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MULTINATIONAL ENTERPRISES

Note by the Secretary-General

1. At its twenty-seventh session, the General Assembly adopted resolution 2928 (XXVII) of 28 November 1972 on the report of the United Nations Commission on International Trade Law. In paragraph 5 of this resolution, the General Assembly invites the Commission

"to seek from Governments and interested international organizations information relating to legal problems presented by the different kinds of multinational enterprises, and the implications thereof for the unification and harmonization of international trade law, and to consider, in the light of this information and the results of available studies, including those by the International Labour Organisation, the United Nations Conference on Trade and Development and the Economic and Social Council, what further steps would be appropriate in this regard".

2. The present note sets forth certain background information pertaining to that resolution and suggests possible action by the Commission in response thereto.

A. Debate in the Sixth Committee

3. A summary of the discussions that took place in the Sixth Committee on the issue of multinational enterprises is found in paragraphs 41 to 43 of the report of the Sixth Committee on the report of the United Nations Commission on International Trade Law on the work of its fifth session (A/8896 of 21 November 1972). These paragraphs are reproduced in annex I below.

B. Action taken by other United Nations organs and specialized agencies

4. Paragraph 5 of General Assembly resolution 2928 (XXVII) refers to studies commissioned by the International Labour Organisation, the United Nations Conference on Trade and Development and the Economic and Social Council.

(i) International Labour Organisation (ILO)

5. The General Conference of the ILO adopted at its 56th session, on 23 June 1971, a resolution "concerning the social problems raised by multinational undertakings". The text of this resolution is reproduced in annex II below.

6. In this resolution the General Conference noted "with satisfaction the decision of the Governing Body of the ILO to consider holding a technical meeting on the possibilities of action by the ILO regarding the relationship between multinational undertakings and social policy" and expressed the wish that this meeting be held as soon as possible. Subsequently, the Director-General of the ILO convened a meeting of experts in Geneva; the meeting, which was held from 26 October to 4 November 1972, was attended by eight Governments, eight trade unions and eight employers' associations. A report on this meeting (GB.189/2/2) was submitted to the Governing Body of the ILO, which met from 27 February to 2 March 1973. Pursuant to Economic and Social Council resolution 1721 (LIII) (see paragraphs 9 and 10 below), the Governing Body of the ILO will report its decisions to the Economic and Social Council.

(ii) United Nations Conference on Trade and Development (UNCTAD)

7. At its third session, held in Santiago, Chile, from 13 April to 21 May 1972, UNCTAD adopted a resolution on restrictive business practices. The text of this resolution is set out in annex III below.

8. In this resolution UNCTAD, considering "the possible adverse impact of restrictive business practices, including... those resulting from the increased activities of multinational enterprises, on the trade and development of developing countries", recommended that efforts be made to alleviate and eliminate such practices. It decided to establish an ad hoc group of experts on restrictive business practices, which would submit a report to the UNCTAD Committee on Manufactures. 1/ The resolution also called upon the UNCTAD secretariat to consider formulating a model law or laws for developing countries in regard to restrictive business practices.

(iii) Economic and Social Council

9. The Economic and Social Council at its fifty-third session adopted resolution 1721 (LIII) of 28 July 1972 (for the text, see annex IV below).

1/ According to information given by the secretariat of UNCTAD, this group, which will meet in Geneva from 19 to 30 March 1973, will examine the possibility of drawing up guidelines for the consideration of Governments of developed and developing countries regarding restrictive business practices adversely affecting developing countries. In addition to studies by the UNCTAD secretariat, referred to in the resolution set forth in annex III, reference may also be made to TD/B/388, TD/B/389, TD/B/390, TD/B/398 and TD/B/399.

10. In this resolution the Council requests the Secretary-General of the United Nations to appoint a group of eminent persons "to study the role of multinational corporations and their impact on the process of development, especially that of developing countries, and also their implications for international relations", and to formulate conclusions and recommendations for consideration by the Council at its fifty-seventh session. The Secretary-General is invited to submit his own comments and recommendations.

C. Possible action by the Commission

11. Paragraph 5 of General Assembly resolution 2928 (XXVII) suggests to the Commission a course of action which should enable it to determine, at a later stage, what work it could usefully undertake with respect to multinational enterprises without duplicating the efforts of the various United Nations organs and agencies in the field. Thus, the Commission is invited to consider what further steps would be appropriate in the light of:

(a) Information received from Governments and interested international organizations; such information should relate to "legal problems presented by the different kinds of multinational enterprises, and the implications thereof for the unification and harmonization of international trade law"; and

(b) The results of available studies, including those by the International Labour Organisation, the United Nations Conference on Trade and Development and the Economic and Social Council.

