



COMMISSION ON TRANSNATIONAL CORPORATIONS

REPORT ON THE FIRST SESSION

(17-28 March 1975)

ECONOMIC AND SOCIAL COUNCIL

OFFICIAL RECORDS: FIFTY-NINTH SESSION

SUPPLEMENT No. 12

UNITED NATIONS



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NOTE

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

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CHAPTER I

CONCLUSIONS AND RECOMMENDATIONS OF THE COMMISSION

INTRODUCTION

1. Taking fully into account General Assembly resolutions 3201 (S-VI) and 3202 (S-VI) of 1 May 1974 on the Declaration and the Programme of Action for the establishment of a New International Economic Order, in particular the relevant provisions on transnational corporations, and resolution 3281 (XXIX) of 12 December 1974 on the Charter of Economic Rights and Duties of States, and giving due regard to the guidelines contained in those resolutions, the Commission on Transnational Corporations, in conformity with paragraph 7 of Economic and Social Council resolution 1913 (LVII) of 5 December 1974, is requested to submit a detailed programme of work concerning the whole range of issues related to transnational corporations to the Council at its sixtieth session. Since that session will take place in the spring of 1976 and the Commission must meet again before that date, according to paragraph 2 of the same resolution, the Commission decided to establish a preliminary programme of work at its current session so that the Information and Research Centre on Transnational Corporations could start operating as early as possible and to wait until the next session of the Commission, in early 1976, to formulate, in the light of accumulated experience, the detailed programme of work that must be submitted to the Council at its sixtieth session.

2. The Commission will be the forum within the United Nations system for the comprehensive and in-depth consideration of issues relating to transnational corporations, without prejudice to the work undertaken within the United Nations in related fields.

3. The Commission desired that the Secretary-General should take early steps to set up the Information and Research Centre.

A. IDENTIFICATION OF THE AREAS OF CONCERN REGARDING THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS

4. If the Commission and the Information and Research Centre are to serve all the interests of the countries concerned with the full range of issues relating to transnational corporations, and in particular the subject of the regulation and supervision of their activities, it is of the greatest importance that the areas of concern regarding the activities of transnational corporations be clearly spelled out.

5. The Commission decided during its first session to make a preliminary identification of areas of concern, fully recognizing that they might require subsequent additions and revisions. These areas of concern of host and home Governments will be found in annexes I and II of the present report. Issues requiring the attention of the Commission are identified also in annex III. The members of the Commission from the developing countries, the socialist countries

and others intend that the areas of concern listed in annex I should serve as preliminary guidelines for the work of the Commission and the Information and Research Centre, while a number of countries intend that annex II should also serve a similar purpose. Annex III should also be considered for this objective. The Commission expects that the preliminary identification may lead, through future consultations and revisions, to the identification of areas of concern agreeable to all its members.

B. DRAFT PROGRAMME OF WORK

Scope of the programme of work

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

- (a) Preliminary work with the purpose of formulating a code of conduct;
- (b) Establishment of a comprehensive information system;
- (c) Research on the political, economic and social effects of the operations and practices of transnational corporations;
- (d) Organization and co-ordination, at the request of Governments, of technical co-operation programmes concerning transnational corporations;
- (e) Work leading to a definition of transnational corporations.

7. In pursuance of the guidelines conveyed by the Economic and Social Council in paragraph 7 of its resolution 1913 (LVII), in accordance with which the detailed draft programme of work should include a statement of its proposed priorities, the Commission has selected specific activities for priority attention, bearing in mind the limitations imposed by the budget on the tasks which the Information and Research Centre can undertake.

8. [An order of priority is assigned below in the work of the Commission.] 1/

C. PRELIMINARY WORK WITH THE OBJECTIVE OF FORMULATING A CODE OF CONDUCT

9. The Commission decided that among the various tasks it would undertake in the next few years the priority would be assigned to the formulation of the code of conduct [to be observed by/ [dealing with/ transnational corporations.

1/ As indicated in the introduction, this report, containing certain conclusions and recommendations, reflects the progress of work by the Commission on the elaboration of a detailed programme of work and on its modalities of work. The texts between brackets have not yet been agreed.

10. At a preliminary stage the Commission would concentrate on defining a set of fundamental rules of conduct, taking into account the principles contained in the document (E/C.10/L.2) submitted by a number of countries at the current session, as well as of any additional proposals outlining principles relevant to the issue that might be submitted in future by other countries.

