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PROPOSED MEDIUM-TERM PLAN FOR THE PERIOD 1992-1997*

MAJOR PROGRAMME IV. INTERNATIONAL ECONOMIC CO-OPERATION
FOR DEVELOPMENT

Programme 23. Transnational corporations

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* The present document contains programme 23 of the proposed medium-term plan for the period 1992-1997. The complete medium-term plan will subsequently be issued in final printed form as Official Records of the General Assembly, Forty-fifth Session, Supplement No. 6 (A/45/6/Rev.1).

PROGRAMME 23. TRANSNATIONAL CORPORATIONS

A. Programme

1. General orientation

23.1 The legislative authority of the programme on transnational corporations derives from Economic and Social Council resolution 1913 (LVII) of 5 December 1974, which formulated the basic mandate of the Commission and the Centre on Transnational Corporations, and is further elaborated and modified by subsequent resolutions and decisions of the General Assembly, the Economic and Social Council and the Commission. The programme is aimed at:

(a) Furthering understanding of the nature and the political, legal, economic and social effects of the activities of transnational corporations in home and host countries and in international relations;

(b) Securing effective international arrangements for the operation of transnational corporations so as to promote their contribution to national development goals and world economic growth while controlling and eliminating their negative effects;

(c) Strengthening the capacity of host countries, in particular the developing countries, in their dealing with transnational corporations.

23.2 Transnational corporations are important actors in the world economy. They transcend national boundaries and the largest of them have sales that exceed the aggregate output of all but a handful of countries. Transnational corporations invest equity capital abroad, but their activities also occur through a wide variety of institutional arrangements, many of which involve little or no investment of capital. With the world undergoing dramatic technological innovation, the individual enterprise - private or public, domestic or foreign - assumes a key role in attempts by the international community to re-activate growth in the developing countries. Transnational corporations are at the centre of that technological change: many innovations originate within them and most are applied, commercialized and disseminated by them.

23.3 In the 1960s and 1970s, the activities of transnational corporations were seen as a threat or potential threat to sovereignty, and throughout the developing world there was much scepticism about the benefits of foreign direct investment. In the 1980s, there was a more mixed assessment of the advantages and disadvantages of foreign direct investment. This is reflected in the new approaches being taken in the formulation of national and international policies in foreign direct investment, which combine measures and policies aimed at facilitating flows of foreign direct investment in sectors and activities under conditions that guarantee the contribution of those investments to the national economy. The expansion of transnational corporation activities world-wide calls for adequate governmental response, which, in the successful pursuit of national policies in an interdependent world, requires a global view.

23.4 In the 1980s, there was progress in the finalization of some multilateral arrangements relating to specialized aspects of the activities of transnational corporations; however, negotiations for a more comprehensive multilateral

framework, such as the United Nations code of conduct on transnational corporations, have not yet been completed. Multilateral arrangements, whether they are binding or voluntary, are an important aspect of the elaboration of generally accepted standards governing international business, and thus contribute to the improvement of relations between host countries and transnational corporations. The growing significance of transnational corporations in the world economy, as manifested internationally in the increasingly integrated approach to trade, foreign direct investment and financial policies and issues, increased the importance of concluding the code in order to promote and guide the essential economic functions performed by these corporations. As the dichotomy between host and home countries blur and their interests converge, international co-operation relating to transnational corporations could be expected to be more active and comprehensive in the 1990s.

23.5 The continuing economic difficulties facing most developing countries pose major developmental challenges for the years ahead. The expansion and spread of transnational corporations have contributed to the economic growth of many host countries. However, the world-wide distribution of foreign direct investment and the activities of transnational corporations are uneven and are becoming increasingly more so: the growing share of developed countries in global foreign direct investment is mirrored by the declining share of developing countries in these flows. The least developed countries in particular have been by-passed by transnational corporations.

