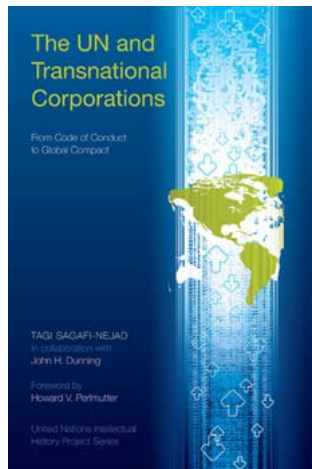




## The UN and Transnational Corporations

*The UN and Transnational Corporations: From Code of Conduct to Global Compact* by Tagi Sagafi-nejad, in collaboration with John Dunning, presents the fascinating story of the UN's efforts to establish substantive rules of engagement for transnational corporations (TNCs) within the global economy and to urge good corporate conduct. The book traces early ideas and thinking before World War II but concentrates on the critical ambitions to establish a Code of Conduct with regular and more detailed reporting. The Commission on Transnational Corporations and the United Nations Centre on Transnational Corporations (UNCTC) were created in 1974, at the recommendation of the United Nations Group of Eminent Persons. But with changes in the economic and political climate over the 1980s and 1990s, the UNCTC



was abolished in 1993 and its continuing work was merged with the UN Conference on Trade and Development (UNCTAD). Since then, impressive research and documentation have continued along with policy analysis, support, and training for developing countries. In 1999, UN Secretary-General Kofi Annan

launched the Global Compact, a voluntary partnership between the UN, the private sector, and nongovernmental organizations (NGOs) that embraces ten principles of good international corporate practice covering human rights, labor standards, environment, and anti-corruption. Other UN agencies have been drawn into these efforts, as issues of TNC profits and free markets have run headlong into specific interests of developing countries, such as their wish to buy low cost anti-retroviral drugs to deal with HIV/AIDS. More generally, the book covers the impact of TNCs and foreign direct investment (FDI) on economic development and international relations, and the attendant national and international policy issues.

### Overview

The relationship between the UN and transnational corporations was largely harmonious from the end of World War II until the late 1960s. By contrast, international relations during the 1970s were marked by discontent, disillusionment, and discord. Flashpoints and crises followed one another in rapid succession—the breakdown of the Bretton Woods system of fixed exchange rates in 1971, the OPEC oil-price hikes and ensuing energy crises, the Vietnam war, the Chilean episode, and corporate bribery scandals and indictments.

During the 1970s, the reputation of the TNCs came under serious attack, notably because of the ITT affair—involving the operations of the International Telegraph and Telephone Corporation in Chile that led to the toppling and death of President Salvador Allende—and the bribery scandals around the world that were revealed by U.S. congressional committees. Given Washington's subsequent hostile attitude toward UN efforts to establish a code of conduct for TNCs, it is important to underline that the world body's actions were to a large extent inspired by the findings of these U.S. congressional committees.

In turn, these events produced vociferous demands by some developing countries, primarily in Latin America, to reshape the international economic order and, with it, the role and influence of FDI. In particular, the global reach of TNCs was perceived to be a patent symbol of lingering exploitation and dependence. Developing countries urged the UN to take action to ensure that TNCs better met their needs.

Against this backdrop, the UN Economic and Social Council (ECOSOC) in 1973 appointed a Group of Eminent Persons to study the impact of TNCs on economic development and international relations, and to advise the UN on this issue. This group of twenty individuals, including two from the United States, engaged in an extensive process of inquiry and presented its recommendations in 1974. Among the most important was the establishment of a permanent Commission and a Centre on TNCs to assist the



UN and national governments on matters pertaining to TNCs and FDI. In particular, the UNCTC was to study the feasibility of producing a multilateral agreement on TNCs, perhaps in the form of a code of conduct.

