

United Nations and its Interface with Transnational Corporations

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Abstract

The United Nations has played a significant role in shaping the discourse on business actors, particularly the transnational corporations. The UN, in various capacities, has framed norms and standards intending to regulate businesses in various issue areas such as human rights, trade, investments, environment, data protection, etc. The evolution of the UN's involvement with transnational corporations from the 1950s to the present has gone through various distinct phases. The UN established a dedicated centre on transnational corporations in the early 1970s to check corporate conduct. The centre also worked on a Code of Conduct for the corporations, but the centre itself was dismantled in the wake of globalisation in 1992. This paper is conceptually based on a constructive framework that focuses on norms and standards in various issue areas governing the activities of the corporations. It also focuses on the political influence of corporations in the decision-making in the UN system. The UN under Kofi Annan renewed the efforts with respect to the corporations as important stakeholders in the Millennium Development Goals. John Ruggie, appointed in 2005, played an important role in guiding principles for the businesses. But in the process, the discourse on the legally binding accountability of the corporations shifted to voluntary guidelines at the whims and fancy of the corporations. This paper traces this shift within the UN with respect to the attitude of UN bureaucracy, the interests of the member states, the global environment, etc. This paper is divided into various phases – from origin to 1970s, 1970 to 1992, 1992 to the present – the explaining the evolution of the UN interface with corporations

Keywords: United Nations, Transnational Corporations, Code of Conduct, BINGOs,

Background

In the liberal institutional school, the interface between international organisations and the business sector can be understood through functional aspects. International organizations like the

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United Nations encourages learning among international institutions and stakeholders through norms and information on various issue areas such as transnational corporations (Haas 2004a, 2004b; Keohane et al. 1993). The bureaucracy employed in these IOs defines shared international tasks (like ‘development’), creates and defines new categories of actors (like ‘refugees’), creates new interests for actors (like ‘promoting human rights’), and transfers models of political organisation around the world (Barnett and Finnemore 1999: 699). Scholars like Hamdani and Ruffing (2015) through their work have shown that the UN has played an important role in defining norms and setting standards for corporate behaviour. The United Nations (UN) has played a significant role in shaping global discourse on business actors, particularly transnational corporations² (TNCs). Across multiple issue areas—including human rights, trade, investment, environmental protection, and data governance—the UN has framed norms and standards intended to regulate corporate conduct. The UN’s engagement with transnational corporations has evolved through several distinct phases since its origin, reflecting broader political and economic transformations in the international system. A pivotal moment in this engagement was the establishment of the UN Centre on Transnational Corporations (UNCTC) in the early 1970s, which sought to advance binding regulatory frameworks for corporate accountability. However, this regulatory momentum was reversed in the context of economic liberalisation and globalisation, culminating in the dismantling of the UNCTC in 1992. This shift marked a transition from a regulatory approach to a more market oriented and voluntary framework governing corporate behaviour.

Under the leadership of Secretary-General Kofi Annan, the UN renewed its engagement with the corporate sector by positioning businesses as key stakeholders in achieving the Millennium Development Goals (MDGs). The appointment of John Ruggie as the UN Special Representative on Business and Human Rights in 2005 marked another critical juncture, leading to the development of the UN Guiding Principles on Business and Human Rights. While these principles represented an important normative advance, they also institutionalised a shift away

² In this paper, the term 'transnational corporation' has been used interchangeably with 'multinational corporation'. In the ECOSOC meeting, the summer session in July-Aug 1974 in Geneva, it was decided to refer to multinational corporations as 'transnational corporations', a term which was considered to be more appropriate to the character and behaviour of multinational corporations. (United Nations Centre for Economic and Social Information, 1974).

from legally binding accountability towards voluntary, self-regulatory mechanisms largely dependent on corporate willingness to comply.

Conceptually, this paper is grounded in a constructivist framework, focusing on the production, diffusion, and institutionalisation of norms and standards across different issue areas. It also critically examines the political influence exerted by corporate actors and lobbyists on decision-making processes within the UN system. Particular attention is paid to how power asymmetries between states, businesses, and UN bureaucracies shape outcomes in global governance. This paper traces this normative and institutional shift within the UN, analysing changes in the attitudes of UN bureaucracies, the interests and alignments of member states, and the broader political economy of global governance. In doing so, it highlights how the promise of binding corporate accountability was gradually displaced by voluntary frameworks, raising critical questions about the effectiveness and legitimacy of the UN's contemporary approach to regulating transnational corporations.

League of Nations and Early UN Days

The League of Nations looked into the problem of sea-polluting corporations owing to the increased number of vessels transporting or burning oil fuel. "The damage to property in ports, to bathing resorts and to fisheries and birds is growing worse every year" (League of Nations, 1936,138). Various Chambers of Commerce in the western world have directly been involved with the League, promoting their agendas for global trade.

Before the end of World War II, the Chamber of Commerce of the United States, by vote of its members, declared in favour of an international organisation for the purpose of maintaining peace and security among nations. The Chamber, in its official manifesto, declared:

"The Chamber reaffirms its belief in the need for such an agency and in the United Nations organisation as the present instrumentality for meeting that need. That it is perfect or final in form no one would assert. That it can solve all the problems of a troubled world would be too much to expect. Created by men who are fallible and subject to human weak" (US Chamber of Commerce, 1943).....The United States of America should expend every possible effort to bring the United Nations organization through this

testing period, to the end that it, with whatever refinements and evolutionary perfections may be necessary, shall become in fact, as it now is in hope, the final safeguard of mankind against the ravages of brutal strife. (US Chamber of Commerce 1943)

The Chamber of Commerce, US, also expected a push to international industrial standards through cooperation between industry and government. It envisioned the need for industrial standardisation, as it would provide effective solutions for many serious problems arising in international trade, thereby contributing to better understanding and greater volume of trade.

