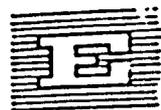


UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL
E/5838/Add.1
21 July 1976
Original: ENGLISH



Sixty-first session
Agenda item 13

TRANSNATIONAL CORPORATIONS

Measures against corrupt practices of transnational and
other corporations, their intermediaries and others involved

Report of the Secretary-General

Addendum

In compliance with General Assembly resolution 3514 (XXX), the Secretary-General prepared a report entitled "Measures against corrupt practices of transnational and other corporations, their intermediaries and others involved"^{1/} based on Government replies to his note verbale of 2 March 1976. Since completing his report the Secretary-General has received replies from the Governments of the following ten countries with respect to the issue of corrupt practices: Australia, Belgium, Ireland, Jordan, the Netherlands, Senegal, Switzerland, Syrian Arab Republic and the United Kingdom of Great Britain and Northern Ireland.^{2/} These replies are summarized below.

I. REGULATIONS CONCERNING CORRUPT PRACTICES

1. The replies of Governments generally draw attention to the types of measures which have been adopted to prevent corrupt practices. The references to national laws and regulations in the replies of other Governments also appear to indicate that such laws and regulations as pertain to transnational corporations are of a general rather than a specific nature and that they deal with the issue of corruption in similarly general terms.

A. Penal legislation

2. The replies of Governments cite their countries' penal legislation designed to prevent corrupt practices. The legislative measures referred to in the replies of Governments appear to fall into various categories. They are contained either in the general criminal codes or in enactments specifically dealing with corruption or in both. The replies of the Governments of Switzerland and of the United Kingdom describe in some detail the scope of the penal legislation relating to corrupt practices and the kinds of sanctions that these provide for.

B. Other kinds of legislation

3. Other types of laws and legislation cited in the replies of Governments as relevant for the prevention of corrupt practices include: the common law, the Representation of the People Act (United Kingdom), the Companies Act (the United Kingdom and New Zealand), the Commerce Act (New Zealand), Exchange Control Regulations (New Zealand), Overseas Investment Act and Regulations (New Zealand), Land Settlement Promotion and Land Acquisition Act (New Zealand), Land and Income Tax Act (New Zealand), the Debtors Ireland Act (Ireland) and the law relating to foreign investment and the registration of foreign companies (Jordan).

C. The issue of jurisdiction

4. The replies of three Governments refer to the issue of jurisdiction to prosecute and punish acts or corrupt practices. This issue raises problems, especially where international elements are present.

5. According to the United Kingdom reply, under that country's existing law no British subject can be tried for an offence committed on land abroad, unless a specific statutory provision so permits. "This is consonant with the cardinal

^{1/} Document E/5838

^{2/} The full texts of these replies are available in the Secretariat.

principle that the function of the United Kingdom's criminal courts is to maintain the Queen's Peace in her Realm and the courts' criminal jurisdiction is therefore territorial".

6. The Government of New Zealand also states in its reply that the various laws of possible relevance to corrupt practices "would of course only reach New Zealand registered companies". Further, it states that special measures might be necessary if a foreign corporation was involved which does not operate through a New Zealand registered company.

7. Similarly, the Netherlands Government states that the provisions of the country's penal code which relate to corrupt practices are applicable only if the offence was committed in Netherlands territory or in a country which recognizes a provision similar to the relevant provision of the Netherlands penal code and the offender is a Netherlands national.

II. INVESTIGATIONS AND PROPOSALS

A. Information on corrupt practices

8. The following Governments state in their replies that, to their knowledge, corrupt practices of the type referred to in resolution 3514 (XXX) have not occurred in their countries: Australia, Belgium, New Zealand, Senegal.

9. With respect to statistics the Government of the United Kingdom states in its reply that it does not keep separate statistics concerning corrupt practices and bribery as such. However, it states its belief that, although precise figures cannot be given, the number of prosecutions was small.

10. The Netherlands Government reply states that the National Bureau of Statistics has collected data on the different forms of corruption provided for in the relevant articles of the penal code. The reply tabulates the various provisions under which action has been instituted between 1968 and 1975 and the number of convictions and acquittals.

11. The Government of New Zealand states in its reply that it collects certain types of information about affiliates of foreign-based transnational corporations and about the foreign operations of transnational corporations based in New Zealand. The reply mentions that details of the range of information which the New Zealand Government collects on these matters was communicated to the Secretary-General by the Minister of Foreign Affairs of New Zealand in his Note FM 104/14/10 of 11 November 1975.