12. Accordingly, the Commission may wish to request the Secretariat:

(a) To draw up a questionnaire designed to obtain information concerning legal problems presented by multinational enterprises and seeking suggestions as to the areas in respect to which the preparation of uniform rules might be practicable and desirable, and to address such questionnaire to Governments and interested international organizations;

(b) To prepare a report for the Commission's consideration, setting forth:

(i) An analysis of replies to the questionnaire;

(ii) A survey of available studies, including those by United Nations organs and agencies, in so far as those studies disclose problems arising in international trade because of the operations of multinational enterprises which are susceptible of solution by means of uniform legal rules;

(iii) Suggestions as to the Commission's future course of action, in terms of programme of work and working methods in this particular area;

(c) To place its report before the Commission at a future session, with the timing of submission dependent on the time at which the replies to the questionnaire reach the Secretariat and the studies mentioned above are available.

Annex I

EXCERPT FROM THE REPORT OF THE SIXTH COMMITTEE ON THE REPORT OF
THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE
WORK OF ITS FIFTH SESSION (A/8896 OF 21 NOVEMBER 1972)

41. Many representatives expressed the view that multinational enterprises, because of their structure and orientation, had interests and objectives which might not always accord with national economic objectives. It was further stated by some representatives that these enterprises had a tendency to circumvent national legal jurisdictions in many diverse fields, such as trade policy, foreign exchange regulations, taxation and business practices, and had served as a medium for the extraterritorial extension of the laws and policies of other Governments. Many representatives supported the proposal that the Commission should undertake an examination of the possible implications of the activities of multinational enterprises for international trade law. In this connexion, some representatives suggested that the Commission might appoint a small group of experts to study the question and to submit recommendations on how best to regulate the activities of those enterprises.

42. Several representatives stated that it would be premature for the Commission to be seized of the matter at this stage. It was observed that other United Nations organs and specialized agencies, such as the International Labour Organisation, the United Nations Conference on Trade and Development and the Economic and Social Council, had already commissioned studies on the social, economic and political aspects of the activities of multinational enterprises. Consequently, it was suggested that the Commission should await the results of those studies before considering the legal implications of the activities of multinational enterprises, thereby avoiding duplication and overlapping. In this connexion, several representatives agreed with the proposal that the Commission might, in the meantime, seek the views of Governments and interested international organizations on the legal problems presented by the different kinds of multinational enterprises and the implications thereof for the unification and harmonization of international trade law.

43. Some representatives were of the opinion that the legal implications involved in the activities of multinational enterprises were closely related to basic political and economic policies and doubted whether it was feasible for the Commission to prepare uniform rules on the subject.

Annex IIRESOLUTION V ADOPTED BY THE INTERNATIONAL LABOUR CONFERENCE
AT ITS FIFTY-SIXTH SESSION (GENEVA, 1971)Resolution concerning the social problems raised by
multinational undertakingsThe General Conference of the International Labour Organisation,

Considering that one of the striking features of economic evolution in recent years is the increasingly rapid development of multinational undertakings and international conglomerates of undertakings.

Considering that this evolution, while offering certain possibilities, raises new social problems, the extent of which will increase, as regards employment, conditions of work and industrial relations,

Considering that because of the international character of these social problems the International Labour Organisation is eminently qualified to deal with them,

Considering that the Sixth Asian Regional Conference of the International Labour Organisation (Tokyo, 1968) agreed to recommend that the Governing Body of the ILO should consider at one of its forthcoming sessions the question of labour-management relations, including multinational undertakings,

Considering that the Ninth Conference of American States Members of the ILO (Caracas, 1970) invited the Governing Body of the ILO to place on the agenda of an early session of the Inter-American Advisory Committee of the ILO the question of the effects of the policies of multinational corporations on working and living conditions in the countries where they operate,

Considering the resolution (No. 73) on multinational corporations adopted by the Metal Trades Committee at its ninth session (Geneva, January 1971),

Noting that the Governing Body of the ILO decided at its one hundred and eighty-second (March 1971) session to provide for an appropriation for the organization of a technical meeting on the possibilities of action by the ILO regarding the relationships between multinational undertakings and social policy,

1. Notes with satisfaction the decision of the Governing Body of the ILO to consider holding a technical meeting on the possibilities of action by the ILO regarding the relationship between multinational undertakings and social policy to be attended by a large number of employers' and workers' representatives;
2. Expresses the wish that this meeting should be held as soon as possible;
3. Requests the Governing Body to decide, in the light of the conclusions reached at this meeting, what action the ILO should take on the question, including its examination by the International Labour Conference at a future session.