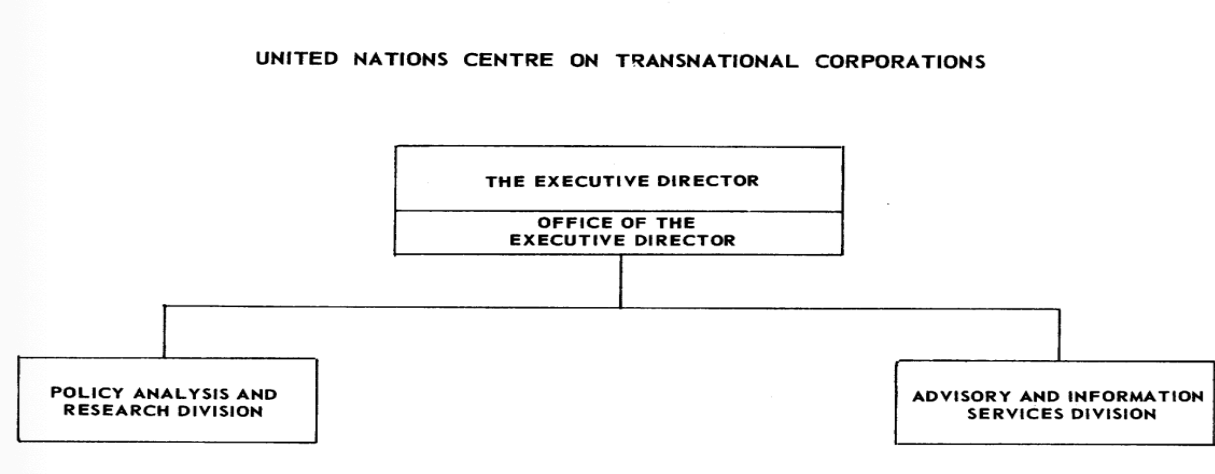
In the United Nations, the business community has been involved since its inception in 1945. The evolution of the UN's involvement with transnational corporations from its origin to the present has gone through various phases. The United Nations played a notable role in preparing the Havana Charter in 1948 for an International Trade Organization, dealing with the question of international trade, investments and restrictive business practices (United Nations, 1974). This phase has been referred to as 'the Laissez-Faire Era (1945-1960s),' as there was an opening and flourishing of foreign direct investment (Nissan, 2009). The Secretary-General, later in 1976, wrote to the Commission on Transnational Corporations, "In 1948 the United Nations took steps to evolve a workable understanding to regulate international production; that early initiative failed because it was premature" (United Nations. 1976).

Institutional Arrangements on Transnational Corporations

With an increased role of corporations, the 'restrictive-unilateral era' began in the late 1960s. Governments in developing countries, particularly Chile and Iran, were apprehensive about the involvement of TNCs in corruption, bribery, and CIA-staged coups (Dunning, 2008 27:35). This was thus the period of the beginning of the broader involvement of the UN, where new ideas emerged through the creation of the Group of Eminent Persons (GEP) (Nissan, 2009). The GEP consisted of 20 representatives from developing and developed countries, the business sector, and academics. The group conducted hearings³ with representatives of corporations,

³ The group of eminent persons appointed to study the impact of multinational corporations on development and on international relations at its meeting in Geneva on 3 November, heard the views of five persons - two from the business community, one from the academic community, one from an intergovernmental agency, and one from the government of a developing Country. (United Nations, 1973) The first statement was made by J.A.C. Hugill, Executive Director of Tate and Lyle Ltd. and Chairman of the Industry Cooperative Programme (ICP). Mr. Hugill recalled that the programme had begun eight years ago as a means by which the agro-allied industry could make its views heard and cooperate with the United Nations system and with the Third World.

governments, intergovernmental organisations, non-governmental organisations, and trade unions (UN, 1974; Segerlund, 2007). The UN Department of Economic and Social Affairs (UN DESA), under Under-Secretary-General Philippe de Seynes, published a report “Multinational Corporations in World Development”, in 1973 which highlighted the problems of multinational corporations. Later, Mr Philippe de Seynes, Under Secretary General for economic and social affairs, was given the responsibility to oversee the UN Centre on behalf of the Secretary General.



Source: Organizational Manual (UNCTC, 1983)

Name	Country	Professional Role & Affiliation
Emerik Blum	Yugoslavia	Chief Executive of Energoinvest (a major Yugoslavian conglomerate).
Pierre Emmanuel Uri	France	Professor and Economic Consultant.
Jean-Luc Pepin	Canada	Politician; formerly a professor at the University of Ottawa.
William S. Blackie	USA	Business Executive at Caterpillar Tractor Co. (Ranked No. 60 on the Fortune 500 at the time).

Compiled from the Secretary General's letters to invite individuals to join GEP.

The GEP representatives recommended the establishment of the UN Centre on Transnational Corporations (UNCTC) and the UN Commission on TNCs. The centre⁴ was established pursuant to Economic and Social Council resolutions 1908 (LVII) and 1913 (LVII). It was headed by an executive director at the assistant secretary-general level who was responsible directly to the Secretary-General. GEP to Study the Impact of Multinational Corporations on Development and on International Relations concluded a hearing of testimony from representatives of the business community⁵ after raising a number of questions to them.

There were disagreements on the nature of the commission. Yugoslavia expected the commission on TNCs to be an advisory body. There were also concerns about the involvement of the corporations in the process of establishing the corporations. A Swiss organization, charged six large Swiss multinationals with infiltrating the committee which set up the UNCTC. In 60 pages of documentation the "Bern Declaration"⁶ reproduced excerpts from highly confidential minutes and correspondence of six multinationals, namely Nestle, Ciba-Geigy, Sandoz, Hoffman-Laroche, Brown Boveri and Sulzer. The first four of these multinationals together accounted for sales of over \$4 billion in the United States.

The release of these documents had provoked a heated debate in the Swiss media. The controversy has centred around Hans Schaffner, a former president of Switzerland and (then) official of one of the companies involved (Sandoz). Schaffner served as one of the 20 members of the Group of Eminent Persons which established the need for the UN Centre in 1973-74. While officially classed as a governmental representative, Schaffner was in effect representing the private interests of the six multinationals. The companies' strategy was prepared in over 15 secret meetings of top corporate executives, at least one of which included both Schaffner and

⁴ The centre was located on the 10th floor of the Burroughs Building at 605 Third Avenue, New York City.

