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COMMISSION ON TRANSNATIONAL CORPORATIONS

Second session

SUMMARY RECORD OF THE 17th MEETING

Held at the Centro Cívico, Lima,
 on Thursday, 4 March 1976, at 3 p.m.

Chairman: Mr. VALDEZ (Peru)

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The meeting was called to order at 3.30 p.m.

DRAFT PROGRAMME OF WORK ON THE FULL RANGE OF ISSUES RELATING TO TRANSNATIONAL CORPORATIONS (E/C.10/8 and Add.1, E/C.10/9 and Add.1, E/C.10/10, E/C.10/11 and Add.1, E/C.10/12 and Add.1, E/C.10/13) (continued)

MODALITIES OF WORK OF THE COMMISSION (continued)

General debate (continued)

1. Mr. MUTHAURA (Kenya) said that he concurred with those representatives who had stated that the task of formulating a code of conduct for transnational corporations was the major and priority item for the Commission. It was a highly technical and complex task which should be handled with caution. A substantial amount of background work had already been done, on which the proposed intergovernmental group could base its preliminary work. The rich and poor member States of all regions and all the major intergovernmental groupings should be represented in the intergovernmental working group. The working paper to be prepared by the group should be aimed at reconciling the views expressed by individual member Governments and various intergovernmental groups, and should also identify specific areas to be covered by the code.

2. His delegation felt that the working paper should be submitted to a group of experts, appointed from business circles and institutions, for their comments; it should then be submitted with those comments to the Commission for consideration. Thereafter, the Commission might renew the mandate of the working group and entrust it with the preparation of a draft code of conduct, which should then go through the same process as the working paper, before the Commission eventually submitted the final draft to the Economic and Social Council.

3. Regarding the Centre's programme of work, priority should continue to be given to background papers for the formulation of the code of conduct. The Centre might, furthermore, play an important role as a source of information on transnational corporations; such information should be specific and practical, so that developing countries could benefit from it and the advice made available by the Centre. His delegation agreed that the Centre should consolidate already existing information from various studies undertaken by private institutions and United Nations organizations, such as UNCTAD, UNIDO, the ILO and the Department of Economic and Social Affairs, for channelling to the requesting countries. The Centre should also carry out research, so as to fill some of the existing gaps in the information available.

4. His delegation supported the programme of technical co-operation proposed in document E/C.10/13. In that connexion, it considered praiseworthy the offer of financial or other assistance made by some developed countries.

5. The information given in document E/C.10/12 showed that very little research, unfortunately, had been carried out in Africa. His delegation was

(Mr. Muthaura, Kenya)

concerned that the Centre had not considered Africa a priority area with regard to the establishment of joint units; it therefore requested the Centre to reconsider the possibility of establishing a joint unit with the Economic Commission for Africa.

6. His delegation felt that transnational corporations could contribute to the development of developing countries if they refrained from unlawful activities. It felt furthermore that the benefits accruing to a host country from transnational corporation investments were quite often offset by the numerous costs which were transferred to the host country by those corporations. The code of conduct should therefore be aimed at minimizing those costs and at promoting the benefits accruing to developing countries.

7. Mr. MANGAMANCA (Zaire) said that Latin America, Africa and Asia had served as a field of experimentation for transnational corporations and referred, in that connexion, to the statement made by the President of the Republic of Zaire on 4 October 1973 in the General Assembly, in which he had said that the prevailing injustice in trade exchanges was due to the fact that the rich countries established prices for raw materials from developing countries and also the prices of their manufactured products; that situation was often aggravated by the policies of the large transnational corporations which pursued solely their own interests, with the result that the host countries remained at their mercy.

8. The need to formulate a code of conduct was, therefore, quite understandable. What was being sought, in fact, was the ability to control the activities of transnational corporations, so as to prevent their interference in the life of States. It was necessary, in that connexion, to maintain a clear idea of the realities of those corporations, since it was impossible to formulate a code of behaviour for invisible agents; at the same time, a study should be made of the ability of the home countries to guide the activities of transnational corporations in the desired direction.

9. His delegation supported the idea of forming a working group to formulate a draft code of conduct for transnational corporations, to which a precise mandate should be granted; so as to avoid the errors committed in the past; he hoped that the code would be acceptable to all, so that it would have a chance to succeed.