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Annex III

RESOLUTION 73 (III) ADOPTED BY THE UNITED NATIONS CONFERENCE ON TRADE
AND DEVELOPMENT AT ITS 118TH PLENARY MEETING, ON 19 MAY 1973

The United Nations Conference on Trade and Development,

Bearing in mind the International Development Strategy for the Second United Nations Development Decade, and in particular paragraph 37, which provides that "Restrictive business practices particularly affecting the trade and development of the developing countries will be identified with a view to the consideration of appropriate remedial measures, the aim being to reach concrete and significant results early in the Decade. Efforts will be made with a view to achieving these results before 31 December 1972"; and, to the extent relevant to restrictive business practices, also paragraph 64 of the Strategy,

Recalling Conference resolution 25 (II) of 27 March 1968, and Trade and Development Board, resolution 51 (VIII) of 5 February 1969 on the nature, scope and characteristics of the study of restrictive business practices,

Welcoming the studies carried out by the UNCTAD secretariat, in particular the preliminary report on restrictive business prepared for the Committee on Manufactures at its fifth session b/ and the report prepared for the Conference at its third session c/ and noting the other documents mentioned in the last report, d/

Reaffirming conclusion 2 (V), on restrictive business practices, adopted by the Committee on Manufactures, at its fifth session with regard to the future work on restrictive business practices,

Recognizing that work being done on restrictive business practices constitutes an important component of the programme of work on the liberalization of barriers to the trade of developing countries on manufactures and semi-manufactures and that every effort should be made with a view to alleviating and, where possible, eliminating restrictive business practices adversely affecting their trade and development,

Recognizing also the desirability of action by developing countries at national, subregional, regional or other multilateral levels to take appropriate remedial measures for such restrictive business practices which adversely affect their economies,

a/ The Conference adopted this resolution without dissent.

b/ TD/B/C.2/104 and Corr.1, 2 and 4. (United Nations publication, Sales No. E.72.II.D.10).

c/ TD/122 and Corr.1 and Suppl.1.

d/ See TD/122/Suppl.1, paras. 5-7.

Considering the possible adverse impact of restrictive business practices, including among others those resulting from the increased activities of multinational enterprises, on the trade and development of developing countries,

Noting that the least advanced among the developing countries have greater difficulty in taking effective action in this field,

1. Recommends that:

(a) Every effort should be made with the view to alleviating and, where possible eliminating, restrictive business practices adversely affecting the trade and development of developing countries;

(b) Co-operation among developed and developing countries through an exchange of information and consultations and other means could contribute to the alleviation and, where possible, elimination of restrictive business practices adversely affecting both the developed and developing countries;

(c) Attention should be paid to the possibility of drawing up guidelines for the consideration of Governments of developed and developing countries regarding restrictive business practices adversely affecting developing countries;

2. Calls upon the UNCTAD secretariat to pursue further its studies in this field and to give urgent consideration to formulating the elements of a model law or laws for developing countries in regard to restrictive business practices;

3. Further calls upon all member countries in particular the developed countries and competent international organizations, such as the World Intellectual Property Organization and the International Chamber of Commerce, to extend their fullest co-operation to the UNCTAD secretariat in this regard;

4. Decides to establish an Ad Hoc Group of Experts on Restrictive Business Practices consisting of an adequate number of governmental and non-governmental experts to be nominated by the Secretary-General of UNCTAD after consultations with Governments. This Expert Group will be responsible to the Committee on Manufactures, to which it shall submit its report as soon as possible;

5. The terms of reference of the Ad Hoc Group of Experts shall include the following, bearing in mind that the work shall be carried out in the context of liberalization and expansion of trade in manufactures and semi-manufactures of interest to developing countries:

(a) The identification of all restrictive business practices including among others those resulting from activities of multinational corporations and enterprises which adversely affect the trade and development of developing countries with a view to submitting recommendations to the Committee on Manufactures for alleviating and, where possible, eliminating, such practices;

/...

(b) Further study of restrictive business practices followed by enterprises and corporations, which have already been identified, and which are adversely affecting the trade and development of developing countries, including among others such practices which may stem from: cartel activities; business restrictions practised by enterprises and multinational corporations; export prohibitions; agreements on market distribution and allocation; the tying of the supply of inputs including raw materials and components; restrictions specified in contracts for the transfer of technology, arbitrary transfer pricing between the parent company and its affiliates; monopoly practices;

(c) In addition to the practices already referred to in the present resolution in carrying out its studies and submitting its recommendations to the Committee on Manufactures, more attention than in the past should be given to such practices, among others, applied by enterprises and corporations and adversely affecting the trade and development of the developing countries, as those in relation to licensing arrangements and related agreements referring to the use of patents and trade-marks; market sharing; pricing policy and participation of firms of developing countries in industrial projects of multinational corporations;