⁵ These representatives included Enilio Collado, Executive Vice-President, Exxon Corporation; Jacques Maisoncige, President, IBM World Trade Corporation; Thomas Murphy, Vice-Chairman, General Motors Corporation; John Powers, Honorary Chairman of the Board of Directors of Pfizer, Inc.; and Irving Shapiro, Vice-Chairman, E.I. du Pont de Nemours. Gilbert Jones, Chairman of the IBM World Trade Corporation; José Campillo Saenz, Under-Secretary for Industry and Commerce of Mexico; Ernst Keller, President; Adela Investment Co. of Lima, Peru; Ralph Nader, private consumer advocate in the United States, and John Horgan, adviser on multinational corporations to the International Council for Social Welfare.

⁶ Berne Declaration: Original name of a manifesto on Swiss development policy published in 1968 upon initiative of several Protestant theologians. The Berne Declaration was signed by 11,000 people willing to take on certain financial and political responsibilities (among other to pay 1-3% of their income for aid to developing countries during a 3-year period). This developed into an organization which combines publication of information on relations between Switzerland and the third world with political and social action. The organization was financed entirely by its membership; it received no subsidies from political parties or the government. A representative of the Bern Declaration was Dr. Anne-Marie Holenstein.

Swiss government officials. The U.S. members involved were Senator Jacob Javits and J. Irwin Miller (chairman of Cummins Engine Co.).

The companies elaborated the following guidelines for Schaffner:

- 1) Delay the formation of a code of conduct for multinational corporations.
- 2) Restrict any further disclosure on the operations of multinationals, particularly on the sensitive issues of profit movements and transfer pricing.
- 3) Reject any enforcement procedures for a code of conduct.
- 4) If all the above efforts failed, restrict the formulation of a code of conduct to international agencies sympathetic to the multinationals (Swiss Organization, n.d.).

Another UN agency – the Food and Agricultural Organization – decided to expel the Industrial Cooperative Program (ICP), an FAO body composed of 100 leading multinationals. Trade unions and Third World countries charged that the ICP jeopardized the FAO's ability to serve as a neutral development agency. The multinationals again requested Schaffner use his influence with UN Secretary General Kurt Waldheim to have the ICP transferred to another UN development agency.

There were also requests by the corporations to appoint the favourite candidate for their convenience. Arnold Miller, President of the United Mine Workers of America based in Washington DC, urged the Secretary General regarding the appointment of Mr Nat Weinberg, who was former research director of the United Auto Workers, as an advisor to the United Nations Commission on Transnational Corporations. Mr Weinberg had earlier served as a consultant to the Group of Eminent Persons whose report led to the establishment of the commission . To which the secretary general assured to 'give most careful consideration to his candidature.' (United Mine Workers of America, 1976).

The Berne Declaration aimed to stimulate an international debate and investigation within the UN on the following questions:

- 1) The relationship between the big multinationals and the UN. The documentation establishes that the corporations succeeded in unduely influencing the UN and its agencies.

2) The relationship between multinationals and their governments. The documentation demonstrates how multinationals influence the policies of their governments.

3) The relationship between the corporations and public opinion. The documentation establishes that the corporations are able to put economic journalists to work for their purposes so as to manipulate the attitude of public opinion towards multinationals and developing countries.

Dual Interface of the Corporations

There have been interactions and collaboration between UN agencies and the corporate organizations. “UN We Believe” organized the first advertising conference held at the United Nations in 1974 on June 26. The conference was addressed by the chairmen of Lehman Brothers-Doyle Dane Bernbach. The Secretary General in his speech, highlighted multiple dimensions, including works and challenges of the UN, and even mentioned that the budget of the UN is far smaller than an average American corporation's (UN We Believe, 1974).

The Office of the President (held by Mrs Guido Pantaleoni), United States Committee for UNICEF, in a letter requested Secretary General Kurt Waldheim to join lunch at the annual meeting on 10 May 1974. Invitations were sent to the members of the corporations and to significant leaders who were active in UNICEF support programmes. (United States Committee for UNICEF, 1974). At the gala event organised at the UN premises by UNESCO, the women volunteers received most of the funds from corporations (Rockwell, 1975).

Nevertheless, the term 'multinational corporation' became an important discussion in the United Nations. David Burgess, Senior Officer of the United Nations Children's International Fund, in commemoration of the opening of the 30th Session of the “United Nations General Assembly” dated 12 September 1975, said the following:

“For those of us participating... in the 30th Session of the General Assembly” – for those of us who work in the Secretariat and in various agencies of the United Nations, key words of the past few years have taken on new meaning – détente, pollution, national identity, determination, apartheid, multinational corporations, hunger, disaster, human rights, liberation, imperialism, and confrontation (United Nations, 1975).

US-USSR tensions: Reflection of global politics

The Permanent Representative of the Union of Soviet Socialist Republics to the United Nations addressed a letter complaining about the nomination of a person from West Berlin as the accredited representative of the Federal Republic of Germany to the United Nations Commission on Transnational Corporations (UNGA, 1975). Evgeny N. Makeyev (Soviet Union) remarked that developing countries were most vulnerable to the negative impact of the activities of the MNCs. He said that the many corporations had become a state within a state and were behind many of the coups d'état in developing countries. In this connection, he referred to the overthrow of the government of Salvador Allende in Chile and its replacement by a military junta. Transnational corporations had the greater share of the \$10 billion to \$20 billion in profits that foreign enterprises pumped yearly out of the developing countries, said Mr Makeyev. He said the corporations were proving unmanageable even in industrialized countries. Their prime task was to strengthen their power abroad and not to promote economic and social progress. Also, they indulged in such practices as tax evasion and imposed on the developing countries models of development which was beneficial to the industrialized countries. (United Nations General Assembly, 1975).

