this reason certain concepts of planning ought to be given greater emphasis:

(a) Real cost of technology: The greatest cost to a developing nation in acquiring technology is to make the wrong choice. With limited resources to spend, a poor choice is disastrous. The cost of misdirecting resources away from needs of highest priority makes the costs of licensing fees, profit remittances and the like insignificant.

(b) Technology of choice: National development is a complex system of interactions often beyond the capacity of human beings to predict. Today's computer technology offers great promise both in processing large amounts of data and in constructing and testing large, dynamic models of complex processes. This technology and know-how is probably the most important technology for a developing country - not the capability to manufacture computers, but the capability to use them. Traditional technologies may bring more immediate results, but no other technology is more important to long-term advances.

(c) Lowest total cost: In the selection of multinational corporations there exists considerable concern over finding the most appropriate technology of production to fit local needs. A frequent question is whether or not it is sufficiently labour-intensive. This neglects a more basic concern: an appropriate technology is one that serves priority development needs at the lowest total cost (both social and economic) for the projected level of production.

If, for example, providing jobs today is the priority, the technology selected should be one that is by its nature labour-intensive - otherwise the host country will bear the added costs either in low wages or a higher cost to the local buyer. The alternative, to select a technology which is by nature capital-intensive and choose to perform it in a labour-intensive manner, is disastrously expensive.

Willingness to say no

One theme is central to the entire discussion: if a deal does not naturally fit a nation's over-all development scheme, it is best not done. There is no bargaining power without the willingness to say no. Absence of multinational corporations is probably better than multinational corporations without a national plan or multinational corporations that do not conform to plan.

The genius of business over time has been its capacity to operate profitably in a variety of circumstances. It is far better at reacting than at acting. If

most countries will gain the abilities and skills to define their terms of entry and relate them with precision to their long-term goals of national development, they will find multinational corporations to be extraordinarily skilful in adapting to and in discovering how to operate profitably within new varieties of circumstances. Some multinational corporations have always proven more responsive to local needs of individual developing countries than have others; they should in time turn out to be more viable. The message to host Governments is clear: there is no need to perpetuate the practice of accepting adverse terms as a condition for economic growth, but there is the greatest possible need to gain skill in setting terms of entry and in forecasting their results.

Labour

The Group did not have time to prepare a finished report. Conflicting ideas have not been brought into sharp contrast. The report is often inconsistent in application of principles, as in the case of extraterritoriality. At times it is too assertive without supporting rationale. Throughout, conclusions are based on judgement and inference rather than upon critical analysis and evidence. Often judgements are made that are too simple, such as the uncritical endorsement of central planning.

Chapter VII on employment and labour is especially susceptible to these criticisms. Organized labour's concern about the increased bargaining power of national companies who grow into multinationals is understandable but overdrawn. The issues are complex rather than simple and require considerable elaboration to understand. While inadequate, the following comments seem important:

(a) Mobility of capital: This is not as great as is imagined. A multinational corporation often does have choices as to where to invest, while a worker, especially in developing countries, has little mobility beyond his area. However, once a multinational corporation has made its choice, built its plant, installed its machinery, it has lost most of its mobility, and it must make that investment productive where it is. On the other hand, the workers in a particular plant do have considerable mobility within their area, as is demonstrated by normally high labour turnover rates in developing countries.

(b) Strikes: The majority of strikes are for two weeks or less. This period is so short that any attempt to shift production internationally could not be accomplished in time to have noticeable effect. Even in the case of strikes of a month's duration production patterns cannot normally be changed in time to make a difference. As a matter of fact, given the growing internationalization and consequent interdependence of production, it is more often likely that a strike at a multinational corporation's plant in one country may well disrupt and curtail production in a plant of another country.

Sympathy strikes might well have been appropriate in simpler times when labour was struggling to gain its power against determined opposition. Now, however, in the great industrial nations, big unions are generally accepted and are as formidable a force as big business. Both wield a significant economic and political power. Therefore sympathy strikes in such countries are less appropriate, and can be sufficiently disruptive to the whole economy so that developing nations should consider all their effects carefully. When big business and big labour achieve significant power, the countervailing force in industrialized societies must then be government - to prevent disputes from damaging the nation as a whole.

The whole mechanism of strikes as a means of settling labour disputes ought to be examined by developing countries. Clearly, in the major industrial nations, it has become costly to workers and shareholders alike. In respect to labour relations, as well as in other matters, developing nations should seek to learn from the experiences of the other industrialized nations, not simply to copy them.

(c) Involvement of Headquarters: Obviously, travel by both multinational corporation personnel and labour union personnel is desirable. Host countries may decide to restrict such travel, and that is their right. Local unions may decide to pursue their own course, and that is their right. Union travel should be at the expense of the union, as management travel is at the expense of the multinational corporation.

(d) Production Shifts; Worker Participation: When production is shifted from one plant to another within a country, or from plant to plant between countries, the enterprise should inform its workers and public as soon as practicable, and devise plans to make the shift as little disruptive as possible.

Host countries should provide adequate adjustment compensation and retraining, and raise funds in such manner as they consider appropriate.

Worker participation in decision-making of this kind and others is, however, difficult to achieve - for two reasons:

(1) Different groups of workers very often have opposing interests. The workers in the country to receive a new plant or expanded production will be naturally anxious for the increased job opportunities to become a reality. The workers in the plant to be reduced or closed will want to retain jobs at almost any cost.

(2) When workers through their union are a party to a management decision, then individual workers within the union who disagree and feel aggrieved have no representation for their grievance.

Appropriate workers' participation in industrial enterprises is of critical importance in the development of a fully democratic life. Many patterns exist, and new ones constantly appear. None are as yet wholly effective or satisfactory.

The reason is that parliamentary tradition is not as appropriate to the conduct of a competitive business enterprise as it is to the conduct of a nation. A democratic parliament can determine within broad limits both the income and the expenses of government. Hence it can logically be composed of parties at interest: geographical, occupational, etc. A commercial enterprise, however, to be long successful must regularly balance the interests of all its stakeholders, workers, shareholders, customers, suppliers, communities. Government by parties at interest does not seem the most appropriate form here, and could even be destructive. Developing countries would do well to avoid the unsuccessful extremes of the past and search for new models.

Summary

How then should the Group's report be read? The language of Parts I and II seems to indicate a bias against multinational corporations, blaming them for what in many cases they cannot be expected to do, implying that they will accept any

restriction in order to enter a developing country. On the other hand, the cumulative effect of the recommendations proposed may well be to the disadvantage of developing countries, making investment in the older established industrial societies more attractive than investment in the developing societies of greater need.

The report does not forcefully present the present views of developing nations, the very real sense of frustration which we heard in our testimony, the depth of the feeling that they have been, more often than one supposes, ill-used.

But the report does give a good example of the current state of dialogue around the subject of multinational corporations. While multinational corporations are a proper focus, the behaviour of nations is also a genuine part of the problem: the internationalization of production in a world of intensified national feelings.

The intervention of the United Nations in appropriate form is timely. Its role however is supporting, not ruling. Its competence must be of the highest. It must sustain the world dialogue, which is only now beginning. And it must speak as forcefully to nations, and most especially developed nations, as to multinational corporations.

VIII. COMMENTS BY HANS SCHAFFNER

The following comments are not to be interpreted as a total rebuttal of the report and all its recommendations. I agree that certain actions be taken; in particular, I support the proposals for the establishment by the Economic and Social Council of a commission on multinational corporations, as well as the creation of an information and research centre on multinational corporations.