11. In order to advance as much as possible the work towards that objective, the Information and Research Centre must undertake the following work in the immediate future and submit related reports at the second session of the Commission:

(a) A comparative study of existing international codes of conduct or guidelines drafted with the purpose of influencing and/or regulating the operations and practices of transnational corporations, including the study of relevant materials underlying such codes;

(b) A comparative study of existing national and regional legislation and regulations enacted with the purpose of regulating the operations and activities of transnational corporations;

(c) Suggestions as to possible methods of intersessional work by the Commission which would further the task of drafting a code of conduct;

/(d) Collection and analysis of material relevant to the formulation of a code of conduct.

D. ESTABLISHMENT OF A COMPREHENSIVE INFORMATION SYSTEM

12. The establishment of a comprehensive information system must have the following objectives:

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

(b) To strengthen the capacity of host countries, in particular of developing countries, in their dealings with transnational corporations;

(c) To collect and analyse material relating to the evolution and development formulation of a code of conduct.

13. Considering that there was a vast amount of information available in Governments, academic centres, business councils, and international organizations regarding transnational corporations and their activities, a high-priority task to be undertaken by the Information and Research Centre would be a survey, by means of a questionnaire and other methods, to determine what information on transnational corporations was available, and where, throughout the world. The survey would permit identification of sources of information at the national and international level, be they governmental, private or academic organizations; the periodicity on which this information was collected and published; the level of aggregation of statistical data available; information disclosure requirements; experience of other international organizations in the collection of information concerning the nature and activities of transnational corporations.

14. Work for the survey should be started as soon as the Information and Research Centre obtained the necessary technical staff, so that at the second session of the Commission a preliminary report on the subject could be examined by its members. On the basis of the results of the survey, the Information and Research Centre should be able to point out gaps and problems regarding the availability, disclosure, analysis and dissemination of information, so that at the next session, member countries of the Commission could decide on priority areas for the collection of information in accordance with specific areas of concern.

15. The Information and Research Centre should not necessarily wait until the survey was ready to start collecting information. Therefore, in its first years of operation, the Information and Research Centre should start making efforts in two directions:

(a) Development of a classification system of information relevant to concerns of member countries, in particular, but not limited to, those of the developing countries;

(b) Collection of information of a general or specific nature at the aggregate and enterprise levels on the following priority areas, where information gaps were most pressing:

1. Transfer pricing and taxation;
2. Short-term capital movements by transnational corporations;
3. Restrictive business practices (other than those already covered by the United Nations Conference on Trade and Development (UNCTAD));
4. Corporate ownership and alternative forms of business participation;
5. Market concentration (giving special consideration to acquisition of participation and merger);
6. Relative use by transnational corporations of home, international and host country's financial markets in their operations and investments;
7. Alternative forms of management and control;
8. Political activities of transnational corporations;
9. Social impact of transnational corporations;
10. Impact of transnational corporations on freedom of labour organizations, trade union rights, labour standards and working conditions;
11. The effect on operations of transnational corporations of the presence or absence of a stable investment climate.

16. The information should be obtained in the first instance from relevant bodies of the United Nations system. Wherever the United Nations system as such was not itself collecting any of the information, the Information and Research Centre should collect it directly from the appropriate sources.

17. In order to ensure that the information system should be as comprehensive as possible, the Economic and Social Council should invite all States Members of the United Nations to co-operate with the Information and Research Centre in its task of collecting information and to examine the adequacy of their domestic legislative and regulatory powers to obtain from transnational corporations information about their operations and activities.

E. STUDIES ON THE POLITICAL, ECONOMIC AND SOCIAL EFFECTS OF THE OPERATIONS AND PRACTICES OF TRANSNATIONAL CORPORATIONS

18. The Commission should undertake studies concerning specific subjects that require analysis, in the light of the report which the Information and Research Centre would submit in 1976 to the Commission on available information and in the light of the state of research on transnational corporations by public, private and academic research institutions throughout the world.

19. With a view to facilitating the aggregation and comparison of financial data relating to the operations of transnational corporations, the Information and Research Centre should establish an Expert Group of professional accountants, auditors and financial managers to explore the possibility of working out standard forms for the presentation of the financial relations between transnational corporations and the associated enterprises.