The UNEP has had a detailed dialogue with industry leaders⁷ in automotive sector over 15 years with respect to harmonisation of emission standards. The 1976 UNEP seminar featured a high-level assembly of automotive leaders including the following:

Name of Official	Appointed/ Recommended	Date	Previous Experiences
Klaus A. Sahlgren	Executive Director of the United Nations Information and Research Centre on Transnational Corporations.	3 November 1975	Permanent Representative of Finland to the United Nations Office at Geneva. Chairman of the Council of the General Agreement on Tariffs and Trade for 1974-1975.
R.S. Bhatt	Chairman of the Commission on Transnational Corporations	17 March 1975	Chairman of the Indian Investment Centre in New Delhi and Director of the Steel Authority of India, a government undertaking.

⁷ Mr. Pehr G. Gyllenhammar, the President of AB Volvo. Mr. Iwaroshi, President of Nissan Motor Co., Mr. Kubo, President of Mitsubishi, and Mr. Komuro, the Executive Managing Director of Toyota. From the American industry, Mr. H.L. Misch attended as the Vice-President of Environmental and Safety Engineering for Ford, alongside Mr. George R. Ryder, the Director of Engineering for General Motors. Other representatives included from Volkswagen, Daimler-Benz, BMW, Renault, Peugeot, Citroën, Fiat, Alfa Romeo, Saab-Scania, Leyland, and Vauxhall. Trade associations and the petroleum industry. The Pehr G. Gyllenhammar, President of AB Volvo share disappointment concerning those entrenched viewpoints of certain countries and motor vehicle manufacturers on the environmental impacts of the motor vehicle (UNEP 1976).

Mr Gerassimos D. Arsenis	Director of Research, Center on Transnational Corporations,	On March 3, 1975, the Greek Government presented this candidature.	Director, New York Office of UNCTAD
Juan Somavia,	a Chilean national	Recommended by Cummins Engine Company based in Columbus, Indiana	previous experiences in GATT and the UN system as a member of the United Nations Group of Eminent Persons on Multinational Corporations and was unanimously elected rapporteur.
Mr. Noel Brown	Deputy Executive Director of the United Nations Centre on Transnational Corporations		Latin-American Group, Ambassador Muñoz Ledo, the latter expressed his Group's formal support for the candidacy. Director and Special Assistant to the Executive Director of the UNEP
Mr. Rana K.D.N. Singh,	Recommended by Indian authorities		
Mr. Samir Mansouri,	Nominated by Syrian Republic for the post of Deputy Executive Director of the United Nations Centre on Transnational Corporations	July 1981	Deputy Permanent Representative of the Syrian Mission to the United Nations
Mr. Farrokh Parsi (Iran)	Chairman, Ad Hoc Intergovernmental Working Group on the Problem of Corrupt Practices (Geneva, 27 June - 1 July 1977)		
Luiz Claudio Marinho			

Table: Profile of Officials related to UN Centre/Comission on Transnational Corporations

Work of the Commission and the Centre

The Commission adopted a resolution on transnational corporations in southern Africa, which called upon all such corporations to cease all further investments and progressively disengage from southern Africa. It also called upon home countries to adopt laws and regulations towards that end. The resolution was adopted by a vote of 36 in favour, 4 against (US, UK, Federal Republic of Germany and France) and 7 abstentions. It was the first vote taken in the commission. (Comission on TNCs)

The Intergovernmental Working Group on the Problem of Corrupt Practices under the Commission also moved forward into attempts to evolve an international agreement on illicit

payments in international commercial transactions⁸. The underlying basic political problem was that the U.S., which (partly for reasons of domestic – i.e., presidential/congressional policy) was pushing hard for a treaty against bribery and illicit payments, wasn't then, willing to pay the price asked for it by the African countries, i.e., a corresponding criminalization of the payment of royalties and taxes to illegal minority regimes in Southern Africa. Moreover, many developed countries, other than the US, were indifferent to the idea of setting up elaborate standards for reporting and disclosure of illicit payments.

The UNGA Resolution A/RES/3514 (XXX) dated 26 January 1976, called upon governments to collect information on corrupt practices, as well as on measures taken against such practices, and to exchange information bilaterally and, as appropriate, multilaterally, particularly through the United Nations Centre on Transnational Corporations (UNGA 1976). The Secretary General raised concerns that the agents of transnational corporations were capable of controlling or appreciably influencing an important and growing part of "social and economic life; it was the responsibility of the United Nations to institute arrangements which would recognize and seek to check such phenomenon. The establishment of UNCTC (Resolution 1908) was a watershed moment in the history of the United Nations (ECOSOC, 1974). At the very first session of the Commission on Transnational Corporations (New York, March 1975), before the formation of the Centre and the appointment of its executive director, delegates⁹ circulated position papers on the nature of the code of conduct for TNCs and its content (Hamdani and Ruffling, 2015); a comprehensive information system; studies on political, economic, and social aspects; technical co-operation; and the definition of transnational corporations (United Nations, 1975).

The UNCTC served as the focal point within the United Nations Secretariat for all matters related to transnational corporations and acted as secretariat to the Commission on Transnational Corporations, an intergovernmental subsidiary body of the United Nations Economic and Social Council. The UNCTC helped in the publication of various reports/documents related to environmental concerns. The UNCTC conducted meetings with key government officials and various agencies within the UN on transboundary environmental issues and industrial safety.

⁸ envisaged through conference of plenipotentiaries was envisaged to complete this task.

⁹ The negotiation process on the Code of Conduct was headed by Sten Niklasson from Sweden, assisted by academicians and business experts such as John Dunning, Raymond Vernon, Sanjaya Lall, Oscar Schachter, and Osvaldo Sunkel (Hamdani, 2017).

UNCTC worked on a Code of Conduct on Transnational Corporations which included multiple facets of the environment area (United Nations, 1974).

The need for a Code of Conduct for TNCs stemmed from the realisation that national regulation and control were inadequate to deal effectively with the global strategies of transnational corporations in small and developing countries, particularly in terms of adequate disclosure of information, consumer protection, and to prevent tax evasion, restrictive business practices, illicit payments and abusive transfer pricing (United Nations, 1983). At the same time, the developed countries also saw merit in the multilateral adoption of common standards of transnational corporate behaviour. In fact, the developed market economies introduced a code of conduct of their own within the framework of the OECD in 1976. The need for such a code was already present in the program of action on the establishment of a 'New International Economic Order' resolution 3202 of 1st May 1974 (UN General Assembly, 1974).