The differences of opinion are partly due to what I consider incomplete and sometimes faulty analysis. The report shows a tendency to propose solutions before the problem under discussion has been properly identified and defined.

Part One: General report

1. General remarks

The report with its recommendations is based on the premise that the contribution made by multinational corporations to the development of the third world can be enhanced most effectively by strengthening the bargaining power of the developing countries and tightening controls over multinational corporations. In my view this premise is simply not correct and even leads to counterproductivity. This, combined with the completely theoretical approach of the report and its disregard for fundamental legal principles, compels me to submit the remarks which follow.

The report should have spelt out more explicitly and in greater detail the aims which ought to be pursued. The general impression is that multinational corporations are less than welcome in the developing countries, mainly due to alleged misconduct on the part of multinational corporations. This erroneous assumption unfortunately results in certain emotional, untenable conclusions and recommendations. Such a complex subject demands a strictly objective analysis ultimately leading to a "balance sheet", itemizing reliable debit and credit sides.¹ The report, with painstaking care, has developed the negative aspects of multinational corporations, whereas the positive features are only listed without emphasis. Let me now try to restore the balance by putting forward a few of their many beneficial contributions.

- mobilization of capital for productive purposes;
- assumption of the very substantial risks inherent in such projects;
- facilitation of diversification;
- development of ancillary industries (spin-off effects on local manufacturing);
- creation of new, more diversified and better-paid jobs;
- improvement of the quality of labour;

- contribution to the substitution of imports and to the growth of exports;
- increase in direct and indirect public revenue;
- provision of new products essential to developing countries at a very early stage.

Developing countries must weigh such substantial "fringe benefits" very carefully against possible negative effects when evaluating an investment proposed by a multinational corporation.

I recognize that, on occasion, acts of misconduct by multinational corporations have occurred. But this is not a special characteristic of multinational corporations, any more than it is of any enterprise. Multinational corporations as well as national corporations - whether based in capitalist or centrally planned economies, whether private or State-owned - are in this respect no better and no worse than international organizations, labour unions or even Governments themselves. "The flesh is weak"; therefore, man is by nature imperfect, a characteristic which is inevitably reflected in the institutions he runs. There are a few men who, unfortunately, are conspicuous for their disagreeable character and unfair actions, but this does not justify blanket condemnation of multinational corporations or of any other institution in which they happen to be employed. The report should have examined whether the issues raised by the multinational corporations are unique or whether they are, as a number of studies indicate, simply part - even of a very important one - of the general problem of foreign direct investment. 1/

It is worth noting that the European Commission, after extensive study, has come to the clear conclusion that there is no need to draw up special legislation for multinational corporations. This reinforces the principle of national treatment, 2/ which is established in international law.

The report recognizes different kinds of multinational corporations, but nevertheless comes to the unsubstantiated conclusion "that there are certain aspects of international production common to all multinational corporations". This sweeping approach must lead to general solutions which do not fit the specific problems. Since there are fundamental differences between the basic categories of multinational corporations, giving rise to divergent and individual problems, the report should have drawn the necessary conclusions from the fact that multinational corporations are divided into well-defined categories: 3/

1/ Cf. also the Report of the Council on International Economic Policy, Washington 1974, p. 17: "During the past several years there have begun a number of efforts to examine the activities of multinational corporations. The studies indicate that, with a few exceptions, the multinational corporations do not present unique problems, but only different aspects of the general problems associated with international investment" (emphasis added).

2/ According to this principle a foreign-owned company must not be treated less favourably than or differently from a national one. For further discussions cf. part Two, chapter 8 of my remarks.

3/ The distinctions to be made - there are many others than those listed below - depend on the nature of the problems: Cf. Jack N. Behrman, Decision Criteria for Foreign Direct Investment in Latin America, New York 1974, p. 1, 2 and 62.

(a) Extractive industries (mining, petroleum drilling, agriculture, etc.) which use and develop the natural resources of a host country and ship the results of their operations (refined or unrefined) mainly to industrialized countries;

(b) Manufacturing industries, which transform raw materials, basic and intermediate products into goods

- for use or consumption mainly in the host country;
- mainly for export (labour-intensive products in the case of developing countries); 4/

(c) Service industries, banking, commerce, 5/ insurance, tourism, communication, transportation, management consulting, advertising, etc.

Moreover, it has to be realized that the issues to be considered are different according to the nature of the countries involved. There are "three worlds of economics" 6/ and, hence, of issues:

(a) The highly industrialized capitalist countries are in a position to face issues which may arise in connexion with the multinational corporations by themselves 7/ or within the framework of the European communities and the OECD;

(b) Socialist countries with State-owned industry deal directly with multinational corporations and do not need assistance from an international organization to decide, for example, what technology to acquire from a multinational corporation, and on what terms;

(c) Some developing countries - particularly those poor in natural resources - complain of a lack of bargaining power, of insufficient negotiating experience and too few available experts and project evaluators. The United Nations, with its great tradition in the field of development aid, can take on the task of assisting developing countries in their needs without difficulty and without having to build up too large and too costly a new bureaucracy.

Furthermore, the report takes too little account of the fact that in a small or medium-sized country, with a limited domestic market, every company of any size is forced to "go multinational". The report thus discriminates

4/ World-wide this subcategory of the manufacturing industries is far less important than the other, but the report uses features conceivable in this small segment only for several of its particularly sweeping recommendations.

5/ The monopoly corporations of socialist countries are becoming more and more multinational in this field and have even penetrated international production. Cf. in this context Raymond Vernon, Apparatchiks and Entrepreneurs: US-Soviet Economic Relations, in: Foreign Affairs, Vol. 52, New York 1974, No. 2, pp. 249-262.

6/ Lloyd G. Reynolds, The Three Worlds of Economics, New Haven and London, 1971.

7/ As are certain large developing countries.

disproportionately against the multinational corporations based in "little league" countries, and, indeed, against those countries themselves.

The report attempts to be useful to the developing countries by overwhelming them with recommendations. Less would have been more, because it is not made clear that several of the proposed courses of action lead to clear either-or alternatives. Nobody can have his bread buttered on both sides. If a host country prefers an intermediate of technology (which is not very economical but creates a large number of new jobs) instead of going for highly capital-intensive competitive automation, it has made a choice which inevitably excludes competitiveness on the export side. Another example might be a host country striving to strengthen its own technological capability so that it can continue its future development on the basis of self-reliance. Such a country could not then contemplate the drastic erosion of the industrial property system which is at the same time an indispensable condition and a vital incentive for the creation of any domestic research and technology.

2. Investment climate 8/

The report, in making certain recommendations, fails to recognize that multinational corporations operate according to the market economy system and must base their decisions on economic reality and rationality. The decision to go or not to go into a particular country and to develop and expand there depends mainly on its investment climate. Multinational corporations are, for obvious reasons, unwilling to invest in countries where arbitrary and discriminatory measures are taken against foreign-owned corporations. Regrettably, the international investment climate is worsening rather than improving. Even businessmen in developing countries are "deeply concerned by the deterioration of the investment climate in our countries and the impact which this may have on development". 9/

A good investment climate does not mean that host countries must extend special favours to foreign investment, like tax incentives, tariff protection, etc. What multinational corporations are really interested in is political and economic stability, sanctity of contracts, sufficient clarity of regulations, 10/ absence of expropriation (or at least prompt, equitable and effective, i.e. transferable compensation in the even of expropriation), non-discrimination (or national treatment, cf. part Two, chapter 8 of my remarks), permission to import the necessary capital and to repatriate adequate earnings, not too much Government interference in the efficient operation of the affiliate and - in the case of manufacturing

8/ Cf. also part One, chapter 4, last paragraph, the text to foot-note 19 and part Two, foot-note 31 and chapter 8, para.2.

