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Concept of Transnational & Multinational Corporations - UNCTAD Model 2000-2200

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Transnational corporations are among the vital components of international economics. These corporations have a significant impact on burgeoning global diverse business trends and competition in international markets and within the boundary of a nation. This paper will examine how internationalisation is embedded in the improvement of the functioning of Transnational and Multinational corporations in the host and native countries under the supervisory control of governments. It is important to note how crucial a corporation can be in ensuring sustained economic growth in the international economy by strengthening healthy competition in the market even in the current volatile processes. The world is witnessing a challenge in determining how TNCs should interact with their local and global environments, as well as any inherent rewards and risks for certain sectors and stakeholders, including governments.¹ All of these initiatives like policy making, supervisory control, reasonable restrictions etc. are meant to result in greater overall quality of life in the context of global economies.

Keywords: *transnational companies, multinational corporations, global economies, reasonable restrictions.*

¹ John M. Kline, 'TNC codes and national 29 sovereignty: deciding when TNCs should engage in political activity' (2005) 14(3) *Transnational Corporations* <https://unctad.org/system/files/official-document/iteit20059_en.pdf> accessed 09 December 2022

INTRODUCTION

Multiple factors, such as liberalisation, globalization, privatization, and modern communication technology, enabled the companies to function smoothly in so many countries at the same time. These international companies are classified based on their investment, structure, services, and also by mode of operations. Based on the business structure, we can divide an organization into two types, one is multinational and the other one is transnational. These two kinds of organizations broadly work under the same kinds of conditions, which is why so many times these two are labelled as one.

‘Multinational’ as the name suggests, the business operates in at least one country other than its home country.² Such corporations have assets and facilities in more than two countries. However, these companies have a central office from which global management is controlled or coordinated. Hence, the decision-making power of the central office affects all the subsidiaries globally. Transnational” these companies operate in two or more countries but such companies do not have a centralised control mechanism. Hence, decisions are taken as per the suitability of the operating zone. As the management system here is not centralized, similar firms operating in different countries cannot be treated as subsidiaries. Multi-National Companies and transnational companies are both big organizations which expand their industrial and marketing networks through their branches or majority-owned foreign affiliates (MOFAs). Since 1991, India has witnessed a huge inflow of foreign investment as Multi-National Companies came into India. The new economic policy adopted by India in 1991 has 3 vital characteristics:

- A. Opening the economy to global markets.
- B. Stabilizing the economy through structural reforms.
- C. Reducing import tariffs and state intervention in policy decisions.

² James Chen, ‘Multinational Corporation: Definition, How It Works, Four Types’ (Investopedia, 29 July 2022) <<https://www.investopedia.com/terms/m/multinationalcorporation.asp>> accessed 09 December 2022

UNCTAD'S DRAFT MODEL ON TRANSNATIONAL CORPORATIONS

The United Nations Conference on Trade and Development (UNCTAD)³ is an organ of the United Nations that deals with the effects of trade and investment in developing nations. In the year 1983, UNCTAD issued a draft model relating to 'transnational corporations'. These are the vital provisions of the draft:

DEFINITION AND EXTENT OF THE DRAFT

'Transnational corporations' as this code's explanation indicates an enterprise, comprising entities in two or more countries, regardless of the legal form and fields of activity of these entities, which operates under a system of decision-making, permitting coherent policies and a common strategy through one or more decision making centres, in which the entities are so linked, by ownership or otherwise, that one or more of them may be able to exercise a significant influence over the activities of the others. These entities can be of public, private, or mixed ownership. This code has universal applicability at home and in the host countries of transnational corporations. This code is open to adoption by all states, regardless of their political and economic scenario and their level of development. This particular draft applies to every type of enterprise. The provisions of this code's intention behind these provisions are not to create any difference between "Transnational corporations" and domestic corporations but to introduce a good set of practices for all enterprises. Under these provisions, both transnational corporations and domestic corporations have been placed on equal footing and subject to the same expectations. The provisions of this draft include states, countries, or governments and also include regional groups of the state. There are also clauses in this draft applicable to affairs within such groups as well regarding the level of competence.