23.6 Transnational corporations are frequently the repositories of scarce technical skills needed for the preservation of the environment and for the conduct of activities in sectors that have an impact on the environment. In that context, there is an increasing need to analyse the activities and strategies of transnational corporations in the context of environmental protection and the promotion of sustainable development by identifying ways in which developing countries in particular might benefit from the experience of developed countries and encouraging private sector initiatives in their efforts to protect the environment in relation to industrial activities of transnational corporations.

2. Overall strategy

23.7 As stated in Economic and Social Council resolution 1980/60 of 24 July 1980, "the United Nations Centre on Transnational Corporations is the central unit in the United Nations system at the Secretariat level for work on matters related to transnational corporations". It carries out its tasks by a variety of means, including:

- (a) Provision of substantive services to intergovernmental bodies, primarily the Commission on Transnational Corporations;
- (b) Preparation of background documents and specialized studies related to transnational corporations;
- (c) Dissemination of information, in particular that regarding agreed standards and guidelines;
- (d) Organization of seminars and conferences on transnational corporations;

(e) Provision of assistance to Governments, especially those of developing countries, in order to enhance their capacity to deal with transnational corporations.

23.8 The programme will be implemented through the Centre and its joint units with the five regional commissions. Each joint unit shall, within the overall programme of work adopted by the Commission on Transnational Corporations and the Economic and Social Council, be the focal point for the activities of the Centre in the region, especially in the fields of research, information and liaison with the Governments of the region. In the area of research, the joint units conduct case-studies in the countries of the respective regions. They also provide on a case-by-case basis inputs for global studies being conducted by the Centre. For its part, the Centre assists the joint units in carrying out research programmes, particularly on subjects of special concern to the regions. The joint units submit outlines, as well as preliminary drafts or studies, to the Centre for comments prior to their finalization. They also look to the Centre for assistance in locating consultants and preparing their terms of reference for specific studies. In other aspects of their work, they also draw upon research done by the Centre. In the area of information, the joint units assist in the collection of information on the countries of their regions, including information on individual transnational corporations, following a format designed by the Centre. In turn, the Centre makes available to each joint unit information pertinent to its region. Where verification of the accuracy of data is required, the Centre's efforts are complemented by those of the joint units. A close co-operative arrangement between the Centre and the joint units has been developed concerning both the programming and execution of advisory and training projects. There is co-operation in the organization of training workshops, including liaison with the Governments concerned, identification of specific requirements for advisory missions, follow-up on missions completed, and briefing and debriefing of the Centre's consultants visiting the region on training or advisory missions.

23.9 While the Economic and Social Council has repeatedly emphasized the role of the Commission on Transnational Corporations and the United Nations Centre on Transnational Corporations as the focal points within the United Nations system for issues related specifically to transnational corporations, the activities of these corporations, by their very nature, affect a multitude of political, social, economic, legal and environmental issues that are dealt with to a varying extent by other organizations and bodies of the United Nations and the system as a whole. In addition to close co-operation with the Department of International Economic and Social Affairs of the Secretariat, the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Environment Programme (UNEP), there is also active co-ordination with the International Labour Organisation (ILO), the Food and Agriculture Organization of the United Nations (FAO), the World Health Organization (WHO) and the General Agreement on Tariffs and Trade (GATT). In the area of technical co-operation, the Centre seeks the collaboration and contribution of the Department of Technical Co-operation for Development of the Secretariat, UNCTAD, the regional commissions in the four developing regions, as well as ILO, FAO, the World Bank/International Finance Corporation, the United Nations Industrial Development Organization (UNIDO) and the Commonwealth secretariat. The Centre also co-operates with the International Monetary Fund (IMF) and the Organisation for Economic Co-operation and Development (OECD). In the 1990s, the Centre will continue to work with organizations of the international business community and the international trade union movement.