9/ G. J. Vollmer, Statement to our Group, p. 12.

10/ This includes planning. One should realize, however, that central governmental planning alone is no guarantee of success. In fact, "economic plans of developing countries are often quite unrealistic so that if a foreign investor were expected to comply precisely with government guidelines, it could not operate successfully". Jack W. Behrman, (quoted in foot-note 3), p. 43.

industries mainly supplying the host country's market - sufficient freedom to develop the business, to innovate the product line, etc. 11/

Many of the report's recommendations - while motivated by the laudable aim of improving the situation of developing countries - would, if put into effect, be contrary to the interests of the third world 12/ and be in flagrant contradiction of paragraph 50 of United Nations General Assembly resolution 2626 (dated 24 October 1970) concerning the "International Development Strategy for the Second United Nations Development Decade". 13/ This would be highly counterproductive, and would also reverse the trend toward the progressive inclusion of developing countries within the international division of labour, which has characterized the post-war period.

3. Rational allocation of efforts

All work in connexion with multinational corporations, including that within the framework of the Economic and Social Council, must be guided by the following three principles:

(a) Subsidiarity, i.e. problem-solving should be delegated to the lowest possible level in the hierarchy because it is closest to reality and has at its disposal most of the elements essential for evaluation; 14/

(b) Regionality, i.e. a kind of geographical subsidiarity, which stems from the fact that problems may be more easily solved in regional groupings (because there is a much greater "family resemblance") than on a world-wide scale;

(c) Speciality, i.e. a kind of "problem-oriented" subsidiarity, which means that those national or international organizations having the greatest expertise on specific issues should be charged with the study of those issues.

A time- and cost-saving division of labour between the world-wide United Nations Organization and recognized regional organizations (e.g. OECD and EEC) is easily accomplished. These organizations should meet together and carefully allocate each task to the one best qualified, taking into account the three principles mentioned above.

11/ Cf. ibid., pp. 50-52, 77 and 87.

12/ The Pearson Report recommends: "A start must be made on improving the general climate for all private investment, foreign and domestic". Lester P. Pearson, *Partners in Development*, London 1970, p. 105.

13/ "Developing countries will adopt appropriate measures for inviting, stimulating and making effective use of foreign private capital, taking into account the areas in which such capital should be sought and bearing in mind the importance for its attraction of conditions conducive to sustained investment" (emphasis added).

14/ The principle of subsidiarity is recognized both in public law and economic policy. Cf., for instance, H. Krüger, *Allgemeine Staatslehre*, 2nd edition, Stuttgart etc. 1966, pp. 772-775; O. v. Nell-Breuning, *Das Subsidiaritätsprinzip als wirtschaftliches Ordnungsprinzip*, in: *Wirtschaftliche Entwicklung und soziale Ordnung*, Vienna 1952, pp. 81-91.

The report should have emphasized the risk of duplication and also have indicated practical ways of avoiding it. The special agencies in the United Nations system which already deal with multinational corporation issues falling within their area of competence should continue to keep the lead in their fields. Examples are labour rights and wage policies, which are the prerogatives of the International Labour Organization (ILO) and co-operation between the developing countries and multinational corporations which is dealt with very competently by the "Industry Cooperative Program" (ICP). There are also independent bodies working very closely with the United Nations which could be charged with special projects. I am thinking of the World Intellectual Property Organization, Geneva (WIPO) for instance with its programme to facilitate the exchange of patent information and to encourage technology transfer to developing countries.

A working party of generalists such as ours, even though some members are experts, but in quite different areas, should have dealt only with basic and general issues. Technical questions calling for special expertise should not have been considered but should have been left to groups of specialists.

For example, on the question of the special tax issues, the ad hoc group of tax experts set up by the Secretary-General of the United Nations is already at work. Our group should have waited for a report from this committee before taking a definite stand on this very complex problem.

4. Legal aspects

The legal aspects, although of fundamental importance, are scarcely taken into account in the report. Many vague legal terms are used which could lead to varying interpretations and to misunderstandings.

It seems to me a matter of urgency to spell out clearly what legal authority the United Nations and the Economic and Social Council actually possess. Unlike nation States and confederations of individual States such as the European Economic Community, international agencies have no sovereignty, no "suprema potestas". They have - at best only delegated authority. The United Nations and the Economic and Social Council have no power of their own, but can act only as agents of their member countries. They cannot deal directly with the persons and enterprises of their members. They have no right to demand information from multinational corporations, or prescribe and enforce norms of behaviour.

The Economic and Social Council and its commission on multinational corporations could not compensate for their lack of legal authority by indirectly enforcing compliance with rules which are not binding. Therefore, it would be inappropriate for the Economic and Social Council or its commission on multinational corporations to attempt to obtain "voluntary" disclosure of information or compliance with certain rules of behaviour by "moral coercion". Such pressure might take the form of threatening multinational corporations that refusal to disclose or comply would be made public, e.g., in an annual Economic and Social Council report on multinational corporations. Such an approach would infringe the sovereignty of the home and/or host country. The recourse to indirect enforcement would moreover impede progress towards solutions based upon agreements which are so urgently needed in this area. In point of fact, there is no choice: rules and regulations can only be enacted on the basis of ratification, i.e. with the consent of the countries concerned.

Every multinational corporation is subject to a multitude of often very divergent controls, i.e. to those of its home and host countries. To super-impose a single international authority would only mean an additional control resulting in a new problem but not a new solution. If there were no conflicts of interest among the countries involved (which is rather improbable), then there would be no need for international tutelage. But since conflicts of interest are inevitable, control by an international body would represent an infringement of the sovereign rights of nation States. Such international arbitration would be highly desirable for the multinational corporation but is purely theoretical and absolutely unattainable in our lifetime, because all the countries involved would have to transfer the corresponding authority to that international body. Thus, as long as there are individual countries with sovereign rights of their own, the idealistic theory of international accountability is likely to remain a dream. Co-ordination, not proliferation of controls is the solution.

The Economic and Social Council can appoint a committee to study the multinational question, but, according to the Roman maxim "nemo plus iuris transferre potest quam ipse habet" (nobody can transfer more right than he has himself), it possesses no more authority than the Economic and Social Council itself. The proposed Standing Committee on multinational corporations to be established by the Economic and Social Council is to be entrusted, inter alia, with the task of co-ordinating the work of other international agencies. If such a commission were to be composed of private persons of different backgrounds serving in their capacity as individuals and nominated by the United Nations Secretary-General, they would, in a sense, be superior to the government delegates to the international agencies whose work they would be supervising and co-ordinating. It is highly unlikely that Governments would agree to subject their representatives, whom they have designated to represent their sovereignty, to the authority of a commission so composed. The concentration on extreme cases to support the recommendations of the report is clearly improper. It flies in the face of one of the fundamental rules of law: legislation in any specific field must be focused on the typical and normal situations and extreme cases avoided, in order to prevent distortion. ^{15/} When considering such typical and normal situations, the appropriate distinctions must of course be drawn.