(d) In carrying out its studies and submitting its recommendations to the Committee on Manufactures, the Group of Experts shall give special consideration to the position of the least developed among the developing countries;

(e) It shall examine the possibility of drawing up guidelines for the consideration of Governments of developed and developing countries regarding restrictive business practices adversely affecting developing countries;

(f) It shall take fully into account those studies which have been and are being carried out by the other international organizations of relevance to work in this area, and shall work in close co-operation with them;

6. Requests the Committee on Manufactures to consider the Expert Group's report and recommend appropriate remedial action on restrictive business practices;

7. In so far as work on restrictive business practices is related to the question of transfer of technology, close co-ordination between the Committee on Manufactures and the Intergovernmental Group on Transfer of Technology should be maintained, so as to avoid duplication of work.

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Annex IV

ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1721 (LIII) OF
28 JULY 1972

1721 (LIII). The impact of multinational corporations on the development process and on international relations

The Economic and Social Council,

Recalling that, according to the Charter of the United Nations, the creation of conditions of stability and well-being is necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples,

Recognizing the growing interdependence of economic and social development in the various parts of the world,

Aware that economic and social conditions are continually undergoing changes which require regular scrutiny to ensure unimpeded and equitable progress towards the attainment of an integrated world economy within the framework of the International Development Strategy for the Second United Nations Development Decade,

Taking note of the statement in the World Economic Survey, 1971 which says, with reference to the multinational corporations, that "while these corporations are frequently effective agents for the transfer of technology as well as capital to developing countries, their role is sometimes viewed with awe, since their size and power surpass the host country's entire economy. The international community has yet to formulate a positive policy and establish effective machinery for dealing with the issues raised by the activities of these corporations", a/

Noting also the resolution adopted at the fifty-sixth session of the International Labour Conference, concerning the social consequences of the activities of multinational corporations b/ and the convening by the Governing Body of the International Labour Office of a meeting concerning the relationship between multinational undertakings and social policy,

Noting further that, in resolution 73 (III) on restrictive business practices adopted at the third session of the United Nations Conference on Trade and Development, c/ considering the possible adverse impact of restrictive business

a/ See E/5144 (United Nations publication, Sales No. E.72.II.C.2), p. 10.

b/ See International Labour Conference, Provisional Record No. 2, Fifty-sixth Session, Geneva, 27 May 1971.

c/ See Proceedings of the United Nations Conference on Trade and Development, Third Session, Vol. I, Report and Annexes (to be issued as a United Nations publication), annex I.

practices, including among others those resulting from the increased activities of multinational enterprises, on the trade and development of developing countries, the Conference decided that an Ad Hoc Group of Experts on Restrictive Business Practices should be set up to make a further study of restrictive business practices followed by enterprises and corporations which have already been identified and which are adversely affecting the trade and development of the developing countries, including among others such practices which may stem from cartel activities, business restrictions practised by enterprises and multinational corporations, export prohibitions, agreements on market distribution and allocation, the tying of the supply of inputs including raw materials and components, restrictions specified in contracts for the transfer of technology, arbitrary transfer pricing between the parent company and its affiliates, and monopoly practices,

1. Requests the Secretary-General, in consultation with Governments, to appoint from the public and private sectors and on a broad geographical basis a study group of eminent persons intimately acquainted with international economic, trade and social problems and related international relations, to study the role of multinational corporations and their impact on the process of development, especially that of the developing countries, and also their implications for international relations, to formulate conclusions which may possibly be used by Governments in making their sovereign decisions regarding national policy in this respect, and to submit recommendations for appropriate international action, the study group to consist of not less than 14 nor more than 20 persons;

2. Recommends that the study group appointed by the Secretary-General be informed of the conclusions of the Ad Hoc Group of Experts on Restrictive Business Practices established by the United Nations Conference on Trade and Development at its third session, and the comments on them of the Trade and Development Board's Committee on Manufactures, so that, among the various aspects of the problem, the important one referred to the Ad Hoc Group of Experts can be taken into account in the global study of multinational corporations envisaged in paragraph 1 above;

3. Recommends further that the study group take advantage of and take into account research being carried out in this field by other international organizations, particularly that of the Governing Body of the International Labour Office as a result of the resolution concerning the social consequences of the activities of multinational corporations adopted at the fifty-sixth session of the International Labour Conference;

4. Further requests the Secretary-General to submit the report of the study group, together with his own comments and recommendations, to the Economic and Social Council at its fifty-seventh session at the latest, and to inform the Council at its fifty-fifth session of the progress made in the implementation of the present resolution.