20. In order to determine the current state of research on those areas of concern regarding the activities of transnational corporations, a simultaneous survey to that in the field of information, as mentioned in paragraph 13 above, should be undertaken and completed in the near future. Such a survey should attempt to establish what significant research on transnational corporations had been undertaken in recent years related with the areas of concern, what research was currently under way, and whether the information was complete and comprehensive. A preliminary report should be submitted at the second session of the Commission in 1976.

21. Meanwhile the Information and Research Centre should concentrate on research on the following areas:

(a) Studies on the role and effects of transnational corporations in sectors of economic activity that so far had been insufficiently covered by research projects, such as in the case of agricultural, extractive, land development, shipping, trade, banking, insurance and tourism activities;

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

(c) Lessons to be obtained from national and regional legislation, mechanisms and arrangements that had permitted the strengthening of the bargaining capacity of Governments in their relations with transnational corporations;

(d) A study of the measures adopted by host countries to strengthen the competitive position of national enterprises vis-à-vis transnational corporations;

(e) Studies described in paragraph 11 above to support the work directed towards the formulation of a code of conduct to be observed by dealing with transnational corporations;

(f) Studies of the political, economic and social impact of the operations and activities of the transnational corporations.

F. TECHNICAL CO-OPERATION

22. The Commission decided to endorse the general approach to the programme of technical co-operation as described in paragraphs 30-49 of the report of the Secretary-General (E/C.10/2). However, a more detailed programme would have to be formulated in the light of the aforementioned areas of concern and of the specific requirements of developing countries.

23. Each country concerned with the operations and practices of transnational corporations should inform the Information and Research Centre before the end of 1975 what its basic requirements of technical assistance were both in the fields of manpower training and consultancy services, so that the Centre could prepare a proposal for the next session of the Commission, taking into consideration the over-all requirements of technical assistance and the availability of funds and specialized staff resources / persons / from the United Nations system. The ultimate responsibility for the technical co-operation programme should lie with the Centre.

G. DEFINITION OF TRANSNATIONAL CORPORATIONS

24. The Information and Research Centre would endeavour to collect available definitions on transnational corporations and background work that had been done by the Organisation for Economic Co-operation and Development (OECD), other international organizations and some well-known academic centres throughout the world.

25. While such work was being collected, the Information and Research Centre should concentrate on identifying the common characteristics of the transnational corporations which played a significant role in the internationalization of the world economy, without prejudice to such definition as might eventually be proposed. Such a study should cover at least the five leading transnational corporations in each industrial sector.

H. MODALITIES

26. The Commission discussed the identification by the Secretary-General and all States Members of the United Nations of persons who might later, as required by its programme of work, be considered for selection by the Commission to assist it and participate in its discussions in a manner to be decided by it at its second session. It suggested that the Secretary-General and States Members might, in the meantime, begin to give preliminary consideration to identifying persons they might wish to suggest to the Commission at the appropriate time.

27. The Commission recommended that summary records be provided for its future sessions. At its 11th meeting, the Commission heard a statement of the financial implications (E/C.10/5) of the recommendation.

CHAPTER II

CONSIDERATION OF AGENDA ITEMS 4 AND 5

A. DRAFT PROGRAMME OF WORK ON THE FULL RANGE OF ISSUES RELATING TO TRANSNATIONAL CORPORATIONS (ITEM 4)

28. The Commission began its substantive work with a general discussion on agenda items 4 and 5, which corresponded to the responsibilities given it by the Economic and Social Council in its resolution 1913 (LVII) of 5 December 1974. It expressed appreciation for the reports of the Secretary-General on item 4 (E/C.10/2 and Add.1) and item 5 (E/C.10/3) and the report of the Group of Eminent Persons (E/5500/Rev.1). 2/

29. A large number of representatives expressed the view that the starting point for the work of the Commission - in particular, the elaboration of a code of conduct - should be the Charter of Economic Rights and Duties of States, the Declaration and the Programme of Action on the Establishment of a New International Economic Order and other relevant resolutions of the General Assembly and the Economic and Social Council. Other representatives stated that that would not be appropriate, as certain provisions of those documents were not accepted by a number of States Members. In particular, reference to General Assembly resolutions in chapter I, paragraph 1, in no way altered the position taken by their Governments in the General Assembly.