The Group recommends "that in the initial agreement with multinational corporations, host countries should consider making provision for the review, at the request of either side, of various clauses of the agreement". In the argument leading up to the recommendation it stresses the point that "a willingness on both sides to renegotiate agreements which have been in force for more than, say, 10 years could help to avoid recourse to extreme measures". Such a demand for periodic review would turn out to the disadvantage of the multinational corporation (which is evident), but also to that of the developing country (which may not be as evident). The stringency of such a provision would result in a foreign investor being forced to insist on full payback within a very short period, which means higher returns over a shorter time.

Many foreign investments are made without any formal agreement, and in such cases a review would not be practicable. The proposed review would even include

^{15/} Cf. Ernst Jünger, Typus, Name, Gestalt, Stuttgart 1963; Arnold Koller, Grundfragen einer Typuslehre im Gesellschaftsrecht, Freiburg 1967.

the basic economic pillars of the investment, which makes the whole venture highly hazardous and aleatory. To avoid such insisted that "the benefactions of a prince ought to be lasting" ("beneficium principis debet esse mensurum"). On the other hand all foreign investors would certainly agree if the review were restricted to those secondary terms of the contract where, since the signing of the agreement, the circumstances have fundamentally changed to the substantial disadvantage of one party while unduly benefiting the other (e.g. foreign currency clauses). In fact, there is no need at all to make explicit provision for such a review because it would be automatic, under accepted rules of law, if conditions should change fundamentally ("clausula rebus sic stantibus"). ^{16/} Indeed, according to the international principle of Security of Law, it would be indefensible to overthrow the fundamental legal principle of the sanctity of contracts.

Part Two: Some specific issues

1. Ownership and control

The report recommends that host countries should give consideration to the establishment of joint ventures. It is a pity that the recommendation does not spell out what even the report admits in the preceding analysis, i.e. that such a solution may not be advisable under all circumstances. ^{17/} The success of a joint venture depends, to a large extent, on whether or not the local partner can make a valid contribution of any kind to the venture. ^{18/} In certain sophisticated technology industries which call for a continuous flow of technical assistance and innovative services (particularly in industries such as electronic computer and pharmaceutical specialities) it is extremely unlikely that a local partner could make a valid contribution. Therefore, joint ventures in such fields are uneconomical and uncompetitive. Moreover, there are indications that "joint ventures pay larger royalties and fees for know-how and management than do wholly owned subsidiaries". ^{19/}

The report also recommends that host countries negotiate with multinational corporations on the gradual divestment of equity interest. While this approach may be acceptable under some circumstances within certain fields, it is

^{16/} Cf. Black's Law Dictionary under "rebus sic stantibus".

^{17/} Vernon, once an advocate of joint ventures, has now concluded that they may be counterproductive and can backfire on the interests of the developing countries. Cf. Raymond Vernon, Restrictive Business Practices: The Operations of Multinational United States Enterprises in Developing Countries. Their Role in Trade and Development, United Nations, 1972. Jack N. Behrman (quoted in foot-note 3), p. 7: "Joint Ventures tend to prevent integration and decentralization". A study published by the Banco Los Brasileiro on the Brazilian situation comes to a clear conclusion "that few (joint ventures) have proved entirely satisfactory. The reasons for this are multitudinous". Paul Griffith Garland, Doing Business in and with Brazil (São Paulo, 1972), p. 36.

^{18/} In certain industries, such as textiles and foot-wear, joint ventures are feasible, and, in fact, quite common.

^{19/} J. M. Stopford and L. T. Wells, Jr., Managing the Multinational Enterprise; Organisation of the firm and ownership of the subsidiaries, London 1972, p. 122.

counterproductive in the above-mentioned speciality industries. The report should have brought this fact to the attention of the developing countries, so that they can carefully weigh the pros and cons and make sure that the rational prevails over the emotional.

There are many instances where multinational corporations, as part of their corporate policy, sell parts of the equity of their affiliates to local investors. However, where a host country insists on progressive divestment there comes a breaking point at which the multinational corporation can simply no longer comply and will leave the country to seek a more favourable investment climate. 20/

The many successful experiments with local ownership apart, there are other cases where a multinational corporation hesitates to open the equity of its affiliate because it wants to avoid the risk of interference with efficient management. A new investment does not, as a rule, realize substantial profits in the initial years of its existence but rather represents a financial burden on the owners. The parent company, as an industrial stockholder, can live with this because it has an extended time horizon and considers the long-term prospects of its affiliate. The individual non-industrial stockholders, on the other hand, having "a shorter time horizon", 21/ insist on obtaining an immediate and substantial return in the form of dividends. 22/ When profits are finally realized, the parent company may prefer to reinvest them while the local stockholders prefer a steady flow of dividends. Other issues such as quality standards, promotional principles, royalties and transfer prices are likely subjects for never-ending discussions. Furthermore, "good management is scarce and it is not in the interest of their (the multinational corporations') shareholders to spread this management over other people's money. Safeguarding secret but not patented processes and protecting the quality and the good name of branded products are additional reasons". 23/

Further difficulties with local minority and - even more so - majority stockholders may arise when economic conditions require an increase in equity capital. If they participate in proportion to their share in the equity they may well divert already scarce local funds from national ventures to foreign ones. But the existing local stockholders may very well be unwilling or unable to subscribe to these shares, and potential new investors may find themselves in the

20/ Jack N. Behrman, (cf. foot-note 3), p. 16: "Governments can, therefore, impose a variety of restrictions which will be borne by companies for a time, but at some point the weight of restriction can become too heavy, inducing a major shift in operation" (emphasis added).

21/ P. N. Rosenstein-Rodan, Multinational Investment in the Framework of Latin-American Integration, in: Multinational Investment, Public and Private, in the Economic Development and Integration of Latin America, Bogota 1968, p. 71.

22/ Jack N. Behrman, (quoted in foot-note 3), p. 86: "And if the local investor is more interested in high and secure earnings, he may withdraw dividends so as to reduce the rate of growth compared with the international investor and take less risks in expansion" (emphasis added).

23/ P. N. Rosenstein-Rodan, quoted above, p. 71.

same position. The affiliate then faces the dismal dilemma of being deprived of new equity capital inflow, local as well as foreign. This barrier to development inevitably comes at a time when it can least be afforded both by the host country and the affiliate.

If "fade-out" formulas were imposed on the above-mentioned sophisticated high-technology multinational corporations against their will, the stream of inflowing technology, innovation, and investment would soon dry up. In this special field, wholly owned affiliates are the only real answer to a developing country's needs.

It goes without saying that a Government is not only entitled but also quite able to exercise very effective control over any wholly owned affiliate and the multinational corporation will have to accept this as part of the rules of the game. Foreign entrepreneurs are usually "highly sensitive to their precarious position as outsiders and are perhaps even over-eager to respond to what they perceive as signals from the government". 24/

In fact, the political power of a host country is on a quite different level from the economic power of a multinational corporation. 25/ The smallest country can deal very arbitrarily with the saleswise strongest subsidiary of a very large multinational corporation, even to the extent of nationalizing it. 26/ In appraising the problem on purely theoretical grounds, one might be tempted to suggest that parent companies be held responsible for the liabilities of all their affiliates in spite of the fact that they are independent legal entities. Such a "piercing of the corporate veil" could be considered only in those extreme cases where clear and convincing evidence proves the parent to be guilty of serious misconduct, making the subsidiary merely its "alter ego" and being the direct and proximate cause of the affiliate's liability.

24/ J. M. Stopford and L. T. Wells, Jr., quoted above, p. 167.