The Secretary General observed the following:

The international production had become the most significant global economic activity, leading to increased concern for the economic, social and political ill effects of unregulated international production and services (United Nations 1976).

The Declaration on the Establishment of a New International Economic Order, which provides for the regulation and supervision of the activities of transnational corporations.

I am more than ever convinced that lasting political stability can only be attained through the establishment of a just and efficient world economic order. (United Nations, 1976)

The UNCTC draft Code of Conduct¹⁰ was thus an outcome of a comprehensive range of deliberations by member states, both developing and developed states, international trade unions, academicians, etc.

At the time that the Code negotiations began, developing countries naturally wanted to have stringent regulations on the TNCs. At the same time, developed economies wanted to have a certain set of codes for the treatment of the TNCs in developing economies. The UNCTC performed a wide variety of functions other than the draft Code of Conduct. It helped in the publication of various reports/documents related to human rights violations, industrial safety, and accounting standards in the 1970s and 1980s. It helped in formulating legal frameworks on diverse subjects such as investment and foreign economic activities. The UNCTC also made a number of contributions to broader issues of the inconsistency in technological safety standards for workers, preventing industrial accidents, the environment, and neighbouring communities between different plant locations involving the TNCs. The UNCTC identified various ways in which TNCs could establish accident prevention and mitigation plans at both the global and local levels, particularly after the Bhopal gas tragedy in India. The UNCTC conducted meetings with key government officials and various agencies within the UN on transboundary industrial safety.

The UNCTC also looked into gross human rights violations caused by TNCs. In accordance with the Economic and Social Council decision 1985/127, the Secretary-General appointed an 11-member Panel of Eminent Persons to conduct public hearings on the activities of transnational corporations in South Africa and Namibia. The hearings attracted a wide range of participants, including Member States, representatives of United Nations bodies, representatives of national liberation movements in southern Africa, parliamentarians and other public officials, representatives of the International Chamber of Commerce and several South African business

¹⁰ The draft code on transnational corporations (1983) consisted of six main chapters. First, the preamble and a statement of objectives; second, the scope and definitions of the code, the third the longest part dealt with the activities of TNCs; it called the TNCs to respect the national sovereignty and observance of domestic laws, regulations and administrative practices of the host countries. The Code advocated that the TNCs follow the conformity standards of the domestic governments in terms of balance of payments, transfer pricing, transfer of technology, taxation, restrictive business practices, and consumer and environmental protection. The fourth chapter laid out the treatment that transnational corporations were to receive from the governments of the countries in which they operated in terms of jurisdiction, nationalization, and compensation. Fifth, highlighted the need for cooperation among the governments for the application of the code. The sixth chapter dealt with the action needed at the national and international levels for the implementation of the code. It provided for the United Nations Commission on Transnational Corporations to assume the functions of overseeing the implementation of the Code and the United Nations Centre of Transnational Corporations as the secretariat to the Commission. (UN Commission on TNCs, 1983). Both these provisions were objected to by some of the developed countries who were apprehensive of the UN Commission becoming a statutory body.

organizations, representatives of labour organizations, non-governmental organizations, and the press (Commission on TNCs, 1988).

Peter Hansen, Executive Director of the United Nations Centre on Transnational Corporations, United Nations hearings on the role of transnational corporations in South Africa and Namibia would be held from 4 to 6 September in Geneva. The previous hearings were held at Headquarters in 1985. Last year, the Economic and social council, on the recommendation of the Commission, decided that another set of hearings should be held, primarily due to the greater United States response to such hearing..... Mr Hansen said that the list of transnational corporations operating in South Africa was much shorter than the one prepared for the 1985 hearings. since some 300 companies had disinvested from South Africa during the past five years”. (Centre on Transnational Corporations. 1989)

Established by the Commission on International Corporations, “Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting” worked to harmonize the accounting and reporting practices of the companies that played a large role in the world economy. The group, composed of representatives of 34 countries, was the only group in which representatives of developed and developing countries met to discuss the harmonization of national standards in their field.

Miscellaneous Works

In its 15 years of technical assistance (1977–1991), the UNCTC advised developing countries on some 700 projects involving a combined FDI inflow of about US \$25 billion. UNCTC assisted various countries like China, Thailand, Cambodia, Uganda and Mozambique in formulating legal frameworks on diverse subjects such as investment and foreign economic activities. (Hamdani, 2015). The UNCTC advisory services included model contracts for natural resources (oil, gas, hard minerals, forestry, and fishing) as well as for hotel management, enabling host countries to obtain the best terms on record. A full draft model contract for petroleum exploration and production was prepared for Peru in 1989 (Allan, 2015). With the increased scope of services in

international economic transactions, the UNCTC conducted detailed research on the service sector.

The Executive Director of the UN Centre on TNC wrote to the Secretary General :

A distinct muting of East-West and North-South differences on major issues was evident at the session of the Commission on Transnational Corporations which concluded on 14 April. Changes in the attitudes of the Socialist States and the developing countries were mainly responsible. The Socialist States did not use the Commission to air political differences. They showed interest in using the commission. and the centre as a source of support for their attempts at economic change. The friendlier attitudes of developing countries towards foreign direct investment also contributed to the constructive atmosphere . Though it is open to question whether developing countries have undergone a philosophical conversion or are reacting to their extreme economic straits, it is important to recognize the opportunity the current political convergence offers us in terms of anchoring it in enduring agreements.

Some delegations expressed the view that some provisions in the draft Code required further clarification with regard to the following issues: the scope of application of the draft Code; provisions concerning the jurisdiction and obligations of home States and host States; enforcement mechanisms; provisions on the responsibilities of transnational corporations toward the environment, technology transfer and human rights; and dispute settlement procedures. In particular, the following issues were among those most frequently mentioned as outstanding: (a) What should be the precise definition of 'transnational corporation' and its enterprises; (b) whether obligations in the Code should be binding or voluntary; (c) what legal responsibility should attach to both home and host States? (d) the nature of enforcement and whether compliance would require sanctions. (e) how environmental standards should be incorporated; (f) the mechanisms for settlement of disputes under the draft Code; and (g) the relationship of the Code with existing international law. (Commission on Transnational Corporations, 1992, Paragraph 80 and 81).