30. Some representatives stressed the importance of fundamental recommendations, embodied in the report of the Group of Eminent Persons, on non-interference in the internal affairs of States and the necessity for adopting strict sanctions against encroachment upon the national sovereignty of legitimate Governments. Other representatives agreed with that view but called attention to the relevance of international law in that context.

31. In relation to the four matters listed in paragraph 7 of resolution 1913 (LVII) as constituting the guidelines for a programme of work of the Commission (see paras. 32-57 below), a number of representatives stated that the Commission should treat those matters as being of equal priority, at least for the time being. However, different expectations were expressed as to the order in which each task could be or should be accomplished. A number of representatives urged that the Commission adopt a "problem approach", which should guide its work.

The development of a comprehensive information system

32. The development of a comprehensive information system was seen both as contributing to the elaboration of a code of conduct, which was described by a number of representatives as a central task of the Commission, and as providing assistance to States Members of the United Nations.

2/ United Nations publication, Sales No. E.74.II.A.5.

33. There was substantial support for the view that the Information and Research Centre should not duplicate work already done or being done elsewhere. A number of representatives stated that the Centre should not try to cover too broad a field or too many topics and thus not make the best use of its resources in accomplishing what was, in their view, its main task, namely, to collect information and undertake studies on the impact of the activities of transnational corporations on the development process, particularly that of developing countries.

34. A number of suggestions were made as to how the Centre should approach its task of collecting information. Some representatives held the view that the collection of information should concentrate on information related to the concern which had been expressed by Governments about the effects of transnational corporations. Those representatives emphasized that the information they sought was available primarily from the transnational corporations themselves and from their host and home Governments.

35. Other representatives stated that, in their view, there was a lack of useful and reliable information. Others suggested that before seeking new information it was necessary to know what information was already available. They believed that the Information and Research Centre should begin by compiling an inventory of available information as a basis for determining what areas were not adequately covered. With regard to the collection of information by the Centre, the Commission understood that it was not contemplated that requests for information would be made directly to transnational corporations.

36. Some representatives stressed, however, that it would be necessary to be selective, even in compiling such an inventory, since the quality and utility of much of the information which might be obtained would vary greatly.

37. Some representatives touched on the question of the confidentiality of the data supplied to the Centre. Some of them stressed the need to preserve the confidentiality of certain data, especially data related to the competitive position of individual companies. Other representatives referred to the need that all States Members of the United Nations had or might have for access to the data held by the Centre.

38. A number of representatives referred to the problem of the comparability of statistics and proposed that the Centre might endeavour to present the information it received in an easily comparable form.

39. Some representatives referred specifically to the need to have information not only of a statistical nature but also regarding national legislation and policies regarding disclosure of information on investment of foreign private capital and on technology.

40. In general, representatives on the Commission found the range of matters covered in the report of the Secretary-General (E/C.10/2/Add.1) too extensive for the Commission and the Centre at the current stage and likely to lead to duplication or misapplication of effort. Selectivity was required, on a basis to be decided by the Economic and Social Council, on the recommendation of the Commission.

Preliminary work with the objective of formulating a code of conduct

41. Members of the Commission discussed the other three guidelines to its programme of work set out in paragraph 7 of resolution 1913 (LVII) partly for their intrinsic importance but chiefly for their importance, at the current stage, as aspects of the preliminary work necessary for the formulation of a code of conduct. Much that is contained in paragraphs 32-40 above and 51-61 below is therefore relevant to this topic.

42. A number of representatives expressed their views as to the kind of code required. The discussion tended to concentrate on two points - whether the code should be voluntary or mandatory and whether it should be addressed to both companies and Governments or only to companies. Some delegations expressed the view that it was not the moment to take a decision on those matters. The views expressed on these and other points are summarized below.

43. Many representatives stressed that transnational corporations had positive as well as negative effects. They recognized, however, that the size, structure and strategies of such corporations created problems for Governments, both home and host, developed and developing. What was needed, in their view, was international action to maximize the positive effects and minimize the negative effects of transnational corporations.

44. In that connexion, some representatives expressed the view that a code of conduct should not be compulsory in character, but should be an instrument of moral persuasion, strengthened by the authority of international organizations and the support of public opinion. Some representatives also referred to the code as a basis for national legislation.

45. Other representatives believed that, in order to be effective, a code of conduct should be obligatory and contain penalties for non-observance.