25/ Statement submitted to our Group by Professor Edith Penrose, p. 4: "I really do not see how the fact that the value of the world-wide sales of an international firm exceeds the national income of say, Tanzania - impairs in any way the ability of the government of Tanzania to reject its application to set up a subsidiary in the country, to restrict and regulate its activities if it is set up, or to expropriate an existing subsidiary".

Ambassador William Eberle, Trade Negotiator United States of America, 7 February 1974 at the National Executive Conference of Washington: "And the last comment I would make is - I have yet to see a multinational company win a fight with any sovereign government no matter how small".

Jack N. Behrman (quoted in foot-note 3): "... the power really rests with the governments".

26/ The right of sovereign States to expropriate is unquestioned. Expropriation must, however, be (1) in the public interest and (2) non-discriminatory.

2. Financial flows and balance of payments

Most analyses on the impact of multinational corporations on the balance of payment of the host countries remain rudimentary by taking into account only the flow of capital on one side and of earnings on the other side and the impact on direct imports and exports as well as indirect impacts via incomes and employment. "But the contributions and disturbances to international payments are both more subtle and more extensive". ^{27/} "Substantial secondary and tertiary effects arise from new demand for imported materials and components", ^{28/} from the services rendered by the affiliate to the national industries etc. "Further, however complex the analysis, it can never overcome the objection that it cannot show what would have happened in the absence of foreign investment". ^{29/} However, the over-all very positive contribution of the multinational corporations to the development of the third world cannot be measured by the impact on the balance of payments alone. ^{30/} The poorer developing countries without their own petroleum reserves, risk running into serious balance-of-payment problems in the wake of the international oil crisis. This is a particularly relevant argument for accepting an economically sound investment proposition and to invite an inflow of capital at a very critical moment. In our days, however, the real problem may well be not whether to accept a preferred investment but to attract an offer at all. Spiralling inflation drastically reduces the multinational corporations' liquid funds available for foreign investment. Needless to say, a potential investor feeling uneasy about his welcome in a given country will find other places in which to invest.

In alluding to the monetary crisis the report makes the gratuitous and patronizing statement that "... the current convulsions in the international monetary system may not be caused by speculative activities of multinational corporations ..." (emphasis added). Without any substantiation or even pertinent argumentation, the report then goes on to make the highly improper statement that the ability of multinational corporations to move massive amounts of funds across borders can aggravate the international monetary situation. Such an accusation is so unfairly biased against multinational corporations that any further comment on it could serve no useful purpose.

It goes without saying that short-term capital movements by multinational corporations pose no direct problems for developing countries. In periods of international monetary crisis, there are no incentives for multinational corporations to transfer funds to such areas. To bring capital into developing countries would be quite easy, but to repatriate it would be an extremely difficult task.

^{27/} Jack N. Behrman (quoted in foot-note 3), p. 40, who discusses these problems with particular competence.

^{28/} Ibid.

^{29/} Ibid., p. 41.

^{30/} The complaint voiced recently by several developing countries that inflowing capital hardly exceeds dividends, interests and royalties, permits only one conclusion: that the investment climate is bad.

Among a multinational corporation's assets, equity in affiliates, being completely immobile cannot be transferred across borders unless divested. Loan capital is only slightly more mobile because the affiliate invests such capital in assets which cannot easily be converted into cash. Loan capital can only be repaid by the affiliate if it has a corresponding cash surplus (in which event it would no longer need the loan, at all), or if it could borrow the money locally on reasonable terms, which is rather improbable in periods of monetary crisis with their impact on "lead and lags". ^{31/} This does not leave any other kind of capital suitable for movement across borders, except actual cash resources.

An efficient company will keep such resources at the lowest advisable level. The retention of unnecessary cash resources for speculation purposes would rapidly impair and eventually destroy the competitiveness of any company. It is obvious that large corporations - be they national or international - do transfer substantial amounts of foreign currency. Such transfers are neither more nor less harmful to weak currencies than are those of Central Banks trying to diversify their foreign currency reserves.

3. Transfer prices

It must be emphasized that the term "transfer price" applies indiscriminately to all prices for the transfer of goods within one and the same group of companies. The term is strictly neutral, even though it is commonly used in a pejorative sense to denote an artificially manipulated intracompany price. Anyone using it should clearly spell out the precise meaning intended.

In the great majority of instances, transfer pricing is no problem at all, because there exist identifiable arm's length prices, particularly in the case of intermediate products intended for further processing in the country of importation. Of course, product quality must always be carefully weighed and duly taken into account. If Governments were to narrow the gaps in the existing tax rates, any incentive to manipulate transfer prices would immediately disappear. But even if a multinational corporation had clear tax incentives for contemplating manipulations, the practical opportunities for manipulation are very limited, if indeed they exist at all. First of all, transfer prices cannot be increased or decreased at will. Very often there is only one-way traffic, and that down hill. Transfer prices are under strict and continuous scrutiny by many different authorities, which would react immediately and forcefully to the first evidence of a "zig-zag" policy in this field. In fact there is no need for any new machinery to be established for the control of transfer prices. Very comprehensive and refined instruments are already available and used with remarkable efficiency. There are even instances where different authorities within one and the same country have held substantially different prices to be the proper transfer price. These divergencies in official opinion are due to the fact that their interests are, in part, conflicting (cf. foot-note 35).

In the absence of an arm's-length price negotiated between unrelated parties, price comparison cannot be used as a yard stick. In such cases the reasonableness of the importing affiliate's profit margin; taking into account, of course, the

^{31/} Timing of settlements for imports and exports so as to minimize losses resulting from foreign exchange rate fluctuations.

market situation in the country of importation, can serve as an initial guide to the acceptability of a given transfer price. If an independent third party were willing to conclude the transaction on similar conditions, the transfer price could not possibly be criticized. In the case of highly specialized products the multinational corporation, in addition to the goods, also supplies to its affiliates services which would not be furnished by a financially independent, unrelated seller. Even within a single multinational corporation identical goods may be sold to different subsidiaries at different prices because of variations in the additional servicing attached to them. 32/ Dissimilar market conditions in the countries of importation, the rule and not the exception in this imperfect world (even within the relatively homogenous "Federal" Common Market) are an even more important reason for multiple transfer prices.

An imitator of an original product does not furnish any service to his customer except physical delivery. Accordingly he has no outlay for research and development, product improvement and the many other services expected and received from the pioneer in the field, whose costs are necessarily much higher. Hence, any price comparison between two such companies is unrealistic.

In view of the fact that transfer prices are subject to the control of a number of different authorities in the countries of importation and exportation and that these authorities have divergent interests 33/ a multinational corporation can only hope to avoid difficulties of one kind or another by fixing objective transfer prices which take into account the competitive conditions prevailing in that market where the multinational corporation affiliate sells to the first unrelated customers. No firm, however strong its position on a market, will provoke a court fight with a Government:

"Should a court decision uphold the government's position, the company will suffer through the imposition of punitive damages, loss of privileges, or a cease and desist order. Even if a company wins (a rare case), it may find that some of its other activities are being investigated, that its property taxes are increased, or that its request for import permits and foreign exchange are denied or delayed." 34/

In dealing with transfer prices, authorities must not discriminate against related companies on the assumption that the relationship might influence prices. Rather, good faith should be presumed in the absence of specific evidence to the contrary ("*bona fides praesumitur*").

32/ See, e.g., section 482, Internal Revenue Code (U.S.) which clearly recognizes the value of services exchanged among related companies.