10. Mr. HARKER (Jamaica) said that the Commission should give top priority to the formulation of a code of conduct and should proceed quickly at the current session with the discussion and harmonization of the areas of concern identified by participants at the first session. An intersessional working group, open-ended in its membership and unrestricted as to the number and duration of its meetings, should be established; it would be responsible for gathering additional information provided by Governments and preparing a draft code of conduct for consideration at the third session of the Commission.

11. When considering the draft code at its third session, the Commission should decide on the nature of the code, in other words, the extent to which

(Mr. Harker, Jamaica)

it would be indicative or binding; the decision would in part be guided by the extent to which consensus could be reached on its provisions.

12. At the current session members should reach agreement on those areas requiring additional in-depth studies for the purpose of formulating internationally acceptable and binding provisions such as taxation policies, transfer pricing and the formulation of an international anti-trust régime.

13. The Centre should collect information to assist developing countries to control and influence the activities of transnational corporations in accordance with their national aims and objectives; in that respect, case studies of specific corporations should not be ruled out if requested by a member State. The provision of technical assistance should have similar objectives.

14. The transnational corporation should be defined in a sufficiently flexible way to allow the code to cover the widest possible range of enterprises; it might be useful to define a transnational corporation as an entity exercising control in more than one State. In any case, controversy over a definition should not be permitted to delay the important work of the Commission.

15. Attempts should be made to evolve an approach for taking measures against the corrupt practices of transnational corporations, including an agreement between participating States to disclose information on such practices, and to introduce a measure of similarity in the penalties to be meted out to offenders. Interested non-governmental organizations should be encouraged to contribute to that difficult and complex task.

16. Mr. DE ANGELI (World Federation of Trade Unions) said that the trade unions were the first and, for a long time, the only organizations to undertake action against the international monopolies and the economic and other activities of transnational corporations which harmed the interests of workers and peoples. There was today a greater awareness of the problem, as could be seen from the establishment of the Commission on Transnational Corporations.

17. Ever since its establishment the World Federation of Trade Unions had struggled for co-ordinated international action on the part of the trade unions, so as to confront the international corporations with a united front of workers and their trade unions and the solidarity of struggle of the international working class. That action took on its most significant form with the drafting in 1973 by the eighth World Trade Union Congress of the charter of trade union rights and economic and social demands of workers. The Federation felt that the Commission ought to draw up, as a priority and urgent item, an international instrument to control transnational corporations, for submission as soon as possible to the General Assembly of the United Nations for approval. As indicated in document E/C.10/NGO/2, that instrument ought to include specific provisions which were in conformity with the principles relating to the establishment of a new international economic order and would form the basis for economic and social co-operation at the international level that was not subject to domination by transnational corporations.

(Mr. De Angeli, WFTU)

18. The activity of the Commission and the Centre was essential, so that the international community could strengthen methods of ending the harmful activities of transnational corporations. In that respect, and especially with regard to technical co-operation and the system of information, it should not be thought, as some people were hoping, that a body of the United Nations could transform itself into an instrument to promote private foreign investment.

19. Another matter of concern to the trade unions was the possible limited character of the code of conduct. Recent scandals in connexion with corrupt practices and subversion should not be allowed to distract attention from the activities and practices of transnational corporations which, even if not forbidden by the penal codes of the home countries or those of the host countries, had such a serious impact on national independence, international peace and security and human rights, that it would be possible to find in those activities certain aspects which could be called illegal under international law. Examples of such activities could be found in the currency speculations fomented by transnational corporations, the sharp decline in prices of raw materials that they often brought about in order to obtain political and other advantages, their restrictive practices with regard to developing countries, which tended to increase the dependence of those countries, the "brain-drain", which aggravated "technological colonialism", and the support extended by transnational corporations to policies of racial discrimination, apartheid and foreign occupation. In that connexion it should be remembered that the Commission on Human Rights had described the transnational corporations as "accomplices" to the policies of racial discrimination and apartheid in southern Africa.