46. Referring to the substance of a code of conduct, a number of representatives described the experience of their countries or their regions in dealing with transnational corporations. They emphasized that the Commission had been created because of the concern of many Governments about the negative effects of the activities of transnational corporations and stated that it was to those areas of concern that the Commission should address itself. The concerns of their own Governments were elaborated by a number of representatives and a number of suggestions were made as to the principles which might be included in a code of conduct. One delegation presented a paper about areas of concern which could be used as a basis for preliminary work for a code of conduct to be observed by transnational corporations. Subsequently, a number of countries submitted the document as E/C.10/L.2. Two other delegations submitted papers (Conference Room Papers Nos. 3 and 4) which, in their view, contained material relevant, inter alia, to the elaboration of a code of conduct.

47. Many delegations said that, at the preliminary stage, efforts should be made to prepare a code of conduct addressed solely to transnational corporations. At a later stage, the Commission could consider the way in which host and home Governments might be involved in order to make the code effective. Some other delegations expressed the view that certain general principles guiding the policies of Governments should be discussed to supplement the code of conduct applicable to the transnational corporations, in order to make the code effective.

48. Other representatives stated that a code of conduct should address itself to the responsibilities of home and host Governments and of corporations. In that connexion, the view was expressed that such a code must not impinge on the right of Governments to make independent decisions in the interests of their countries and must not in any sense provide for the extraterritorial application of national laws. Other delegations, however, stressed the relevance of norms of international law.

49. The general view was that the code of conduct should be based on factual information. It was also stated that the work toward the formulation of the code of conduct should not be delayed by the lack of information.

50. A large number of the members of the Commission considered that the most important task to be undertaken by the Commission in the next few years was the formulation of a code of conduct to be observed by transnational corporations.

The undertaking of studies, especially case studies, on the political, economic and social impact of the operations and practices of transnational corporations which seem most urgent

51. Many of the comments made with regard to the development of a comprehensive information system were also made with respect to the undertaking of studies. Some delegations expressed the view that the Information and Research Centre should be selective and that the Commission should guide the Centre on the areas which require study. In particular, some delegations expressed the view that the Commission should take care not to become a commission on the treatment of foreign investment.

52. Some representatives indicated that their countries had no need of further case studies, but were not opposed to the undertaking of such studies if these were found useful by other countries. Other representatives indicated that they would find such studies useful.

53. The following aspects relating to the activities of transnational corporations were mentioned as possibly requiring study:

Transfer pricing and taxation;

Restrictive business practices;

Transfer of technology;

Market allocation;

Market concentration;

Corporate ownership and alternative forms of business participation;

Financial and management control;

Productivity and capital formation;

Industrial relations and effects on wages and employment;

Rights of workers to organize trade unions and their full exercise of trade union rights;

Consumer protection;

Working conditions and standards;
Effects on entrepreneurship and other human resources;
Political interference and activities prejudicial to host countries;
Legal issues - extraterritorial application of national legislation and conflicts of jurisdiction;
Disclosure of information;
International accounting standards;
Sovereignty over the wealth and natural resources of the host country;
Financial flows and balance of payments, inflation, world monetary situations;
The political, economic and social impact of transnational corporations;
Trends in international investment;
National legislation affecting the ability of transnational corporations to contribute to development;
Relations between transnational corporations and host Governments;
Activities of transnational corporations in tourism, banking, insurance, and transportation;
Violation of United Nations resolutions regarding racist and colonial régimes;
Effects on security and détente.

As regards matters relating to labour organizations, trade union rights, labour standards and working conditions, one delegation stated that those matters were of the exclusive competence of each State in the exercise of its sovereignty and could not be subject to interference or prejudgement by the Commission.

54. It was generally felt that the research of the Centre should be closely related to the priorities and the programme of work to be adopted. Several representatives felt that the Centre's main task at the current stage was to organize the information it would obtain according to the areas of concern identified by Governments and to undertake those studies which were relevant to those areas. The view was also expressed that there was a need for research on the positive aspects of the activities of transnational corporations.

55. A number of representatives suggested that the Centre should submit to the Commission at its next session specific proposals for research on topics which were the subject of work by the Commission.

56. Many representatives referred to the need to build on work which had already been done, both within and outside the United Nations. Specific references were made to the work done by, inter alia, UNCTAD, ECA and other United Nations regional commissions, the ILO, OECD, EEC, the Andean Group and the Organization of American States. The view was expressed that the work already done should be assessed before any new studies were commissioned.