3. Subprogramme structure and priorities

23.10 In light of the above orientation and the trends and prospects relating to the activities of transnational corporations and their role in world development, the United Nations programme on transnational corporations will consist of the following subprogrammes:

(a) Securing an effective code of conduct and other international arrangements and agreements relating to transnational corporations;

(b) Minimizing the negative effects of transnational corporations and enhancing their contribution to development;

(c) Strengthening the capacity of host developing countries in dealing with matters related to transnational corporations.

23.11 Among the multiple tasks entrusted to the programme, priority will be given to the formulation of an effective, comprehensive, generally accepted and universally adopted code of conduct on transnational corporations.

B. Subprogrammes

SUBPROGRAMME 1. SECURING AN EFFECTIVE CODE OF CONDUCT AND OTHER INTERNATIONAL ARRANGEMENTS AND AGREEMENTS RELATING TO TRANSNATIONAL CORPORATIONS

(a) Objectives

23.12 The legislative authority for the present subprogramme derives from Economic and Social Council resolutions 1913 (LVII), 1961 (LIX), 1980/60, 1986/53, 1987/57 and 1989/24.

23.13 The growing significance of the role of transnational corporations in the world economy has increased the importance of concluding an international framework to address the essential economic functions performed by those corporations, particularly in mobilizing the capital, skills and technological resources required to meet growth and development needs world wide. Though global economic and political conditions have changed over the past decade, that has not altered the fundamental need of the international community to address the impact of transnational corporations. While the original objectives of the code are still valid, new problems are emerging that require an international response that addresses the responsibilities of both transnational corporations and Governments. For instance, transnational corporations demonstrate remarkable flexibility in adapting to changing conditions by adopting different structures, organizational patterns, modes of operation and inter-corporate alliances that make their control by any single jurisdiction more elusive than before. Besides, while the control of potentially negative impacts is of concern, the facilitation of possible benefits is equally important. A global framework is needed for the continued growth of foreign direct investment and activities of transnational corporations with a view of establishing positive economic linkages between transnational corporations and developing countries; supplementing national foreign direct investment régimes; harmonizing definitions and regulatory processes; and facilitating the effective integration of centrally planned economies into the international economic system. In addition, specialized legal instruments may be required to address specific

issues of the activities of transnational corporations, such as service industries, product liability, environmental risk management and disclosure of information.

23.14 Recent events in the financial world, particularly the continued volatility of stock markets, have caused considerable concern over the quality and quantity of information in the financial statements of transnational corporations. The lack of comparability and the inadequacy of financial statements limit their usefulness in analysing global economic trends. It appears that in order to control and promote global capital markets effectively further harmonization of accounting and reporting standards and their expansion to new areas will be needed.

23.15 More specifically, the objectives of the subprogramme will be:

(a) To establish, through the adoption of a code of conduct on transnational corporations, international standards to supplement national laws regarding those aspects of operations of transnational corporations that straddle national borders and to develop international guidelines for bringing the operations of transnational corporations into conformity with the policy objectives of their host countries;

(b) To facilitate the continued growth of foreign direct investment and activities of transnational corporations by, *inter alia*, prescribing minimum standards for the treatment of transnational corporations by Governments and by strengthening intergovernmental co-operation and co-ordination with regard to foreign direct investment;

(c) To improve the information disclosure by transnational corporations through the harmonization of diverse national accounting and reporting practices and to formulate, adopt and monitor other international arrangements and agreements;

(d) To formulate and adopt international guidelines, standards, arrangements and agreements addressing environmental, industrial safety and other concerns arising from the increased transnationalization of economic activity;

(e) To improve the understanding of transnational corporations through research, studies and surveys, and to disseminate and publicize the agreed standards and guidelines.

(b) Course of action of the Secretariat

23.16 If the code of conduct is adopted during the period 1992-1997, the Centre will assist the United Nations Commission on Transnational Corporations in the implementation, follow-up and review of the code. During the first two years after its adoption, the efforts of the Commission and the Centre will concentrate on disseminating, publicizing and explaining the instrument; on working out the details of its follow-up mechanisms at the enterprise, national and international levels; and on establishing a reporting system. Once a mechanism for implementation of the code is established, the active involvement of transnational corporations, labour movements, as well as Governments is envisaged.