A progress report on the subject states that positions of home and host countries regarding a code of conduct were becoming less polarized; Government policies were more transparent and hospitable to foreign direct investment now than in 1976, when negotiations on the code were first initiated. Agreement on dealing with the uncharted area of TNCs and the environment was a direct result of the improved atmosphere in the Commission.

It is possible that the negative attitude of the Reagan administration to UN norm-creating activity, particularly in respect to TNCs, will be amended in view of important economic developments that affect the position of the United States. (UN Centre on TC, 1989).

The first report (document E/C.10/1989/13) states that overlending to developing countries by transnational banks, without due regard to capital positions and the probability of default, was a major contributing factor to the international debt problem. The volume of lending to developing countries had peaked during the period 1974-1982 and fell off sharply afterwards. That fall-off, combined with the debt-servicing liability on existing loans, had created a large reverse transfer of resources from developing to developed countries during the period 1983-86.

To deal with the crisis, measures such as debt restructuring and debt.-for-debt swaps and debt-equity swaps were adopted which staved off a collapse of transnational banks. Those techniques, however, failed to address the worsening economic conditions of developing countries. (United Nations 1989)

The Secretary-General's report on transnational corporation developments (document B/C.10/1989/2) stated that worldwide flows of direct foreign investment had tripled during the period 1983 through 1987, reversing a trend of declining investment in the early part of the decade. However, flows to developing countries declined from 27 per cent of total foreign investments during 1981-1983 to 21 per cent during 1983-1987. Inflows to Latin America declined in absolute amounts, despite debt conversions. (United Nations, 1989).

In his opening remarks to the group, the executive director of the Centre on Transnational Corporations, Peter Hansen, underlined the importance of such standards by citing, as an example, that "inadequate disclosure in the financial sector will cost the United States

Government \$157.6 billion – that is, the cost of the federal bail-out of the savings and loan industry." (United Nations 1989).

However, with the emergence of New Public Management, the ideological campaign against the UNCTC took on a rather shrill tone in the 1980s when US ambassadors to ECOSOC warned that the UN Centre on TNCs was a significant threat (Hamdani and Ruffing, 2015: 36). By the mid-1980s, many developing countries and underdeveloped countries, because of their sluggish economic performances and increasing pressures of debt, also began to have a welcoming attitude toward TNCs. In this changing environment, UNCTC was merged into UNCTAD in Geneva in 1993. As the UNCTC was dismantled in 1993 and a part of it was moved to UNCTAD, the approach towards TNCs became less confrontational.

While the mode of functioning changed, with the UN becoming more accommodative of the TNCs under globalisation, at no point did the UN give up on its standard setting functions. The other agencies of the United Nations, such as WHO and United Nations International Children's Emergency Fund (UNICEF) were successful in formulating codes such as the International Code of Marketing of Breast-milk Substitutes code for transnational corporations (Sikkink 1986). Similarly, the International Labour Organization (ILO) adopted the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy on labour-related human rights.

Political and economic changes at the end of the 20th century have fostered and intensified the search for collaborative arrangements. In 1999, at the World Economic Forum (WEF), the UN Secretary-General, Kofi Annan, invited the TNCs and large firms to join a partnership mission in the form of a Global Compact to promote responsible business practices grounded in principles contained in various UN declarations (Annan 1999). The relationship with the business community became even direct as the role of business in generating employment and wealth through trade, investment and finance had grown and as the UN member states increasingly stressed the importance of private investment in development (Secretary General, 2000).

The business community was increasingly appreciative of the role of the United Nations: Promoting peace and security; providing norms and standards in such diverse areas as trade laws,

shipping, aviation, telecommunication, postal services and statistics; addressing issues of vulnerability, poverty, environmental degradation and social conflict. All of this was seen as helping provide a stable and favourable framework for business and development. Cooperation with business had many forms, such as advocacy, fund-raising, policy dialogue, humanitarian assistance and development cooperation. The “Guidelines for Cooperation Between the United Nations and the Business Community” were issued by the Secretary-General of the United Nations on 17 July 2000.

In this background, the UN Global Compact (UNGC) became operational in 2000 and functioned under the chairing of the UN Secretary-General and the directorship of George Kell. The Secretary-General communicated to all UN member agencies to provide a high-level representative to liaise with UNGC member companies and facilitate interactions with them. (George, 2015; 118). This further pushed the private sector to become involved with the United Nations. In 2005, the Secretary-General appointed Professor John Ruggie as his special representative. The work of the Special Representative of the Secretary-General led to the adoption of ‘Guiding Principles on Business and Human Rights’. With the Global Compact, Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, Guiding Principles on Business and Human Rights, and various other initiatives, the United Nations has managed to advance the norm of corporate social responsibility (Berliner and Prakash, 2012 ; Černič, 2011). The adoption of such norms nudged TNCs to adopt principles rooted in the human rights framework of the UN (Tjahja et al 2021). However, these voluntary principles replaced the discourse on the legally binding code for the corporations.

NGO Participation in the UN System

With the UN Centre on Transnational Corporation was dismantled, the business representatives continued to be an important stakeholder of the UN system and voice their interests. The UN, promoted the NGO¹¹ community to help widen and deepen the understanding of the UN. To achieve this objective, the concept of 'Major Groups' was developed. There are nine major

¹¹ Non-Governmental Organisations (NGOs) are formally recognised in the UN Charter, in Article 71 of the Charter, and is thus given a legal status internationally. The NGO community at the UN includes all units and organisations which are not of the government – hence the term 'non-governmental'. Neither the concept 'civil society' or 'stakeholder' have legal status. Only a properly organised NGO can be accredited to the UN.

groups (Women; Children and Youth; Farmers; NGOs; Indigenous Peoples; Trade Unions; Local Authorities; Science and Technology; Business and Industry) according to the original agreement made in 1992 at the UN Conference on Environment and Development, UNCED. To be recognised as a bona fide major group within the context of the UN, any major group has to be recognised as a proper NGO (ref: ECOSOC 1996/31).