57. A particular matter referred to by a number of representatives was the need to study, as alternatives to the transnational corporations, other methods of internationalizing the production of goods and services and management. The example of the Council for Mutual Economic Assistance was cited as using the form

of intergovernmental contractual specialization and co-operation. It was stated that this process was carried out at the public and inter-State level through, inter alia, joint State-owned undertakings established by member States of the Council.

The definition of transnational corporations

58. Not all representatives referred to the matter. A number of those who did referred to the work being done elsewhere on the subject, particularly in OECD, and suggested that it was a matter on which work should proceed cautiously.

59. Some representatives doubted the need to give any priority to the problem of definition. The view was expressed that the companies covered by the Commission's mandate were those whose activities gave rise to the concern mentioned above.

60. On the other hand, it was pointed out that the Centre would have to have a working definition as a basis for the collection of information. It was also pointed out that the elaboration of a code of conduct could require a general understanding as to which companies it was intended to cover.

61. In particular, the view was expressed by some delegates that the definition used in the United Nations Secretariat study, "Multinational Corporations in World Development" 3/ was too broad to be useful. However, it was also stated that the definition should be broad enough to cover international direct investment activities of all sorts, including those by State-owned companies. In that connexion some delegates supported the definition used in the report of the Group of Eminent Persons (E/5500/Rev.1). Some delegations maintained that State-owned enterprises should be excluded, as they were not mainly geared to profit-making. Some delegations expressed the view that the expression "transnational corporations" referred only to private enterprises.

Possible arrangements or agreements on specific aspects relating to transnational corporations

62. A number of representatives expressed the view that, in general, the matter was one to be approached cautiously. The preparation of a code of conduct was regarded by some representatives as of greater urgency. The view was expressed that, at a second stage, the Commission might examine aspects of the code which might require intergovernmental agreements.

63. One matter identified by a number of representatives as being appropriate for early action was an agreement on international accounting standards. It was suggested that the Commission should set up an expert group on this subject, including representatives of business from developing and developed countries, government representatives, professional accountants and at least one member of an international accounting organization. It was also suggested that the Centre could study existing work on the subject and that such a study could be a basis for determining whether or not to establish a working group.

64. It was also suggested that anti-trust measures and taxation were matters on which international agreements might be possible at a future date.

3/ ST/ECA/190 and Corr.1 (United Nations publication, Sales No. E.73.II.A.11).

The organization and co-ordination at the request of Governments of programmes of technical co-operation

65. All representatives supported that activity of the Information and Research Centre. A number of questions and suggestions were raised, however, about the implementation of programmes of technical co-operation and it was stressed, in particular, that, in accordance with Council resolution 1913 (LVII), the programmes would be implemented through existing organs of the United Nations system, such as UNIDO, UNDP, UNITAR and the Department of Economic and Social Affairs. Other representatives considered it important that the Centre should itself possess the capacity in funds and personnel to provide technical assistance to developing member countries although assistance would be also available through the existing agencies.

66. Some delegations referred to the need to strengthen the negotiating capacity of developing countries in their dealings with transnational corporations and stated that the Centre should assist those countries in an appropriate way when so requested. It was stressed, however, that international civil servants should not be advocates for either party in actual negotiations. A number of delegations stressed that priority should also be given to that aspect of the Centre's work.

B. MODALITIES OF WORK OF THE COMMISSION (ITEM 5)

Selection of persons to assist the Commission

67. Some representatives expressed the view that paragraph 1 (d) of Council resolution 1913 (LVII) could not be revised by the Commission. They also stressed that it would be in the best interest of the Commission if its members respected the consensus expressed in that paragraph.

68. Some representatives supported the suggestion made by the Secretary-General in paragraph 6 of his report on the modalities of work of the Commission (E/C.10/3) regarding the nomination of a group of 12 to 15 persons to assist the Commission, on the basis of one third from trade unions, one third from business and one third from other groups.

69. Other representatives believed that the Commission could and should proceed with the selection of persons to assist it without awaiting the adoption of its programme of work and that those persons should constitute a standing advisory group which could meet during sessions of the Commission to prepare comments on matters before the Commission, either on their own initiative or on that of the Commission. Members of the group could also submit individual opinions. In addition to the standing advisory group, persons could be selected on an ad hoc basis to assist the Commission.