23.17 The intergovernmental expert group on accounting and reporting has made important recommendations on a broad range of issues regarding informal disclosure in financial statements. In the future, the work in that area will be expected to focus increasingly on non-financial items needing disclosure. With a view to

strengthening the compliance of transnational corporations with international standards, consideration might need to be given to setting up appropriate mechanisms. There will also be a need to examine ways in which a positive contribution can be made in assisting national standard-setting, particularly in developing countries and centrally planned economies.

23.18 During the period, follow-up activities related to the agreement on illicit payments and any other arrangements completed by then, may be mandated and undertaken. The Centre will provide substantive support to intergovernmental bodies concerned through the provision of background documents and other support services related to international arrangements and agreements under preparation. The Centre will also undertake studies and arrange for consultations aimed at identifying other areas in which international arrangements or agreements are needed.

SUBPROGRAMME 2. MINIMIZING THE NEGATIVE EFFECTS OF TRANSNATIONAL CORPORATIONS AND ENHANCING THEIR CONTRIBUTION TO DEVELOPMENT

(a) Objectives

23.19 The legislative authority for the present subprogramme derives from Economic and Social Council resolutions 1913 (LVII), paragraph 4, 1961 (LIX), 1980/60, paragraphs 2, 3, 5 and 9, 1986/1, 1986/53, 1986/54, 1987/56, 1988/56-58, 1989/21-23 and 1989/25-28.

23.20 Foreign direct investment grew consistently during the 1970s and 1980s and it is likely that, even amidst adverse macro-economic conditions, it will continue to expand further during the 1990s. Developing countries will be the host regions with the highest potential to absorb foreign investment, but unless conscious efforts are made to encourage investment and related flows, there is a danger that foreign direct investment in those countries will remain stagnant in the next decade. The rapidly changing map of regional integration, including the consolidation of the European Community at the end of 1992, will create new challenges and opportunities to both Governments and corporations. Recent policy changes in the centrally planned economies could increase the role of those countries in the world economy and radically affect the flows of foreign direct investment to and from them over the period of the medium-term plan.

23.21 Transnational corporations respond to opportunities arising from technological innovation and market forces. New technologies are emerging and spreading at a fast pace, particularly changing the economics of production. Developing countries will need to build a capacity to generate and utilize new technologies if they are to maintain or acquire international competitiveness in existing export industries and penetrate new markets. At the same time, being at the centre of technological change, transnational corporations can make innovative contributions to national strategies for technology development, by applying, commercializing and disseminating the new technologies in developing countries.

23.22 The growth and interdependence of transnational business also create a need for international attention to environmental and health issues that affect business and government interests throughout the world. A number of serious incidents involving chemicals, radioactive material and oil spills have warned the world community that risks from deficient environmental or safety standards are not just a local, but also a regional and even a global problem. A challenge for government

administrators and business officials is to design policies and strategies that allow continued growth while maintaining an appropriate level of environmental safety.

23.23 There will also be a need for mechanisms that channel foreign direct investment into priority areas of national investment programmes; encourage indigenous enterprises; ensure introduction of environmental standards; protect against and compensate host countries for transfer pricing abuses; ensure that the financial activities of transnational corporations are consistent with the country's balance-of-payments objectives; and aim at prudential control of global markets. The introduction of such mechanisms requires a consistent policy environment that enhances the overall contribution of transnational corporations to development. Critical to such efforts is concern for the possible adverse social and cultural impacts of the operations of transnational corporations in developing countries. Actions by developing countries would need to be complemented by policies and mechanisms aimed at improving the quality and quantity of investment flows. Actions for an accelerated transfer of investment capital, technology and managerial know-how to developing countries constitute crucial elements of an international action programme for development in the 1990s.