On several occasions, the UN has recognised the significance of non-governmental organizations (NGOs) involvement. The Economic and Social Council (ECOSOC) resolution 1996/31, acknowledged the expertise and capacity of NGOs to support the work of the United Nations (ECOSOC,1996). Various other UN frameworks encourage public participation at national and international levels. For instance, the Aarhus Convention, developed under the UN Economic Commission for Europe (UNECE), establish a legal commitment to ensure public participation (Principle 10 of the Rio Declaration-Aarhus Convention, supra note 38 at Article 8) in environmental matters. The Almaty Guidelines (supra note 12) were further established to facilitate access to information, encourage significant public involvement, and ensure access to justice in environmental issues.

UNEP's governing body decided in 1996 to adopt and use the concept to designate its accredited NGOs. The major group coordinating body at UNEP is called the Major Groups Facilitating Committee (MGFC), and its members, two from each of the nine MGs, are elected by its own constituency. The United Nations Division of Economic and Social Affairs, UNDESA¹², also uses the major group concept. The Major Groups concept has also inspired other parts of the UN to differentiate among the various NGO constituencies. The UNFCCC (the UN Framework Convention on Climate Change), for instance, uses different designations for the NGO community in the climate negotiations.

A business enterprise cannot be an accredited member of the UN as for-profit organisations are barred from being accredited members. They have tried a number of times. But a business can become a member of the ICC – the International Chamber of Commerce, which is a properly

¹² which also coordinates the High-Level Political Forum (HLPF) and the Sustainable Development Goals (SDGs), The resolution which mandates the HLPF, A/Res/67/290, has multiple references to the major groups. The NGO community at the HLPF, which comprises all Major Groups, has decided to expand on the number of Major Groups to include representatives from the disabled community, the ageing community and others.

defined non-governmental organisation. As a member of the ICC, a businessperson can thus be accredited to the UN (Several times, CEOs from large private companies have been accredited to the UN). But then they are a member of a country's delegation and given formal credentials by the government. And as the UN is owned by member states, this is a government's prerogative. Similarly, members of civil society have also been accredited to the UN by being a member of a country's official delegation.) In the UN system, a stakeholder is therefore context dependent - civil society, business, or a representative of government. To make the distinction and set a stakeholder apart from the authorities, national or local, many use the term non-state-stakeholder or non-state actor.

There is growing influence of corporate foundations on the functioning of international organizations. Some well-known NGOs¹³ issued 'Ending Corporate Capture of the United Nations: Joint Civil Society Statement' in 2012, expressing 'strong concerns about the growing influence of major corporations and business lobby groups within the UN' and calling for 'ending corporate capture of the United Nations' (Friends of the Earth International et al. 2012).

It drew attention to the fact that 'corporate lobbying within UN negotiations has managed to block effective solutions for problems related to climate change, food production, the violation of human rights, water supply, health issues, poverty and deforestation. In order to address the concern of corporate lobbying, the WHO, for instance, adopted in 2016 a 'Framework of engagement with non-state actors' (WHO, 2016). It recognizes the risks involved in dealing with non-state actors, including 'conflicts of interest' and 'undue or improper influence. . . especially in, but not limited to, policies, norms and standard setting'. This partnership with the corporate world has implications for UN-led agencies in functioning in multiple issue areas.

Within the UN, businesses and industry NGOs have participated in deliberations and consultations for about 50 years. The ICC got observer status in the United Nations in 2016 and celebrated 50 years of association with the United Nations in 2022 (ICC, 2022). It is a key business and industry NGOs (BINGOs) that promotes and voices the interests of business and industry in various UN forums.

¹³ Friends of the Earth International, Corporate Europe Observatory, La Via Campesina, Jubilee South/Americas, Peace and Justice in Latin America/SERPAJ-AL, Polaris Institute, The Council of Canadians, The Transnational Institute, Third World Network, World March of Women,

Brundtland Commission in 1987, which has strong ideas on governance and public participation in decision-making processes. UNEP was the first intergovernmental, multilateral organisation to allow civil society and then the NGO community to address the official plenary on a regular basis.

Article. 7 para. 6 and Articles 6 to 8 of the UNFCCC¹⁴, provide for the right of NGOs to participate in the conference negotiations. The stakeholders under the UNFCCC are organised into various constituencies based on their interests. Such constituencies mainly include business and industry NGOs (BINGO), environmental NGOs (ENGO) such as Climate Action Network (CAN) and Global Campaign to Demand Climate Justice (DCJ), farmers and agriculture NGOs, Indigenous peoples organisations (IPO), local government and municipal authorities (LGMA), Research and independent NGOs (RINGO), Trade union NGOs (TUNGO), Women and gender (WGC) and youth NGOs (YOUNGO). With an increasing number of constituencies in the environment, indigenous people, research, and independent NGOs have contributed to the dilution of the voice of businesses (WBCSD Secretariat). Business and industry NGOs (BINGOs) and environmental NGOs (ENGOS) had 11.5% and 43.4% representation, respectively, in COP 26. Within BINGOs, there are stakeholders with diverging views, from grey businesses who oppose mandatory regulations to green businesses who see mitigation and adaptation as an opportunity. Research and independent NGOs constitute more than 27% of approved observer organisations.

Non-State actors participate in intergovernmental negotiating processes in various ways: 1. engaging in civil society delegations; 2. providing knowledge and ideas to assist the Secretariat in the preparation of conference documents; 3. working with or becoming part of national governments' delegations; 4. organizing parallel side-events during negotiations; 5. producing and distributing materials, research, or publications; and 6. proposing text and amendments after their co-sponsorship by a Member State.

The participation of businesses in negotiations takes several forms. Various parties (member state) include representatives of certain companies in their delegations, providing them with a direct channel to influence the position of the concerned party (Vormedal,2008). BINGOs with a

¹⁴ Draft Rules of Procedure of the Conference of the Parties and its Subsidiary Bodies, (UN Doc. FCCC/CP/1996/2, 1996).

non-profit and tax-exempt status are admitted as observers. After accreditation as observers, BINGOs can attend COPs' and subsidiary bodies' plenary meetings and any open-ended contact¹⁵ group.