33/ For example, the Income Tax, Foreign Exchange and Price Control Authorities in the country of importation are concerned that transfer prices are too high. On the other hand, the Customs Authorities of the country of importation as well as the Income Tax and Foreign Exchange Authorities in the country of exportation are concerned that the identical prices are too low.

34/ J. S. Arpan, International Intracorporate Pricing; Non-American Systems and Views, New York, etc. 1972, p. 76.

The possibility of price manipulations should be considered only in those instances where the size of an affiliate company's share of the market or other similar circumstances could affect the level of the selling price to an independent purchaser.

The open market price (arm's-length price) for a given commodity is, in many instances, different from country to country. Nobody has been able to explain such market behaviour in a reasonable manner. The report asks multinational corporations "to explain the reasons for significant price differentials ... in comparable markets". Unfortunately it gives absolutely no guidance on what constitutes a "significant price differential" or what are "comparable markets".

To the dismay of many professors and public administrators, even in one and the same country, a product may command a multitude of different prices, all of which are market prices. In these cases the term "market price" does not denote a single price but covers a whole range of prices. If the market prices are different, it stands to reason that the transfer prices will also be different. Therefore, the idealistic dream of a single uniform transfer price to all affiliated companies throughout the world is completely unrealistic and unattainable. The inability to attain uniformity within the EEC is probably the most convincing proof of the insuperable difficulties inherent in such a goal on a world-wide scale.

However, price divergencies may have been the consequence of other circumstances. The price agreed upon between a willing seller and a willing buyer can (perhaps very substantially) differ from that conceded by a desperate buyer to a hesitant seller or from that quoted by an overstocked and frantic seller running into liquidity difficulties on account of the closure of an important market and dealing with a buyer trying to drive a particularly hard bargain. Such circumstances must be given due consideration both when they influence intra-group transactions and when comparing arm's-length prices with transfer prices.

The report recommends that the transfer prices be publicly disclosed or made known to the interested parties upon request. Its reason is that this would "make possible the application of the principle of non-discrimination as expressed, for instance, in the United States by the Robinson-Patman Act: a seller is prohibited from charging different prices to different buyers unless the difference can be justified by differences in the quantity or regularity of supply". "Difficile est satiram non scribere" (it is difficult not to be satirical). Firstly, non-discrimination among customers does not necessitate the publication of the purchase prices of their supplier, neither does U.S. law demand it. Secondly, such legislation - if it existed - could not have any extraterritorial application (or else home and host countries would disregard the strong **second recommendation made on page 50**. Thirdly, such a proposal would cut across the legal principle of "proportionality" which lays down that an intervention (by a Government) may not be more drastic than is justified by the objective at which it is aiming. ^{35/} Fourthly, the alleged discrimination among customers cannot be abolished by creating actual discrimination against importing affiliates, as financially independent third parties would not be obliged to disclose their import prices.

^{35/} Max Imboden Schweizerische Verwaltungsrechtssprechung. Die Rechtsgrundsätze der Verwaltungspraxis, erläutert an Entscheiden der Verwaltungsbehörden und Gerichte, Basel and Stuttgart 1960, p. 121.

4. Employment and labour

No sophisticated, high-technology manufacturing multinational corporation has ever gone abroad simply for the pleasure of going abroad. In many cases, such multinational corporations invest in developing countries because they wish to supply those markets. Available studies do not confirm the generalized allegation that multinational corporations are "roaming the world in search of profits by using cheap labour abroad" 36/ as the primary or decisive motive for their decision to invest abroad. In fact, a survey of the investment policy of U.S. multinational corporations has shown "that American multinational enterprises prefer to locate their overseas operations in the advanced, more highly industrialized, higher-wage countries where economic conditions most closely resemble those in the United States". 37/

On the other hand, cheap labour is a comparative advantage which developing countries can offer to multinational corporations of very specific labour-intensive branches such as textiles, electronics or optics. However, the more capital-intensive the industry and the more advanced the technology, the less justification is there for the allegation that multinational corporations take advantage of low labour costs. In these industries, labour (and land) costs are the only elements which are lower in developing countries than in industrialized nations. These advantages are often outweighed by the lower productivity of such labour. In other words, while wages per capita are lower in developing countries, the labour costs per manufactured unit, and even more the over-all costs per unit (the only valid criterion) may well be higher. Any special charge imposed on multinational corporations (e.g., in the form of taxes or contributions) would constitute flagrant discrimination between multinational corporations and local businesses and destroy the competitiveness of developing countries on the export market.

The report expresses uneasiness about the multinational corporations' alleged flexibility in being able to shift existing and new production facilities from one country to another. When multinational corporations make a decision where to place a new investment 38/ they undoubtedly have freedom of action in a sense. But if they want to supply a given developing country's market, there is no real alternative to investing in that country. As to the shifting of existing production facilities, the alleged flexibility is either of no real importance or purely theoretical. 39/ "No company builds factories, invests in equipment, and spends long years and large sums training personnel, in order to finally close up shop in the light of short-term contingencies ... No one can afford 'shadow factories' to be used and closed

36/ AFL-CIO Industrial Union Department, The Multinational Corporation, Washington, D.C. 1972.

37/ Chamber of Commerce of the United States, United States Multinational Enterprises (Washington, D.C., 1972), p. 17.

38/ As a matter of fact, the decision to locate a new plant at the place with the best economic conditions is not "shifting" in the proper sense of the word. Shifting can only consist in transferring existing production from one place to another.

39/ However, many companies have felt it desirable at times to threaten Governments with such an option. Cf. Jack N. Behrman (quoted in foot-note 3), p. 16.

as required". 40/ If a multinational corporation can shift production from one country to another, this presupposes idle facilities which will result, in the short or in the long run, in a lack of competitive strength.

I believe that the maintenance of good labour relations should be a basic aim of every multinational corporation and all its affiliates. They must be model employers by training their personnel, paying fair wages and granting good fringe benefits.

If a multinational corporation is compelled to give up operations in a given country, workers and labour unions have a right to be informed in time. All enterprises - foreign-owned as well as national ones - must make every effort to find new jobs for the displaced workers and, if possible, to train them adequately.

The report recommends that Governments should allow sympathy strikes in support of workers employed by affiliates in other countries. This recommendation seems to be based on the most questionable assumption that workers in country A can judge if a strike in country B is justified and that a multinational corporation could adjust a loss of production in the latter by shifting it to another country.

5. Technological services

The report comments at length on the concept and the different varieties of technological services currently rendered by the multinational corporations. The analysis and suggestions as well as the recommendations, however, show too little insight into the practical needs of the giving side, the multinational corporations. The theory "that the technology provided by multinational corporations has been produced anyway and that the corporations have already derived ample reward from its use in the developed countries for which it was primarily intended" is counterproductive for the developing countries. Moreover, it is totally inconsistent with the recommendation that affiliates "should also be permitted to export their technology to other parts of the organization at appropriate prices" (emphasis added). Every service is worth its due reward. Technology within the field of highly sophisticated manufacturing multinational corporations is no granite block which can be shifted from one country to another if the muscles are powerful enough. It is an extremely lively, innovative, continuously improving complex of knowledge and services which must be carefully adapted to the needs of each and every host country and which calls for a constant flow of technical assistance. It is highly dynamic - not static - and it is "much more than the technology which patents protect" (language of the report). 41/

There is regrettably a growing tendency on the part of host countries to attempt to reduce the compensation for technology rendered and even to prohibit the transfer of any royalty payment from a wholly or majority-owned affiliate to its parent company. Such countries try to justify and rationalize this policy by stressing the fact that the licensor anyway gets a consideration in the form of dividends and that withholding taxes for the two kinds of payments are similar.