B. Investigations

12. The Government of the United Kingdom refers to a Committee of Inquiry which it had established in December 1974. The terms of reference of this Committee were "to enquire into the standards of conduct in central and local Government and other public bodies in the United Kingdom in relation to the problem of conflict of interest and the risk of corruption involving favourable treatment of a public body and to make recommendations as to the further safeguards which may be required to ensure the highest standards of probity in public life". The Committee is expected to report in the near future.

13. Furthermore, the reply of the United Kingdom mentions other instruments which are available for the investigation of corruption when a company is involved. It states that these are more frequently used in relation to the ordinary crimes of fraud, though they have occasionally been used for the probing of corruption. The two legal instruments which the reply cited are the Companies Acts of 1967 and 1948. First, section 165 of the 1948 Act enables the Department of Trade to appoint an inspector or inspectors where there are circumstances which suggest that the business of the company has been or is being conducted with intent to defraud creditors or for fraudulent or unlawful purposes or that the company was formed for a fraudulent or unlawful purpose. Secondly, under section 109 of the 1967 Act, the Department of Trade may, if it thinks there is good reason to do so, direct the production of the books and papers of a company, or authorize one of its officers to require such production, and thereafter to obtain explanations of any entry therein from any past or present officers or employees of the company. Under Section III of the same Act the Department of Trade is prohibited from disclosing the results of the investigations to the police, except for the purposes of instituting criminal proceedings.

14. The Government of the Syrian Arab Republic refers to its legislative decree No. 151 of 1952 which governs the activities of transnational and other corporations in the country. Article 37 of this decree establishes the machinery for ensuring compliance with the law and for investigating violations. Responsibility for enforcement of the law is entrusted to officials of the Corporation and Economy Departments in the provinces who are authorized by the Ministry of Economy to verify the enforcement of the provisions of the decree. The reports which these officials prepare remain valid until acted upon. However, the Government's reply states that, since the enactment of the decree, foreign corporations have not committed any serious violation or misconduct requiring investigation or legal action against them.

15. The Government of New Zealand states that its Justice Department carries out routine investigations under the Companies Act and other statutes solely to ensure that the laws are being complied with. These routine investigations contain no record of any instances of corrupt practices by transnational corporations operating in New Zealand. The reply also states that there do not appear to have been any specific studies of the trade policies and practices of transnational corporations.

16. The Netherlands Government states in its reply that it has no information on acts of corrupt practices in violation of the laws of other countries and that the information available to it relates only to corrupt practices violating Netherlands law. It indicates that these latter instances of corrupt practices, namely, where an international element is absent, are not contemplated by General Assembly resolution 3514 (XXX). In five such cases proceedings have been instituted under the Netherlands penal code. Four of these cases resulted in convictions, the fifth in an acquittal.

17. The reply states that the Netherlands Government has not conducted any other studies or investigations of corrupt practices having an international element. The only investigations it has made concerned the domestic scene. Nonetheless, it considers that the information, which has relevance solely to the situation in the Netherlands, could be useful for the purposes of the Secretary-General's note verbale.

18. In 1962 the Netherlands Minister of Justice established a commission whose function was to consider the possibility of prescribing penal sanctions for officials other than agents of the public service who corrupt others or allow themselves to be corrupted, and to make recommendations on the issue.

19. The report of the commission made use of several views which it had gathered from confidential discussions with industrial and commercial leaders. Furthermore, some big enterprises had supplied the commission with confidential written information. On the basis of that material, the commission had concluded that it was necessary to punish corruption, active as well as passive, by non-public officers. The recommendations made by this commission resulted in the insertion of article 328 in the penal code. Before putting forward the text of article 328, the commission had undertaken a comparative study of the relevant provisions of legislation in the Federal Republic of Germany, Austria, Sweden, Switzerland, the United Kingdom, France and the State of New York.

20. The Netherlands Government's reply states that article 328 of its penal code facilitates action against the corruption of non-public officers, even where an international element is present, provided that the criminal act was committed in Netherlands territory, or in a country which has a provision similar to article 328 and the offender is a Netherlands national.

21. The reply of the Belgian Government states that the question whether the penal code of Belgium presents lacunae, especially in the area of corruption and bribery, has been considered in Belgium. A study has been started with a view to amending the law of 6 August 1931 establishing appropriate rules of conduct for ministers.

C. Proposals

22. Two Governments (those of the Netherlands and the Syrian Arab Republic) made the following proposals for combating corrupt practices.