³ 'United Nations Conference on Trade and Development (UNCTAD)' (*United Nations*) <<https://sdgs.un.org/un-system-sdg-implementation/united-nations-conference-trade-and-development-unctad-44215>> accessed 09 December 2022

ACTIVITIES OF TRANSNATIONAL CORPORATIONS

Transnational corporations perform various kinds of activities irrespective of their origin or place of work.

- **General and Political**

Transnational corporations need to respect the sovereignty and domestic laws/regulations of a nation following international laws in consideration of agreements signed by the nations concerning their resources and finance. Transnational corporations should adhere to the explicitly declared administrative laws and policies of the host nations. Units of "transnational corporations" are governed by the laws and regulations of the countries in which they operate to the extent necessary. Transnational corporations should conduct their operations in line with the plans, programs, goals, and objectives set by the governments of those nations. Such corporations should work towards the achievement of such goals not only at national but, if possible, regional levels too. All "transnational corporations" are required to work with the governments of the nations in which they do business to create development plans and should be receptive to requests for input in this regard so that positive relationships can be developed with those countries. The host countries should make pertinent governmental agreements for cooperative action.

All the contracts between the government and transnational corporations should be bargained for and carried out in good faith. Generally, long-term agreements have negotiation and review clauses in them. But, in the case of the non-appearance of such clauses and if a fundamental change has taken place in the circumstances under which the whole contract has been executed. So, in that case, transnational corporations should band alongside the administration in good faith for review and re-negotiations of the contracts. Transnational corporations shall stay away from all actions, behaviour, and amenities which can lead to destructive outcomes on social-cultural marking resolved by the administration of host nations. Economic and mechanical evolution is generally backed by social changes. In societal as well as commercial associations, 'transnational corporations' should not show prejudice about the footing of race, religion,

gender, colour, mother tongue, communal, state and ethnological or any other viewpoint. 'Transnational corporations' must be bound by government plans or policies designed to increase equality of opportunity and treatment. In conformity regarding the endeavours of the global body about the 'eradication of apartheid in South Africa and its continued illicit occupation in Namibia.'

- All the 'transnational corporations' shall gradually lessen their operational affairs and abstain from making any further funding in 'South Africa' and instantly terminate all operations in South Africa.
- 'Transnational corporations' shall hold back from uniting formally or informally, particularly concerning their "racist practices in South Africa and illicit occupation of Namibia" to be in line with the United Nations resolution concerning these two nations.

A "transnational corporation" shall not impede illicitly in the internal political events of the nations in which they are operating. This implies that these corporations shall also refrain from any disruptive and other illegitimate occupation directed towards impairing the political and social structure in such nations. A "transnational corporation" shall not interfere in any activities which are the sole responsibility of the government. A "Transnational Corporation" shall avoid, in its undertaking, handing out, encouraging or giving any liquidation, gift or other benefits as consideration for carrying out its duties. For the code, the principles set out in the international agreement on illicit payments adopted by the United Nations should apply in the area of abstention from corrupt practices.

A. Economical, financial, and social authority and control

Transnational corporations must assign power to make decisions among their entities. So, they are all not to the development of the host country. "Transnational corporations" shall cooperate with other corporations by following local ordinances, policies, and rules so all transnational corporations can meet successfully the demand fixed by laws. Every Transnational Corporation should join the government in its policies to increase active participation from its citizens in the 'decision-making processes'.

Transnational Corporations should conduct their financial activities like the balance of payments or other financial transactions following the laws and regulations of that country. As needed by the administration or promotion of administration's policies concerning nature, scope, and purpose to the extent of Transnational Corporations should add to the enhancement of exports and imports in the nations where they function and also to an enhanced application of goods and services, and other assets available to such nations.

Transnational corporations should be amenable to calls for by administration to such nations concerning any plan for disinvestment or remittance of accumulated profits, when the size and duration of such transfers can lead to intense balance-of-payments strains for such nations. Transnational corporations shall not go against the normally prevalent economic execution affairs prevalent in the host country. They should not involve in small-duration economic operations or transfers or defer or advance foreign exchange transactions in a way which will enhance monetary instability in a nation and that can bring about an intense balance of payment for the nations concerned.