BINGOs often speak up during negotiations by sharing their official views on specific agendas. They have both formal and informal ways of connecting with the UNFCCC Secretariat. During the negotiations, the secretariat organize private meetings with the BINGO group, COP President, the workshop chairs, and the executive secretary. These opportunities for formal discussions and access are available to all non-state-actor groups involved in the process, including BINGOs. This allows them to remain constantly informed about the progress of the negotiations. Over time, BINGOs have gained the right to attend workshops (Depledge, 2005, page 217) and submit written inputs, which are published on the website of the UNFCCC secretariat. BINGOs are further invited to submit their views on several negotiation agendas, such as new market mechanisms, REDD+ and agriculture, etc. The expansion of BINGO reflects the increasing legitimacy attempts by corporations in multilateral forums (Vormedal, 2008). This helps companies establish a collective voice at the table, which is not possible as individual companies. BINGOs actively maintain relationships with UNFCCC secretariat staff to enable input into negotiation processes (Vormedal, 2008). Participation in BINGOs is geographically unevenly distributed. Businesses from developed countries and regions such as North America, Western Europe, Australia, and Japan dominate participation as BINGOs. However businesses from developing and underdeveloped countries are less represented because of inadequate networking and funding issues.

BINGOs are divided and have diverse viewpoints that represent different interests. Vormedal (2008) categorizes these BINGOs into Grey, Middle-Grey, Middle-Green, and Green on the basis of their participatory characteristics in the negotiations. Grey denotes low or no environmental profile and mandate, Middle Grey and Middle Green are somewhat middle positions inclining to less and more environmental characteristics, respectively. Similarly, the green category denotes a high environmental profile and mandate. Grey BINGOs are characterized by their opposition to climate change mitigation and mandatory GHG regulation. Their core mandate and relevant strategy have been to prevent the adoption of binding targets and time-bound goals. For instance,

¹⁵ A contact group is an informal working group. By nature, informal groups have fewer procedural rules than plenary sessions. However, observer organizations may be asked to leave a contact group if one-third of the parties object to their presence.

the Global Climate Coalition (GCC) obstructed and delayed negotiations for the Framework Convention and the Kyoto Protocol (Levy and Egan, 1998; Newell and Peterson, 1998; Legett, 2001). However, with declining support from industry players, such as British Petroleum, Shell, and General Motors, the GCC was officially disbanded in 2002 (Sourcewatch,2006). Many BINGOs influence national governments. For example, the Australian Industry Greenhouse Network (AIGH) and the Australian Aluminum Council (AAC) sought to undermine Australia's ratification of the Kyoto Protocol under John Howard's liberal government from 1996 to 2007. This later failed because of a change in the government in 2007 (Vormedal,2008).

Over time, there is a general shift in the approach of businesses as more and more businesses are becoming accommodative to environmental needs (Levy,2005). The accommodative approach within the environmental domain is termed as "norm bandwagons". It pertains to the phenomenon whereby individuals or groups engage in pro-environmental behaviors or adopt such attitudes primarily because they observe others doing so or perceive it as the dominant trend. The green category of BINGOs includes organizations such as the World Business Council for Sustainable Development (WBCSD). The WBCSD supports the necessity of regulating greenhouse gas emissions and establishing international frameworks, positioning itself as a valuable ally in the pursuit of solutions to combat climate change. Overall, the WBCSD emphasizes long-term policy advocacy by sharing insightful papers and engaging directly with decision-makers and the UNFCCC secretariat.

The capacity of BINGOs to assess the specific regulatory choices and implementation gives them considerable influence on negotiations. Additionally, financial resources serve as crucial assets. Although BINGOs typically do not offer direct financial support to delegates, their financial resources allow them to raise their ideas by organizing side events such as seminars, presentations, panel discussions, and even informal gatherings such as cocktail receptions and dinners during negotiations for BINGO staff, companies, NGOs, national delegates, and secretariat staff. Companies use such spaces for lobbying, networking, showcasing the implementation of projects, press conferences, and exchanging ideas. Business and industry personnel participate in numerous events that are organized in parallel to the conference and official meetings as side events. However, most negotiators cannot attend side events because they occur simultaneously in the negotiations (Schroeder and Lovell, 2011) and therefore the

impact of side events remains limited (Schroeder et al).

BINGOs such as the International Emissions Trading Association have been found to be involved in drafting legal texts in contact groups at COP. Certain parties even include representatives of certain companies in their delegations, providing them with a direct channel to influence the position of the concerned party. They arrange private meetings with national delegates, distribute lobbying documents and position papers, and assist parties in the formulation of legal documents. They convey their views through meetings with presiding officers chairing the parties and secretariat in an informal manner. The input of the business groups is decided by the presiding officer. Vormedal (2008) demonstrated that attempts by business groups influence negotiations on Carbon Capture and Storage (CCS) in the Clean Development Mechanism (CDM) of the UNFCCC. These attempts of BINGOs make ENGOs apprehensive of carbon-intensive companies playing an obstructive role in the multilateral climate framework.

This phase of negotiations on CCS illustrates recent changes in business organizations within the climate regime. Prior to this, corporations were less inclined to be transnational agents than NGOs (Hirst and Thompson,1996). There has broadly limited international influence of business due to the absence of social ties between industry groups and country delegates (Levy and Egan, 1998). The factors that shape the influence of businesses involve the possession of technological information and innovation capacity. International Petroleum Industry Environmental Conservation Association's (IPIECA) and The International Emissions Trading Association's (IETA), established in 1974 in response to the formation of the UNEP ,expertise in the field of CCS technologies provided them with a privileged position vis-à-vis ENGOs in terms of providing input to delegates on the issue, and thus influenced the views and positions of other actors, as well as the development of policy and regulatory design (Vormedal 2008). BINGOs effectively leverage networks, informal connections, and social relationships with various delegations, international organizations, and staff from the UNFCCC secretariat to share information regarding business interests and influence decision-makers (Vormedal 2008).

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