70. A number of representatives, however, opposed the suggestion. It was argued that the Commission was an intergovernmental body and needed facts for its work, not more opinions, of which it already had a large quantity.

71. Some representatives argued that, in accordance with paragraph 1 (d) of resolution 1913 (LVII), the Commission could not select persons to assist it until its programme of work was adopted. It was argued, in addition, that such

persons as the Commission did appoint eventually should be appointed on an ad hoc basis and only to assist the discussion of specific matters during sessions of the Commission.

72. A number of representatives stressed the need for the Commission to take account of the views of the companies and of trade unions and the need, therefore, to select persons from those two areas to assist the Commission.

73. Some delegates expressed the view that the Commission was not bound by the views of such persons, but that it should take them into consideration. It was said that the Commission needed both categories of persons - those serving on an ad hoc basis and permanent employees of the Centre - and that the latter should be selected on the basis of equitable geographical distribution. Some delegations expressed the view, with regard to the former, that the Commission should rely on representatives from international trade union organizations, business associations and scientific institutions to support its work.

Organization of hearings, interviews and panels

74. There was little time to discuss the matter, which was regarded as an item to be more appropriately taken up at a later stage. Those representatives who spoke on it recognized the possible utility of hearings, interviews and panels at an appropriate stage in the Commission's work. Some representatives drew the attention of the Commission to the possibility of using those modalities in the fulfilment of paragraph 1 (d) of resolution 1913 (LVII).

Other working arrangements

75. There was little time to discuss the matter, which was also regarded as an item to be more appropriately taken up at a later stage. Some representatives expressed the view that, at an appropriate stage, the Commission would be advised to establish working groups on particular matters.

CHAPTER III

CONSIDERATION OF THE DRAFT PROVISIONAL AGENDA FOR THE SECOND SESSION OF THE COMMISSION

76. At its 11th meeting on 28 March 1975, the Commission considered agenda item 6 entitled "Draft provisional agenda for the second session of the Commission". A note by the Secretary-General on the subject (E/C.10/4) was before it.

77. The Commission adopted without a vote the following provisional agenda for its second session:

1. Election of officers
2. Adoption of the agenda
3. Draft programme of work on the full range of issues relating to transnational corporations
4. Modalities of work of the Commission
5. Draft provisional agenda for the third session of the Commission
6. Adoption of the report of the Commission to the Economic and Social Council.

CHAPTER IV

ADOPTION OF THE REPORT OF THE COMMISSION TO THE ECONOMIC AND SOCIAL COUNCIL

78. The Commission considered its draft report to the Economic and Social Council at its 9th, 10th and 11th meetings, on 27 and 28 March 1975. The report, as amended during the discussion, was adopted unanimously at the 11th meeting.

CHAPTER V

ORGANIZATION OF THE SESSION

79. The Commission on Transnational Corporations held its first session at United Nations Headquarters from 17 to 28 March 1975. The session was opened by the Under-Secretary-General for Economic and Social Affairs, who made a statement. The Commission held 11 meetings.

80. The following States are members of the Commission: Algeria, Argentina, Australia, Bangladesh, Barbados, Brazil, Bulgaria, Canada, Colombia, Democratic Yemen, Ecuador, France, Gabon, German Democratic Republic, Germany (Federal Republic of), Greece, Guinea, India, Indonesia, Iran, Iraq, Italy, Ivory Coast, Jamaica, Japan, Kenya, Kuwait, Mexico, Netherlands, Nigeria, Pakistan, Peru, Senegal, Sierra Leone, Sweden, Thailand, Trinidad and Tobago, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yugoslavia, Zaire and Zambia.

81. All members of the Commission were represented at the session except Zambia.

82. The following States Members of the United Nations were represented by observers: Austria, Denmark, Philippines and Turkey.

83. The following non-member States of the United Nations were represented by observers: Holy See and Switzerland.

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

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

86. The following other intergovernmental organizations were represented: European Economic Community, Organization of African Unity, Organization of American States and Organisation for Economic Co-operation and Development.

87. The following non-governmental organizations were represented:

Category I: International Chamber of Commerce, International Confederation of Free Trade Unions, International Council on Social Welfare and World Federation of Trade Unions;

Category II: Chamber of Commerce of the United States of America and International Hotel Association.