23.24 Continuous and more systematic monitoring of international and national measures with respect to the activities of transnational corporations in South Africa will also be necessary. While approximately 600 firms, their subsidiaries or affiliates have disinvested in 1984-1989, many have retained non-equity ties. The circumvention of trade measures by third countries has occurred in the absence of mandatory and universal sanctions. Financial measures will likely have the greatest impact on the South African economy during the plan period.

23.25 Consequently the subprogramme will aim:

(a) To facilitate mutually beneficial linkages between transnational corporations and developing countries and minimize the negative effects of the operations of those corporations;

(b) To strengthen intergovernmental co-operation in the area of foreign direct investment and the operations of transnational corporations, with a view to minimizing potential negative effects of their operations and maximizing their contribution to economic development and growth;

(c) To further the understanding of the nature and role of transnational corporations, by analysing: (i) the trends in the activities of transnational corporations and their impact on world development; (ii) the impact and implications of the activities of transnational corporations on host countries, in particular developing countries, as concerns economic, political, social and cultural issues; (iii) capital inflows and outflows, trade and transfer of technology through the impact and implications of transnational corporations on the world economy; (iv) the effectiveness of existing national policies, laws and regulations on matters related to transnational corporations; (v) the role and impact of transnational corporations in major sectors; (vi) the effectiveness of contracts and agreements between host country entities and transnational corporations; and (vii) organizational structures, operational forms and strategies of transnational corporations;

(d) To provide policy recommendations and assist host countries, in particular developing countries, in attracting and maintaining an increased flow of capital, technology skills and entrepreneurship.

(b) Course of action of the Secretariat

23.26 The Centre will undertake research and analysis on issues assigned to it by the General Assembly, the Economic and Social Council and the Commission in the following areas: the role of transnational corporations in production, processing and export in selected domestic economies and major sectors; a comprehensive, integrated study of transnational corporations in world development; aspects of the economic, political, social and cultural impact of transnational corporations; activities of transnational corporations in South Africa; the role of transnational corporations in: (i) international financial transfers and balance of payments; (ii) in international trade, including intra-firm transactions; (iii) the transfer of technology; and (iv) service industries, including data services; surveys on foreign direct investment flows and stocks world-wide, disaggregated by sectors, by countries and by corporations; information on individual corporations; changing patterns of transnational corporation arrangements, including non-equity arrangements, joint ventures and licensing agreements; changing patterns of transnational corporation structures, organization and modes of operation; changing patterns in the size, characteristics and sector and country composition of transnational corporations; changing patterns in corporate alliances across national borders and their impact on competition; the impact of foreign direct investment and transnational corporation activities on the global economy and linkages with other macro-economic factors.

23.27 The Centre will also undertake research and studies on the impact of national and international policies on foreign direct investment and transnational corporation behaviour; the effectiveness of laws and regulations in that area; the changing patterns of various types of contracts and agreements in various sectors; environmental risk management; the effect of the consolidation of the European Community on foreign direct investment flows and patterns of transnational corporation activity; the effect of the economic integration of the centrally planned economies on the global economy; the role and impact of multilateral, regional and bilateral agreements and arrangements on international co-operation on foreign direct investment and transnational corporations; new and alternative forms of international economic co-operation; the role and impact of home country policies in encouraging foreign direct investment flows towards developing countries; the role and impact of international standards in transnational corporation/host country relations; progressive elaboration of international standards for the collection of data on foreign direct investment and transnational corporations; key concepts relevant to an international framework on foreign direct investment and transnational corporation activity; harmonization of national standards and norms in that area; and development of methodologies and concepts to facilitate harmonization.

23.28 Further, the Centre will organize seminars, conferences and other meetings in different regions aimed at disseminating the findings of its research and analysis and will examine ways of translating those findings into intergovernmental and governmental policies and measures.