During its two decades of operations, the UNCTC engaged in three main activities: providing information, analyzing policy, and providing advisory services. The UNCTC's information activities were truly pioneering—documenting the global activities of TNCs and establishing bibliographic data on TNCs at both the aggregate and enterprise levels and on legislative policies related to TNCs at the national and regional levels. These activities have continued as an invaluable international resource. The UNCTC's policy analysis activities involved research on economic, social, and legal matters and their impact on different aspects of economic development and international relations. These also have continued, except for studies leading to the preparation of a code of conduct for reasons explained below. The third area—the provision of advisory and training activities—also made an important contribution, but over the years it has diminished in importance.

After the 1970s, dramatic political, economic, technological, and cultural changes inexorably altered the context and the tenor of the debate on TNCs away from confrontation toward collaboration. The UN shifted from designing codes of conduct to curb the influence of transnational corporations to inviting them to join a global compact to further the common good. As a world debating society or “parliament of man,” the UN has had, and still has, the potential to play a pivotal role in steering a “fragile” world toward a more “fertile” future. Moves toward political and economic freedoms, propelled by the unrelenting growth of new technologies, epitomized by the Internet, cellular telephony, and the digital revolution, have underpinned this transformation.

## Changing UN Efforts Toward TNCs and FDI

The UN's contributions to a greater understanding of TNCs and FDI have come from many sources, but they have primarily emerged from the UNCTC and UNCTAD, which assumed responsibility for most TNC matters after the

UNCTC was dismantled in 1993. Overall, the UN's capacity-building activities and its monitoring and formulation of policy at both the national and international levels with respect to TNC–host country relations have been impressive and influential. The world body has contributed in many ways to a better understanding of issues and trends and has also served as a canary in a mine, detecting signs of strain in the global economy. More often than not, the UN and its constituent agencies have been ahead of the curve, although their path has been strewn with obstacles, particularly in the stormy 1970s.

The UN system's greatest strength lies in the core competencies and institutional relationships that its component agencies have honed over the years. UNCTAD and the UNCTC have together clocked more than thirty years of knowledge and best practice experience on the subject and on ways that TNCs and developing countries can cooperate to meet the development needs of the latter and the legitimate wealth-seeking objectives of the former. Providing employment and the best quality goods and services at reasonable prices can benefit both TNCs and the countries in which they operate. With their ability to tap into resources, capabilities, and markets throughout the world, TNCs have also transformed themselves in the process, abandoning many of the nationally-oriented and sometimes distorting strategies of the 1970s.

The UN's work has straddled a fine line between being proactive and reactive. In the 1970s and 1980s, UN staff played a proactive role. This was particularly so at the outset, since the desire to establish such an entity was intense among a few member countries and equally intense inside the UN. But once the atmosphere became more temperate and settled, by the late 1980s and 1990s, UN activities reacted to the change in the FDI climate and adapted accordingly. On the whole, evidence has shown that on issues such as transborder data flow and services, investment promotion, and technical assistance to small- and medium-sized enterprises, the UN's efforts have been at the forefront. On earlier issues such as TNCs in South Africa and more recently labor rights and globalization, the UN has been proactive. Another important contribution of the UN has been the development of indigenous human



resources through the many training programs, seminars, and curricula development.

But the greatest UN achievement relating to matters of FDI and TNCs has been its assistance to developing countries—through knowledge creation and capacity-building and human capital development. In TNC–host country relations, its approach has been nuanced by attention to the quality of capital and the complementary roles of TNCs, governments, and markets. As times change, there will be questions as to how the interests, strategies, and operations of TNCs can be more successfully reconciled with those of national governments.

The annual World Investment Report series, a primary information source, has become an important and expanding inventory of knowledge and information related to FDI and TNCs, and a highly visible contribution. This series, born in New York in 1991 and transferred to UNCTAD in 1993, was ahead of the curve in its ability to provide a careful and detailed examination of TNC-related topics through a thorough and multilevel peer review process involving scholars engaged in frontier research. The series, which has successfully straddled scholarship and policy, has earned respect in academic and government circles, and to a lesser extent in the business world.

In 1999, UN Secretary-General Kofi Annan launched a UN partnership mission called the Global Compact. This is a voluntary compact that embraces ten principles of good international corporate practice, covering human rights, labor standards, the environment, and anti-corruption. It is supported by a new section and a small staff and budget. By 2008, the Global Compact had over 5,100 corporate participants and stakeholders from over 130 countries.