20. With regard to the information system of the Commission and the Centre, the World Federation of Trade Unions felt that member States should strongly support the formulation of uniform methods of information-gathering, so that the Commission would have at its disposal such financial and social data as to be able to see what was attributable to each enterprise and what to the transnational corporation as a whole.

21. With regard to the modalities of work of the Commission, he supported the co-ordinating and central function of the Commission within the United Nations. In that connexion he hoped that the other specialized agencies and organizations of the United Nations system would be requested at the present session to take up, as a priority item, the elaboration of the measures required to ensure that transnational corporations complied with the principles established by the United Nations. It was to be regretted that no further action had been taken with regard to paragraph 1 (d) of resolution 1913 (LVII) of the Economic and Social Council.

22. The adoption and implementation of an international instrument on transnational corporations could be achieved only with the help of the joint struggle of workers, peoples, and their mass organizations. Whatever measures the United Nations adopted, their effectiveness would be diminished if the

(Mr. De Angeli, WFTU)

trade unions did not participate organically in the detailed formulation of rules for transnational corporations in the various sectors. Those rules, once approved by the United Nations, should be implemented by Member States.

23. The World Federation of Trade Unions felt that the international instrument should stress the need for the full exercise of trade union rights, both at the national and at the international level. Document E/C.10/NGO/2 contained the proposals of the World Federation of Trade Unions with regard to the code of conduct; it stressed the social nature of the problems raised by transnational corporations and dwelt on the need to defend and extend trade union rights.

24. With regard to the future work of the Commission, the Federation felt that the selection of persons from the trade union movement should be made in accordance with the directives of the international trade union organizations. In that connexion he asked the Commission to request the Secretary-General of the United Nations to hold continuing consultations with those organizations, so as to draw up a list of qualified persons and to employ officials from trade union circles at the Centre.

25. Mrs. WILLNER (International Organization of Consumer Unions (IOCU)) drew the Commission's attention to her statement in document E/C.10/NGO/1 and said that IOCU experts had been invited to international conferences on the environment and food, regional conferences and the hearings of the Group of Eminent Persons, where the President of IOCU had spoken on behalf of the interests of consumers in developing countries against some of the practices of transnational corporations in such areas as transfer pricing, financial policies, patent systems, the strengthening of national industries and the effects of restrictive business practices on the consumer.

26. A recently published study on existing legislation in the field of restrictive business practices had noted that one of the principal objectives of such legislation was the safeguarding of consumer interests. A survey by IOCU of 16 Latin American and Caribbean countries had revealed so many examples of abuse in labelling products which bore the same name but varied greatly from one country to another that it would be impossible to catalogue them all. The member organizations of IOCU had drawn up a series of grievances in connexion with publicity campaigns by transnational corporations to promote products lacking in nutritive value - such as certain milk formulae - in areas where literacy was at a low level and insufficient for understanding the instructions for their proper preparation. Heavy adulteration of foods and the use of carcinogenic additives had also been discovered.

27. She hoped that the call made by the Executive Director of the Centre in his opening address that more attention should be given to the role and impact of transnational corporations in industries particularly relevant to consumers, such as food and pharmaceuticals, would be heeded. The member organizations of IOCU had brought to the attention of the world hazards in automobiles, unsafe tools, certain toys, inflammable fabrics and other products.

(Mrs. Willner, IOCU)

28. She welcomed the appeal by the Group of Eminent Persons to member States to support national consumer associations and provide them with the necessary facilities to achieve their goals, but she felt that more was needed. To expect that developing countries, with so many economic and social problems, could provide as elaborate a system of protection as the industrial countries was unrealistic. They therefore required international protection going beyond the measures which they themselves could adopt.

29. She recalled that the Executive Director had said in his opening statement that the social impact of the activities of transnational corporations remained to be defined and that issues such as their effects on consumption patterns and consumer protection still awaited in-depth analysis. While previous studies and statements had sought to give due recognition to the rights, conditions of work, employment opportunities and safety of workers and other matters related to transnational corporations, there had been no reference to the impact of the activities of transnational corporations on the **quality** of life, which was in fact the ultimate objective of development. Consumers were interested precisely in the way to translate the passing from a subsistence to a cash economy into an improvement in the quality of life.