88. At its 1st and 2nd meetings, on 17 and 18 March 1975, the Commission elected the following officers by acclamation: R. S. Bhatt (India), Chairman;

Juan Manuel Figuerero (Argentina), Evgeny Mateev (Bulgaria) and Louis K. Mwangaguhunga (Uganda), Vice-Chairmen; R. H. Wyndham (Australia), Rapporteur.

89. The agenda (E/C.10/1), as adopted by the Commission at its 1st meeting, was as follows:

1. Opening of the session and adoption of the rules of procedure
2. Election of officers
3. Adoption of the agenda
4. Draft programme of work on the full range of issues relating to transnational corporations
5. Modalities of work of the Commission
6. Draft provisional agenda for the second session of the Commission
7. Adoption of the report of the Commission to the Economic and Social Council.

90. The documents before the Commission at its first session are listed in annex IV of the present report.

Annex I

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

Note submitted by the Group of 77

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

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

a/ See Conference Room Paper No. 2, para. 21.

Annex II

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

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

Preamble

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

List of areas of concern

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

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

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

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

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

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

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

(7) The extent to which domestic laws, regulations and practices on social policies help or hinder development of labour relations activities in TNCs.

(8) The extent to which the social policies practised by TNCs help or hinder development of labour relations activities in countries in which they operate.

(9) The effects of TNC operations and activities on employment possibilities and whether these give rise to benefits (e.g., job creation) or non-benefits (e.g., strain on indigenous resources of host countries).

(10) The extent to which the presence or absence of declared points of contact within both TNCs and host Governments have assisted or hindered development of an effective and continuing dialogue between the parties concerned.

(11) The effect of TNC operations and activities on the social and cultural identities of host countries, the positive or negative impacts which these can have on such countries and the extent to which host countries make their expectations known in these respects.

(12) The extent to which existing codes of conduct and guidelines concerned with any aspect of the range of issues relating to the activities of TNCs may already exist, including the study of the materials underlying such codes and guidelines, commentaries thereon and the implementation and/or effects of such codes and guidelines upon TNCs and Governments.

(13) Issues relating to co-operation between host Governments and TNCs to ensure the fullest possible attainment of their respective objectives when TNCs invest in host countries, including the extent to which TNCs and host countries state their needs and objectives in a sufficiently clear manner and how such co-operation may be improved for their mutual benefit.

(14) The need to define more clearly the areas of acceptable and unacceptable political activities on the part of TNCs.

(15) The role played by TNCs and Governments in the transfer of technology to host countries, including the types of technology involved, conditions imposed by TNCs and Governments in connexion with such transfers, and the positive and negative effects of technology transfers and the framework within which they are made on host country development objectives and the viability of the investment concerned.

(16) The role played by TNCs in fostering development and growth of related industries in host countries and the positive or negative effects of the activities of TNCs on the existing patterns of indigenous supply and production.

(17) The extent to which TNCs endeavour to participate in or ignore local business and regional organizations of host countries, host country regulation of such participation where these exist, and the consequences of TNC and host country actions in this area.

(18) The extent to which TNCs seek to promote indigenization of their operations and activities in host countries, including appointment of staff at all levels, and the extent to which policies adopted by host Governments help or hinder this process.

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

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

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

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

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

Annex III

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

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

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

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

Annex IV

LIST OF DOCUMENTS BEFORE THE COMMISSION AT ITS FIRST SESSION

<u>Document No.</u>	<u>Agenda item</u>	<u>Title</u>
E/C.10/1	3	Provisional agenda
E/C.10/2 and Add.1	4	Draft programme of work on the full range of issues relating to transnational corporations: report of the Secretary-General
E/C.10/3	5	Modalities of work of the Commission: report of the Secretary-General
E/C.10/4	6	Draft provisional agenda for the second session of the Commission
E/C.10/5	7	Statement of financial implications of providing summary records: note by the Secretary-General
E/C.10/L.1 and Add.1-2	7	Draft report of the Commission
E/C.10/L.2		Paper submitted by the delegations of Argentina, Barbados, Brazil, Colombia, Ecuador, Jamaica, Mexico, Peru, Trinidad and Tobago and Venezuela on areas of concern which could be used as a basis for preliminary work for a code of conduct to be observed by transnational corporations
E/C.10/INF.1 and Add.1		List of representatives to the first session of the Commission

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