The continued relevance of this UN work, and indeed of the entire UN system, will be determined by the extent of its contributions in the three critical areas already identified—creating knowledge, building capacity, and shaping policy. In turn, this will depend on the degree to which its capabilities can be directed toward issues of survival and growth in a world still suffering from hostility, poverty, overpopulation, pollution, and other ills.

## The Swinging Pendulum

The sweeping changes brought on by globalization, the dramatic increase in all forms of international exchange (i.e., trade, FDI, capital flows, and cross-border mergers and acquisitions), and the renewed push for greater corporate social responsibility are among the major differences between the 1970s and today. It is clear that there are newer opportunities and greater challenges than when UN efforts began. Earlier attention to ideology has been gradually replaced with a more pragmatic approach to FDI and economic development. Most developing countries have now embraced their own brand of a market-based economic system and seek to use each others' best practices, coordinate policies and institutional mechanisms when feasible, and take full advantage of services that the international system can provide.

In the interim, the UN's efforts toward TNCs and FDI have stimulated a gradual paradigm shift in the thinking of developing countries in the 1980s. This trend was bolstered by the accelerated pace of globalization, the collapse of communism and subsequent surge in international capital investment in Central and Eastern Europe, and the progression of an increasing number of erstwhile "developing" countries into the ranks of "emerging" economies.

This changed context is evident in other important ways. In the 1970s, international political economy discussions were dominated by the demand for a new international economic order (NIEO) and a more aggressive UN advocacy role. There were scandals involving ITT, Gulf, and dozens of other companies as well as government officials. By contrast, more recent years have seen the rise of TNCs from developing countries such as China, India, South Korea, Mexico, Brazil, and Taiwan. These TNCs increasingly resemble their western elders by increasing their economic prowess and foreign presence. Moreover, they have begun to tread where no developing-country firm had before—by bidding for and buying western companies and challenging global giants on their own turf. These new economic powers engage in their own form of global expansion through mergers, green-field investments, and other partnerships. Examples are the acquisition by India's Mittal steel company of Luxembourg-based Arcelor



(and also Mittal's incursions into Asian and African oil businesses), and the \$17.6 billion bid by Companhia Vale do Rio Doce—Brazil's large natural resources firm—to acquire a Canadian nickel mining company, primarily for its management skills.

In addition to the UNCTC and UNCTAD, other parts of the UN system have undertaken TNC-related activities. In 1977, for instance, the International Labour Organization (ILO) adopted a Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. The ILO adopted the declaration because it was not binding and was couched in more conciliatory terms than successive drafts of the Code of Conduct prepared by the UNCTC. The World Health Organization (WHO) accomplished remarkable work promoting consumer warnings and other controls on the use of tobacco, a code on the marketing of breast-milk substitutes, and actions to curb abuses by the pharmaceutical industry.

Nonetheless, there have been recent signs that the pendulum may be swinging again. The 1997 Asian currency crisis and the wave of anti-globalization demonstrations that erupted in Seattle in 1999 and in Genoa a year later punctuated an era of relative prosperity and optimism. The terrorist attacks on U.S. soil on September 11, 2001, shocked the world and more turmoil followed in their wake. Wars and invasions and the rise of cross-border terrorism became the order of the day as Afghanistan, Iraq, Lebanon, and some African countries, including Somalia and Sudan, teetered on the brink. Radicalism swept several Latin American countries. Far from being universally embraced, globalization, and its primary symbol, the TNC, came under fire once again. Paradoxically, aside from some targeted attacks on the oil facilities, hotels, resorts, and retail food chains of American and other companies, TNCs seem to have evaded direct assault. All this is exacerbated by the ongoing Great Recession that began in 2007.

As the context of international economic relations changed, so has the role and influence of the United Nations. As a creature of its constituent member states, it cannot deviate far from the views and values of these stakeholders. Since the rise of neoliberal ideology in the major world powers during the 1980s, the UN's

attitude toward TNCs and its policy recommendations to developing countries have undergone a major shift. As an aggregator of a multitude of opinions, the UN has neither promoted TNCs nor advocated radical action against them. Rather, it has acted as a catalyst and, to some extent, a balancer of views as well as a moderator of stakeholders' reactions. The UN continues to straddle a median between extremes.