30. The conclusion of an international agreement among member States on consumer protection as an aspect of the code of conduct would not only be in keeping with the mandate of the Commission and the Centre but would also enhance the value of its work to those to whose welfare it was ultimately directed, namely the consumers. IOCU hoped that the Commission would seize the present historic opportunity to meet that clear international need.

31. In conclusion, she introduced various revisions (E/C.10/NGO/1/Corr.1) to the draft proposal for a model United Nations code of consumer protection.

32. Mr. RIDDELL (International Confederation of Free Trade Unions) said that some unsavoury facts recently brought to light by the democratic processes of the United States constitutional system had created a great deal of adverse publicity for transnational corporations. While the trade unions condemned the corrupt practices of transnational corporations as strongly as any other critics did, they were much more concerned by some of the corporations' legal activities. In pursuing their basic purpose of gathering financial resources from all over the world to invest them where it was most profitable, the transnational corporations decided, in many cases, whether the production and employment situation of a country would improve or stagnate. Thus, despite their claimed contribution to the economic development of the third world, those corporations were in fact responsible for the continuing economic imbalance in the world in that two thirds of their investments were still in the more advanced industrial countries.

33. The trade unions would, of course, continue to defend the interests of the workers by building up new forms of organization based on international solidarity and the development of a countervailing power that could to some

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degree restore the balance of collective bargaining, which was currently tipped in favour of the companies. In that connexion, the trade unions were merely asking Governments to recognize their freedoms.

34. Many of the problems arising in their relations with transnational corporations could not be solved by collective bargaining alone. Political action was also needed to secure the enactment of both national and international legislation that would impose the necessary social controls on the activities of the corporations. At its world congress held in Mexico in October 1975, the International Confederation of Free Trade Unions (ICFTU) had adopted a charter of trade union demands for the legislative control of transnational corporations. That document could serve not only as a practical guide to organizations affiliated with the ICFTU for securing the right kind of national legislation, but also as an indication to international bodies of the desiderata of the labour movement in that respect.

35. ICFTU noted with satisfaction the assurance given by the Executive Director of the Centre that account would be taken of that document in formulating the Commission's programme of work and in elaborating a code of conduct.

36. ICFTU felt that in general there was a continuing need for legislative measures and intergovernmental co-operation for their implementation. As a basic element of any serious control, there was a need to insist that the corporations provide far more detailed information about their global finances, production and investment plans, since such information was essential not only for any realistic collective bargaining but also for Governments for such purposes as national economic planning and taxation.

37. It was also necessary to insist that the corporations conform to recognized international labour standards as laid down in the conventions and recommendations of the International Labour Organisation. With respect to the social obligations of the corporations in the developing countries, a rather serious oversight should be pointed out in the otherwise excellent documentation prepared for the current session. In the section on investment incentives, on page 13 of document E/C.10/8, no mention was made of an incentive which was sometimes held out by the Governments of developing countries, i.e., the guarantee of freedom from what in some quarters was called "trade union interference". If the developing countries required the support of the international community in dealing with the powerful transnational corporations, then surely that was even more true in respect of the workers of those countries, who at least could expect to enjoy the right to the protection of the trade unions and the right to co-operate with the trade unions of other countries in defence of their common interests.

38. There were also other important problems, such as policies on investment and take-overs, taxation, restrictive business practices, the transfer of technology and monetary speculation, which were not only primary responsibilities of Governments but also of great concern to trade unionists.

(Mr. Riddell, ICFTU)

39. ICFTU found it hard to understand the difficulties which had arisen with respect to the methods of participation of groups such as the international trade union movement in the Commission's work, the principle of which had already been clearly laid down in Economic and Social Council resolution 1913 (LVII). ICFTU, for its part, therefore welcomed the general expression of support for that principle from the delegations of the United States and the Soviet Union, among others, and the United Kingdom and Swedish proposals, which could provide the practical basis for the application of that principle. ICFTU would therefore take strong exception to any attempt to introduce any suggestion of discrimination in the selection of qualified persons, as provided for in that resolution.

40. No one could deny that the trade unions of the third world, wherever free to do so, had thrown their whole weight into the task of nation-building and the establishment of a new international economic order. At a time when the international community seemed ready to take practical steps to confront the challenge posed by those who controlled the existing economic order and to ensure that the immense economic power and technical know-how of the transnational corporations were harnessed to the economic and social progress of peoples, the trade union movement, as the authentic spokesman for millions of workers in the industrial and developing countries, was ready to help in that task and hoped that that offer would not be spurned.