40/ G. Lacke, Statement submitted to our Group, p. 10.

41/ Cf. Jack N. Behrman (quoted above in foot-note 3), p. 78 ("patent licenses are not worth much without know-how"), 82 (verbatim below in the text to foot-note 43) and 85 ("few patents are valuable without unpatented know-how").

Not only is the second argument wrong - there is a great difference from a tax point of view between royalties (deductible from the licensee's taxable income) and dividends. But the first argument is also fallacious. Prohibiting royalty payments by majority-owned affiliates means discriminating against the parent company in favour of the minority stockholder, who will receive what in effect corresponds to unearned income without any economic justification. The larger the third parties' share in the equity of the affiliate, the greater the discrimination against the licensor. The situation is particularly unjust in the case of a wholly owned affiliate which opens its equity to third parties, either for business reasons, under moral pressure, or under outright compulsion. Originally, the licensor received remuneration for the services rendered in the form of an additional dividend. (For the sake of argument we exclude the possibility of restrictions on the transfer of dividends, which often makes it rather difficult if not impossible to include licence royalties under dividends.) After partial divestment his remuneration suffers a corresponding reduction and in the case of total divestment the licensor no longer receives anything at all. The prohibition of royalty payments to a licensor who happened to be the parent company at the time of the first transfer of technology, thus constitutes nothing less than indirect, de facto expropriation. Practical experience shows that the failure of a licensor, for whatever reasons, to conclude a royalty contract at the beginning of the transfer of technology, cannot subsequently be rectified, because the competent authorities in the host country will not permit it. The same applies to the case where the conclusion of a licence agreement is prohibited at the outset because the licensor has a majority holding in the equity of the licensee. 42/

The report complains about the high cost to the third world of acquiring technology and the heavy burden on the balance of payments. 43/ It fails, however, to make a clear distinction between the cost to the licensee on one side and the return to the licensor on the other. A developing country cannot expect the charges for foreign technology received to be low if it levies high withholding taxes - in some instances up to 60 per cent - if it disallows their deductibility from the taxable income of the licensee and if it diverts such transfers into the parallel, and less favourable foreign exchange market.

The report regrets that multinational corporations take out patents in every country, although in some of them the patented process may not be used. It recommends consideration of whether a country needing the product should be granted the right to obtain a licence from the multinational corporation. In this connexion I must, however, point out that most countries already provide for compulsory licences under patents that are not utilized locally within a specific period of time from grant. What the report does not spell out: a compulsory licence is of course only granted with adequate compensation for the patent-holder.

42/ This discrimination as well as that allowing local licensees higher royalty rates than affiliates constitutes a particularly unfair infringement on the principle of "national treatment".

43/ The relativity of this last argument is shown in the ECOSOC study on the "Role of Patents in the Transfer of Technology to Under-Developed Countries" (Doc. E/3861-E/C.5/52/Rev.1 of 9 March 1964) which states "that the actual burden which royalty payments to foreigners impose on a country cannot be measured in balance of payments terms alone, but must be evaluated in terms of the contribution that the technology in question makes to the development of a particular industry within the country and the long-term contribution that it makes to decreasing the country's dependence on foreign imports and increasing its exports of the product in question" (emphasis added).

As far as the principle is concerned, I admit that the patent system must avoid abuses of property rights and will have to be adjusted to the genuine economic and social needs of developing countries. But I feel that it should not be eroded in a way which would eliminate its vital incentive for the creation and fructification of domestic innovation as well as for the indispensable technology transfer from abroad.

The report recommends the establishment of a World Patents (Technology) Bank. Such an institution would hardly be useful in practice. It should be realized: "By far the largest number of licences cover know-how (unpatented or unpatentable trade secrets), and this knowledge is much more important than the patents. In addition, few patent licences are valuable without additional know-how, ...". 44/

As to the choice of products, I agree that multinational corporations must integrate their operations into local economic priorities or programmes (and they actually do). In my view, however, it goes much too far to recommend that host Governments should evaluate domestic needs before permitting the commercial introduction of each particular product by a multinational corporation's affiliate. In fact this would mean that the Governments usurp the decision power without being able to shoulder the corresponding responsibility.

I agree in principle with the recommendation that affiliates should not be prohibited from exporting their products. However, where highly specialized industrial commodities are concerned, export restrictions cannot be avoided completely, particularly if their marketing is subject to national registration and regulations. In these cases, the licensor is entitled to impose conditions and even to prohibit exports, e.g., if economic considerations in the country of importation indicate such measures. In the case of proprietary rights it must be understood that the right to grant a licence is divisible. A host country either agrees to sensible restrictions or it gets nothing at all, or the licensor continues to export rather than to grant a licence. In many cases the real problem is not that multinational corporations allocate markets but that they are compelled by host Governments to export products manufactured locally. Such a requirement is quite indefensible if the products involved are not competitive on the world market and must be subsidized by the parent company.

In various places, the report insists that the economic benefits resulting from the operations of multinational corporations be distributed between them and the developing countries. One could not agree more, providing the lines of demarcation are correctly drawn. A multinational corporation supplying its affiliates with goods, services and capital is certainly entitled to fair and adequate remuneration in the form of (transfer) prices, royalties and fees, interest and dividends. The report rightly claims that restrictions on the remittance of, for instance, royalties, must not be circumvented by manipulating transfer prices. But it is an equally fair and logical corollary that developing countries must allow the multinational corporations a fair return for providing technology and capital. It is vitally important to ensure that "both parties find the relationship rewarding" (one of the most constructive theses of the report).

44/ Cf. Jack N. Behrman (quoted in foot-note 3), p. 82.

The report states that there are alternative ways for developing countries to acquire technology and even insists that such alternatives "are many and varied". If this were really the case, manufacturing multinational corporations serving the local market would be quite willing to step back and to concentrate on investments in industrialized countries where the market potential tends to be higher and where the risks are certainly very much lower. In the present circumstances, overshadowed as they are by the repercussions of the oil crisis and the "promises" emanating from the Raw Material Conference recently held in New York, the incentive to invest in the non-oil-producing countries of the third world will be any way drastically reduced.

The report states in several contexts that multinational corporations try to maximize their profits on a global scale and severely criticizes them on that account. The maximization of profits has never been the *raison d'être* of private enterprise. The aim was rather to "optimize profits", but this is already antiquated and has been abandoned both in theory and practice. The basic criterion today is to ensure that profits are sufficiently high to cover the potential risks involved and thus avoid losses. A moderate, but long-term profit is preferable to a very high short-term one. Sufficient profit is really indispensable for the survival of enterprise but is not its only, not even its principal motive. Social responsibility is becoming increasingly important. But only a profitable venture can shoulder these responsibilities and provide better jobs, better services and a better environment:

"To put it crudely, a bankrupt company is not likely to be a good company to work for, or likely to be a good neighbour and a desirable member of the community - no matter what some sociologists of today seem to believe to the contrary." 45/

6. Competition and market structure

The advent of the multinational corporations superseded an era of protectionism which, as Paul Samuelson points out, does not provide protection to any one but succeeds only in "making the world less productive". 46/ Greater productivity means higher output of goods and services and is a paramount objective for every developing country. Sophisticated models such as "workable competition" or "effective competition" do not make a substantial contribution to the development of the third world: "Primum vivere, deinde philosophari" (survive first, and then philosophize).