Such corporations should not put curtailment on their unit's far-off by and large accepted commercial transactions prevalent in such nations regarding the transfer of goods, services, and funds. Every Transnational Corporation should never become part of operations which would have a serious unfavourable collision on the survival of local markets, especially by restricting the availableness of money to other transnational corporations. While providing securities to enhance local equity involvement in enterprise such a nation or engage in long-term debts in the local market, transnational corporations should discuss with the administration of the host nation on request upon the effects of such transactions on local money and capital markets.

Transnational Corporations shall not use monetary practices which are not based on significant market prices or in the absence of such prices, the arm's length principle, which saves the effect of changing the tax base on which the entities are assessed or of evading exchange control measures adversely affect economic and social conditions of the nations in which they operate. Transnational corporations should adhere to all the relevant laws, policies, and regulations

regarding the Transfer of technology, competition and restrictive business activities, consumer protection, and environmental protection of the nation in which they are operating.

Disclosure of Information: Every Transnational Corporation should disclose to the public at large in the nation in which they operate, by using reasonable modes of communication, all the lucid, full and detailed information on the formation, blueprint, functions and activities as a whole. Such details should include all economic and non-economic entries and should be made available to the public at regular intervals. A piece of financial information to make available annually with appropriate detailed notes and should include the followings:

- A balance sheet;
- Research and development expenditure;
- An income statement including operating results and sales;
- A statement of allocation of net income or net profits;
- Details of significant new long-term capital investments;
- A statement of sources and uses of funds;
- Details of research and development expenditure.

Non-financial information should include

- Structure of Transnational corporation displaying name and address of parent organisation, its important entities, % of ownership (direct or indirect);
- The main function of its entities;
- Employment information including the average number of employees;
- Accounting policies used in the organisation;
- Policies applied concerning transfer pricing.

POSITION OF TRANSNATIONAL CORPORATIONS

- **General treatment of “transnational corporations” by the host nations:**

All nations have the right to regulate the entrance and initiation of the “transnational corporation” together with the functions such corporations may play in social and economic development and can also bar their existence in specific fields. Such corporations should get just and fair-minded and non-biased treatment by the laws of the nations in which they operate and also intergovernmental conditions to which the governments of these nations have subscribed consistent with International law.

Transnational corporations should not demand preferential treatment or concessions given to domestic enterprises to promote self-reliance or make them independent to survive global competition. All the laws, regulations, policies, schemes, bylaws and other measures which can affect transnational corporations must be clearly and readily available. Amendments in them must be made by following exact legal procedure and also by keeping in mind the legitimate rights and duties of all concerned parties. Any sort of confidential information provided by transnational corporations to the government of the host nation must be accorded reasonable safeguards to protect its confidentiality. All Transnational corporations should be enabled to make all the payments such as interest on capital invested, cash repatriated upon the termination of the transaction, licence & technical assistance fees, and other royalties.

CONCLUSION

The ambience for international communication and cooperation in science has been advantageous since ever. Unfortunately, the technical community has to face a lot of drawbacks because of fear for national security and the internal functioning of a nation. In 1998, a joint task force had been established by Japan for the promotion of the Rights and Responsibilities of Multinational corporations in an age of technological interdependence. In today’s era, Transnational and Multinational corporations are scrambling to find ways to protect their survival. They need to fulfil the responsibilities of a citizen in their parent and host countries too since they cannot function by merely thinking about themselves and the interests of their nation. They need to make stronger connections with indigenous communities. The emergence of synergistic contests ought to occur next to world peace may advance if the ongoing trend holds since nationalistic political factions may not be able to dismantle networks of international

cooperation. The Japanese task force suggested that the government, as well as multinational and transnational corporations, should adhere to the core of ethical business and management. As there is no immediate need to create guidelines regarding the rights and duties of MNCs as there are so many exemplary examples of success and MNCs can learn from them to flourish.