1. International co-operation

23. The Netherlands Government reply refers to the need for international co-operation to deal with corrupt practices. It states that unilateral regulation (in Netherlands penal law) concerning corruption by officials serving in foreign countries cannot be achieved, if only for practical reasons. Only international co-operation, on as wide a scale as possible, would make it possible to take effective action against illicit payments in the framework of international commerce. In the view of the Netherlands Government such international economic co-operation is equally necessary in order to combat acts likely to distort the course of world markets.

24. In its reply the Government of the Syrian Arab Republic also indicates that it is ready to facilitate co-operation, to study any decisions to be taken by the United Nations on the issue of corrupt practices and to consider, in the light of these, the possibility of amending the law governing foreign corporations in a manner not contrary to Syria's interests.

2. International agreements

25. The Netherlands Government states that it would support initiatives with a view to preparing workable international agreements, of universal scope, on the

issue of corrupt practices. In its view, these international agreements will only enter into force or have some effect when the States whose participation in international economic relations is significant regard the norms as binding. Such agreements would have to provide for mutual judicial assistance. In this connexion the Netherlands Government noted with interest the discussions which had taken place at the second session of the Commission on Transnational Corporations. It thought that the proposals put forward by the United States of America deserved serious consideration, preferably by the Sixth Committee of the United Nations General Assembly.

3. The possibility of adopting international norms in national legislation

26. The replies of the Syrian Arab Republic and the Netherlands indicate a willingness to consider adopting, as part of their national legislation, norms which the international community may promulgate. According to the latter, these norms must however be clear, capable of being inserted into national legislation and perhaps backed by sanctions.

UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
GENERAL

A/RES/3414 (XXX)
11 December 1975

Thirtieth session
Agenda item 124

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

[without reference to a Main Committee (A/L.783 and Add.1)]

3414 (XXX). The situation in the Middle East

The General Assembly,

Having considered the item entitled "The situation in the Middle East",

Guided by the purposes and principles of the Charter of the United Nations and resolutions of the United Nations as well as those principles of international law which prohibit the occupation or acquisition of territory by the use of force and which consider any military occupation, however temporary, or any forcible annexation of such territory, or part thereof, as an act of aggression,

Gravely concerned at the continuation of the Israeli occupation of Arab territories and Israel's persistent denial of the inalienable national rights of the Palestinian people,

Recalling relevant resolutions of the General Assembly and the Security Council, particularly those concerning the inalienable national rights of the Palestinian people and its right to participate in any efforts for peace,

Convinced that the early reconvening of the Peace Conference on the Middle East with the participation of all the parties concerned, including the Palestine Liberation Organization, is essential for the realization of a just and lasting settlement in the region,

Convinced that the present situation prevailing in the Middle East continues to constitute a serious threat to international peace and security, and that urgent measures should be taken in order to ensure Israel's full compliance with relevant resolutions of the General Assembly and the Security Council on the questions of Palestine and the Middle East,

Recognizing that peace is indivisible and that a just and lasting settlement of the question of the Middle East must be based on a comprehensive solution under the auspices of the United Nations, which takes into consideration all aspects of the Middle East conflict, including, in particular, the enjoyment by the Palestinian people of its inalienable national rights, as well as the total withdrawal from all the Arab territories occupied since June 1967,

1. Reaffirms that the acquisition of territory by force is inadmissible and therefore all territories thus occupied must be returned;

2. Condemns Israel's continued occupation of Arab territories in violation of the Charter of the United Nations, the principles of international law and repeated United Nations resolutions;

3. Requests all States to desist from supplying Israel with any military or economic aid as long as it continues to occupy Arab territories and deny the inalienable national rights of the Palestinian people;

4. Requests the Security Council, in the exercise of its responsibilities under the Charter, to take all necessary measures for the speedy implementation, according to an appropriate time-table, of all relevant resolutions of the General Assembly and the Security Council aiming at the establishment of a just and lasting peace in the region through a comprehensive settlement, worked out with the participation of all parties concerned, including the Palestine Liberation Organization, and within the framework of the United Nations, which ensures complete Israeli withdrawal from all the occupied Arab territories as well as full recognition of the inalienable national rights of the Palestinian people and the attainment of those rights;

5. Requests the Secretary-General to inform all concerned, including the Co-Chairmen of the Peace Conference on the Middle East, and to follow up the implementation of the present resolution and report thereon to the Security Council and to the General Assembly at its thirty-first session.

2429th plenary meeting
5 December 1975