When discussing concentration, the report, in my opinion, fails to make the fundamental distinction between amalgamation of a multinational corporation with local firms in developed countries and those in developing countries. While mergers in the former case are relatively frequent, and sometimes even controversial, this is not true in the latter case. Here the situation is completely different. Most manufacturing multinational corporations produce goods and services which are innovations within a developing country. Only in rare instances do their activities

45/ Peter F. Drucker, "Management: Tasks, Responsibilities, Practices", p. 72.

46/ Quoted by the Emergency Committee for American Trade, Washington, D.C., 1972.

lead to the displacement or absorption of national enterprises and then mainly at the invitation of the host Government. Such local firms are usually very small in scale and far from reaching viable, let alone optimal size.

If their market potential is adequate, developing countries are well advised to invite more than one multinational corporation in those industries open to foreign investment. If it is inadequate, regional co-ordination would be the solution, at least in theory. In practice, however, the actual distribution of the various industries among the countries of a regional grouping usually meets with substantial difficulties. The reasons are mainly considerations of national prestige and the high cost of such a restructuring. 47/

While abuses of monopolistic situations cannot be tolerated, concern about real or alleged oligopolistic market structures is greatly exaggerated. Oligopolists are, for valid reasons, far more conscious of their competitors than polypolists. This is one of the major reasons why oligopolistic markets are characterized by dynamism and very intense competition for market shares. A growing lack of dynamism and competition is a feature of a monopolistic rather than of an oligopolistic market.

The report recommends that host and home Governments should "prohibit the market allocation of exports by MNCs". This fundamental problem is dealt with in **part Two, chapter 3** (transfer prices) of these remarks. It must, however, be stressed that there are many cases where free competition exists within one and the same multinational corporation. On the other hand, it would be completely unrealistic in many other cases to expect or demand that intense competition should be fostered between a parent and its offshoots abroad. This is particularly clear where the latter depend to a large extent on a continuous flow of sophisticated technological services from their parent.

7. Disclosure of information

The introduction of international standards for corporate accounting and reporting would be highly desirable. Expert advice is urgently needed in this very complex matter and could probably best be obtained by inviting stock exchanges to delegate experts to try their hand at this difficult task. As explained in chapter 8, any provision calling for mandatory disclosure of information should be enacted on a completely non-discriminatory basis, i.e. within the framework of national Corporation Codes which apply equally to domestic and foreign-owned companies.

The crucial issue is where to draw the line between the legitimate needs of a Government for information and those of a multinational corporation for confidentiality and between well-founded interests and exaggerated curiosity.

The primary requirement is for basic data in standardized, and therefore comparable form and with a validity of a certain length of time, for instance one year. Details demanding explanatory notes and subject to continuous changes would normally be within the company's private sphere and should not be for public exhibition. Transfer prices definitely belong to this category.

47/ Cf. Jack N. Behrman (quoted above in foot-note 3), pp. 41/2 and 70.

There are multinational corporations with tens of thousands of commodities which are supplied to affiliates over the entire world. The reasons for price differences are legion: divergent market conditions, quantities, discount-rebate clauses, quality specifications, terms of payment, invoice currency, transaction level of the importer, services rendered in addition to the goods shipped, etc. Routine disclosure of transfer prices without exhaustive explanations would be an exercise in futility. On top of all this, many of the elements alluded to above change from day to day. It would be unrealistic as well as improper to require a multinational corporation to go into such fine detail.

8. The principle of "National Treatment" 48/

It is regrettable that this vital and internationally recognized principle is nowhere mentioned amongst the plethora of recommendations proposed by the group. If developing countries have to treat multinational corporations differently from national enterprises in certain areas, such treatment should under no circumstances be part of an individual understanding between the host country and the multinational corporation. This would lead to arbitrary decisions and discrimination between multinational corporations themselves.

Individual treatment of multinational corporations is clearly inappropriate. Any regulations involving other than "national treatment" must be part of national legislation on foreign investment. The fewer the exceptions, the better the investment climate and the more advantages for the host country. The principle of national treatment means, of course, that like and like must be treated alike, while unlike and unlike must be treated differently. This means that a foreign-owned company cannot ask for favourable treatment under the principle of national treatment if such treatment is not conceivable in the case of a national firm. Thus, restrictions imposed on the remittance of capital and dividends would not be covered by the principle of national treatment, while similar restrictions in the field of royalties and interests would. On the other hand there are cases where multinational corporations may be treated more favourably than national enterprises, but in line with the provisions of international law. This is highly important in the field of expropriation: Wherever a country can expropriate its own nationals without compensation, multinational corporations may demand compensation under international law. Moreover, they may demand transferable compensation, even if national companies cannot because their owners are not domiciled abroad.

In part Two, chapter 7, I concluded that it would be a great waste of effort and money to insist on the disclosure of detailed information which could not be understood without a great deal of explanatory notes, which in many cases would not even be available. Most of the items which would be required to be published are highly confidential and could be of the utmost interest to competing enterprises, particularly national ones. This would inevitably weaken the competitiveness of multinational corporations. For instance, the disclosure of transfer prices would immediately reveal the gross profit ratio of the importer. Any legal requirement to publish import prices should be applicable not only to imports of multinational corporations' affiliates but also to those of any and all domestic firms.

48/ Cf. the definition of "national treatment" in part One, chapter 1, foot-note 2 and practical examples in part Two, chapter 4, para.2 at the end, chapter 5 foot-note 40 and chapter 7 para. 1.

If the disclosure of such important data became mandatory in any country, it would have to be neutral and non-discriminatory and include the import prices of all companies, multinational corporations and national alike. Such a requirement must not be included in a foreign investment law by the host country but should be part of its Corporation Code.

Conclusion

Multinational corporations, like national Governments, act fundamentally in their own interests. Unfortunately, in these times of economic turmoil national interests are given top priority to the neglect of international considerations. Many countries let their currencies float against all others or try to export their inflation to other economies. This tendency brings with it the danger of a return to protectionism and progressive international disintegration. A dam stemming this tide of unfortunate events is the multinational corporation. Its interest is in world stability and international economic integration. The multinational corporations are one of the few elements seeking to preserve economic equilibrium across national boundaries.

Inherent in both the report and this commentary is the assumption that multinational corporations have had a major impact and are an integral part of life today. With such phenomenal growth in all parts of the world within such a brief period, it is obvious that the multinational corporations must adapt their behaviour to the particular needs of the third world.

The study of multinational corporations which has been undertaken by the members of this Group represents an important and necessary step towards the understanding of the multinational corporation phenomena. I hope that it will stimulate the future work of economists, business leaders, government officials and other experts and trust that my remarks on the report will contribute to a better understanding of the practical side of this issue.

IX. COMMENTS BY JUAN SOMAVIA

The report should be read in conjunction with the Secretariat document Multinational Corporations in World Development, as analysis, facts and figures constitute an essential component of the work of the Group.

The tendency of the report to concentrate on the micro-relationship between a multinational corporation and a given country neglects some very relevant facts related to the role multinational corporations play in reacting to and shaping policies and events in home and host countries. The total impact of multinational corporations can only be adequately perceived if their activities are analysed in the context of past and present international economic and political relationships. The establishment of a new international economic order has to consider multinational corporations not only as individual actors but also as the expression of a given system whose values, basic orientations and general structure have stimulated their unprecedented expansion and defined their essential characteristics.

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