41. Mr. URRIZA (World Confederation of Labour), referring to the statement made by the World Confederation of Labour (WCL) at the fifty-seventh session of the Economic and Social Council regarding the effects of the transnational corporations on the process of development and international relations, reaffirmed that the Centre should function as an "international public service" in behalf of Governments and the trade unions and should establish permanent links with the international trade unions. On the other hand, WCL reaffirmed that its struggle against the domination and economic imperialism of the transnational corporations and against their interference in the political arena, constituted a principal objective of the trade union movement and that it would be illusory to expect that the solution of the problem of transnational corporations could be found in the preparation of a code of conduct as long as that code was not backed by political will and concerted action on the part of countries.

42. With respect to the participation of trade union organizations in the preparation of a code of conduct, he wished to stress the differences which existed between the participation of experts and the participation of trade unions, since it was essential to keep in mind that the latter represented millions of workers. As to the specific measures to be taken by the United Nations, effective support should be given to the countries which sought to regain their economic independence through control of their own resources, and to contribute to improving their know-how in that area by undertaking global and sectoral studies with the participation of the trade union movement.

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

(a) PRELIMINARY WORK WITH THE OBJECTIVE OF FORMULATING A CODE OF CONDUCT (E/C.10/8 and Add.1, E/C.10/9 and Add.1, E/C.10/10)

43. Mr. SAHLGREN (Executive Director of the United Nations Centre on Transnational Corporations) introduced agenda item 4 (a) and said that the overriding objective of the Centre had been to advance as much as possible the work towards the formulation of a code of conduct. Nevertheless, the information gathered was not complete. For example, in preparing the report on national legislation and regulations relating to transnational corporations (E/C.10/8 and Add.1) the lack of time had been an obstacle. In addition, the material obtained did not always distinguish between legislation concerning transnational corporations and legislation concerning foreign investment in general. It was to be hoped that Governments would communicate to the Centre any possible inaccuracies or omissions in that document and any new legislation pertaining to transnational corporations.

44. The preparation of the report on international codes and regional agreements relating to transnational corporations (E/C.10/9 and Add.1) had also suffered from a shortage of time. With respect to the note by the Secretariat regarding possible methods of work relating to the drafting of a code of conduct (E/C.10/10), which simply presented a balance-sheet of the existing situation, he pointed out that the United Nations Secretariat would be able to provide the necessary services to the intergovernmental working group whose establishment was proposed in paragraph 15. That group would be able to meet, preferably in closed session, in August or at the beginning of September of the current year and again between January and March in 1977. If the suggestion that the group prepare an annotated outline of a code of conduct, including proposals related to the nature and approach of such a code was acceptable, that annotated outline would be submitted to the Commission at its third session. Furthermore, the group would decide on its own, should the Commission so determine, the modalities for implementing the decisions adopted by the Commission.

45. With respect to the study whose preparation was suggested in paragraphs 17 and 18, it would be necessary to obtain the views of all Governments, including those which were not members of the Commission, and it would be useful to obtain the views of other parties concerned, in particular trade unions and commercial or industrial concerns. Preparation of a study taking all points of view into account could only be beneficial, keeping in mind, of course, that the Governments would have the responsibility for the entire exercise.

46. Therefore the aforementioned study would presumably be submitted to the working group at its first session and would include, in systematic form, the views of all Governments regarding the scope, approach and content of a code of conduct; the relevant information, presented in tabular form, extracted from national legislation and international instruments relating to

transnational corporations; and the current views of interested non-governmental parties, in particular trade union and business organizations, regarding the comprehensiveness of a code and a possible outline. In the period between the spring of 1977 and the spring of 1978, i.e., in the intersessional period of the Commission, the working group would meet as many times as was necessary in order to complete its task of drafting a code. Thus it might be assumed that it **could** complete its work by the fourth session of the Commission so that in July 1978 the Economic and Social Council would be able to consider the adoption of a code of conduct.

The meeting rose at 5.05 p.m.