## The Future

Although members of the United Nations galaxy have developed along functional lines, the multidimensional nature of many real world challenges requires new organizational configurations. One such configuration might be a matrix structure. Using the TNC model of alliance formation, the UN could develop a structure to deal with the challenges of development. In such an alliance formation, TNCs, NGOs, and governments would each play a role. UNCTAD's expertise and knowledge of FDI and TNCs could combine with those of the UN Industrial Development Organization in the area of industrialization for the benefit of both, and ultimately for developing countries. In May 2006, the World Health Organization was charged by its governing body, the World Health Assembly, with developing a global strategy for intellectual property, health research on new medicines for diseases that especially affect developing countries, and development. The WHO could partner on this with the World Intellectual Property Organization, whose charge is to oversee intellectual property issues. The Commission and the Centre on TNCs had been devised in this matrix configuration. The UNCTC engaged TNCs, other UN agencies, NGOs, and national governments in its deliberations. The relocation of the UNCTC's responsibilities to UNCTAD is due less to the efficacy of this kind of structure than to the intractability of the problems it was then charged with. Its failure to generate a Code of Conduct for TNCs stood in contrast to its many successes in knowledge creation and capacity building.

If the UN system were to commission a new Group of Eminent Persons like the one established in 1973, whose charge would be to focus on TNC-related issues and devise a new mandate, how might its recommendations today differ from those made in 1974? That such an



idea has not been put forth suggests that the *problematique* itself has changed—from a focus on TNCs to the broader phenomenon of globalization, and from confrontation and control to cooperation. More hands are now extended than swords drawn. To this we must add the proliferation of instruments—the web of controls—that TNCs must navigate, from self-imposed ones to those that are industry-based, NGO-initiated, governmental, regional, and international, and from narrowly-focused to comprehensive. Thus a new council of elders might question the need for—or possibility of—a binding global contract. Instead, it might seek to create a mechanism to harmonize the disparate, conflicting, and sub-optimal arrangements that exist. Advocates of the UN Global Compact forcefully argue that it comes closest to such an arrangement.

Meanwhile, most developing countries seek the assets, technology, management skills, and market access of TNCs and encourage their involvement in economic development. Over the past few decades, empirical evidence has provided support for market-based solutions to problems of promoting efficient and sustainable economic development. At the same time, there is near-consensus—now more than ever after the beginning of the Great Recession—that the market must be properly governed through simple and transparent formal rules, trust-based commercial relationships, a balance of incentives and penalties, and an understanding of, and general agreement on, the basic rules of engagement.

A new blue ribbon group would see this as signifying an optimistic future. The UN, of course, has made and held countless declarations, goals, and summits. Despite these, the global economy continues to grapple with the adverse effects of globalization, such as growing income gaps within and between states and the apparently uncontrollable waves of conflict and migration fuelled by such gaps. On the economic front, centrifugal forces include the stalemate over global trade talks, persistent protectionism in developed countries, misaligned currencies, and the specter of another round of stagflation similar to the bouts that accompanied the 1973–74 and 1978–79 oil crises. Other forces that threaten the fragile system are religious fundamentalism and global terrorism.

As the UN system engages in soul-searching, hope remains that the centripetal forces that drive globalization and the universal human quest for better quality of life will overcome the monumental obstacles posed by these centrifugal forces. If, as the ultimate “born global” institution, the UN can combine the collective knowledge and expertise of its constituent parts on TNCs and FDI together with its unique capacity to act as a “consensus-builder,” a fertile future can materialize. Such a future would combine the technological and organizational assets of TNCs with UN’s social capital.

The authors of *The UN and Transnational Corporations* end their volume as follows: “Recall...that the United Nations is driven by dreams and visions that can transcend national boundaries. It was built on ideals by idealists and survives on the shoulders of new generations of idealists. The fertile future is there for the taking” (221).

Louis Emmerij and Richard Jolly