SUBPROGRAMME 3: STRENGTHENING THE CAPACITY OF HOST DEVELOPING COUNTRIES IN DEALING WITH MATTERS RELATED TO TRANSNATIONAL CORPORATIONS

(a) Objectives

23.29 The legislative authority for the present subprogramme derives from Economic and Social Council resolutions 1913 (LVII), paragraph 4, 1961 (LIX), and 1980/60, paragraphs 3 and 9, and decision 180 (LXI), subparagraph (b).

23.30 The 1980s have experienced a substantial change in the relationship between host developing countries and transnational corporations. Confrontation has given way to more pragmatic attitudes based on a recognition by both parties that there can be a mutuality of interest across broad areas of economic activity. That trend is most dramatically reflected in the new "open door" policies of several countries in Africa. Equally significant is the change being effected in the economies of Eastern Europe, which were previously not open to foreign investment. Host countries will continue to need expertise during the 1990s with respect to the structuring of appropriate foreign investment régimes and fair and equitable joint-venture arrangements. Countries that have traditionally welcomed foreign investment have also shifted to more liberalized policies, partly because transnational bank debt is no longer an option for securing capital from abroad. Those countries face the task of streamlining their administrative mechanisms not only for rapidly and effectively evaluating, screening and approving foreign investment applications but also for promoting foreign investment and identifying appropriate prospective joint-venture partners. At the same time, these countries will presumably wish to ensure that the transnational corporations meet certain performance requirements. A key challenge in the 1990s, therefore, is to devise foreign investment policies that strike the right balance between facilitation and regulation.

23.31 These developments are occurring in the context of rapid technological advances and intensified competition between countries and between transnational corporations which have contributed to a growing globalization of the world economy. Developing countries therefore need to forge flexible and innovative policies in the 1990s that give them continuous access to these technological advances and enhance their share in investment and world economic activity.

23.32 The objectives, therefore, will be:

(a) To facilitate the flow of adequate and appropriate foreign investment and technology transfer to host developing countries;

(b) To maximize the contribution of contractual arrangements with transnational corporations in host developing countries;

(c) To enhance the capability of public and private sector officials of host developing countries in negotiating with transnational corporations;

(d) To establish and strengthen developing country capacities to identify, collect and analyse information on foreign investments, technology transfer and transnational corporations;

(e) To enhance the capability of small and medium-sized industries in developing countries in their dealings with transnational corporations.

(b) Course of action of the Secretariat

23.33 In the period 1992-1997, the Secretariat will provide advisory, training and information services in the following areas:

- (a) Examination of policy options related to transnational corporations either at the overall level, in specific sectors or in connection with specific issues such as ownership and control, acquisition of technology, fiscal and financial questions and transfer pricing;
- (b) Formulation or revision of laws and regulations related to the activities of transnational corporations either in general or in specific sectors (e.g. natural resources), or on specific issues (e.g. transfer pricing);
- (c) Elaborating or strengthening evaluation, screening and monitoring guidelines for projects involving equity or non-equity participation of transnational corporations, as well as developing or strengthening relevant governmental infrastructure, procedures and information systems in that regard;
- (d) Evaluation, within the context of specific projects, of the alternative merits of various types of contractual arrangements such as joint ventures, licensing, management contracts and production-sharing agreements;
- (e) Legal, financial, economic and operational issues related to specific contractual arrangements with transnational corporations, in the natural resources, manufacturing or service sectors;
- (f) Staff support in the preparation for negotiations;
- (g) Organization and conduct of training workshops, seminars, round tables and study tours on matters related to regulating and negotiating with transnational corporations;
- (h) Developing or strengthening national information systems related to transnational corporations;
- (i) Collection and dissemination of information on laws and regulations, individual transnational corporations, contracts and agreements, and other data sources;
- (j) Preparation of responses to requests from Governments for information on matters related to transnational corporations;
- (k) Establishing interdisciplinary programmes of training on matters related to transnational corporations by institutions of higher learning of developing countries;
- (l) Establishing a public and private sector infrastructure for developing small and medium-sized enterprises and assisting them in establishing beneficial links with transnational corporations.
